Kailash Nath Gupta vs Enquiry Officer, (R.K. Rai), Allahabad ... on 27 March, 2003

Equivalent citations: AIR 2003 SUPREME COURT 2232, 2003 (6) SCC 137, 2003 AIR SCW 2680, (2003) 6 ALLINDCAS 34 (SC), (2003) 4 JT 446 (SC), (2003) 3 KHCACJ 80 (SC), (2003) 3 ALLMR 774 (SC), (2003) 3 JCR 124 (SC), 2003 (3) KHCACJ 80, 2003 (3) ALL MR 774, 2003 (2) LRI 445, 2003 (5) ACE 421, 2003 (6) ALLINDCAS 34, 2003 (3) SLT 509, 2003 (4) SCALE 527, 2003 SCC(CRI) 1295, 2003 (2) JKJ 257, 2003 (4) JT 446, 2003 (7) SRJ 41, 2003 (2) UJ (SC) 1167, (2003) 2 PUN LR 555, (2003) 4 RAJ LW 507, (2003) 2 TAC 241, (2003) 4 ANDHLD 59, (2003) 3 SUPREME 698, (2003) 4 SCALE 527, (2003) 3 ALL WC 2501, (2003) 1 WLC(SC)CVL 756, (2003) 2 ACC 1, (2003) 2 ANDHWR 5, (2003) 114 COMCAS 685, (2003) 6 INDLD 496, (2003) 2 ACJ 1002, (2003) 51 ALL LR 574, (2003) 3 CIVLJ 764, (2003) 2 CURCC 291, (2004) 1 BOM CR 367, AIR 2003 SUPREME COURT 1377, 2003 AIR SCW 1813, 2003 LAB. I. C. 2290, 2003 ALL. L. J. 1178, 2003 (4) ACE 132, 2003 (3) SLT 125, 2003 (2) LRI 313, 2003 (9) SCC 480, 2003 (1) ALL CJ 779, (2003) 6 ALLINDCAS 203 (SC), 2003 (6) ALLINDCAS 203, 2003 (5) SRJ 446, (2003) 3 JT 322 (SC), 2003 (3) JT 322, (2003) 97 FACLR 556, (2003) 2 CURLR 72, (2003) 3 SERVLR 1, (2003) 2 SCT 1018, (2003) 2 ALL WC 1509, (2003) 102 FJR 589, (2003) 2 BANKCLR 7, (2003) 5 INDLD 298, (2003) 2 LAB LN 392, (2003) 3 SCALE 428, (2003) 5 ESC 275, (2003) 3 SUPREME 318, 2003 LABLR 530, (2003) 2 LABLJ 367, 2003 SCC (L&S) 1137

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil, Arijit Pasayat

CASE NO.:
Appeal (civil) 2508 of 1998

PETITIONER:
Kailash Nath Gupta

RESPONDENT:
Enquiry Officer, (R.K. Rai), Allahabad Bank & Ors.

DATE OF JUDGMENT: 27/03/2003

BENCH:
Shivaraj V. Patil & Arijit Pasayat.

JUDGMENT:

J U D G M E N T SHIVARAJ V. PATIL J.

The appellant was an officer in the Allahabad Bank when disciplinary proceedings were initiated against him on account of certain alleged irregularities. Following charges were framed against him: -

> "ARTICLE I That the said Shri K.N. Gupta while functioning as Manager during the period from March, 1983 to April, 1986, allowed advances to various borrowers without observing the norms procedure laid down from time to time by Head Office. Due to his negligence Bank's money is in jeopardy. Out of good number of irregular advances, few cases are taken hereafter.
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> Advances for pumpsets have been allowed under Minor irrigation loan scheme -
>
> (1) without observing the requirement of possessing the minimum land holding by the borrowers. Few cases having such irregularities are as follows: -
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> Name of the Date Amount Land holding Borrower Advance Advance Sri Ram Ratan 29.3.85 Rs.4750/- 1.37 acres Ram (Jt. A/c) Sri Indra Deo 11.3.85 Rs.1200/- 1.64 acres Singh Yadav
>
> b) Under the aforesaid minor irrigation scheme advances for pumpsets have been allowed without obtaining the completion report of boring from A.D.O. (M.I.).

Few such cases are as follows: -

> Name of the Date of Amount of Borrower Advance Advance Sri Narain & others 6.6.84 Rs.8536.00 25.5.84 Rs.2150.00 Rabindra Singh Yadav 13.8.84 Rs.7800.00 9.8.84 Rs.4200.00
>
> c) Under minor irrigation scheme advances for electric Tube Well/pump set have been allowed without verification of electricity. Few examples are as follows: -
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> Name of the Date of Amount of Borrower Advance Advance Ram Kanwar and ors. 7.2.85 Rs.7500.00 Sri Santi 28.3.84 Rs.7000.00 ARTICLE II That during the aforesaid period and while functioning in the Yusufpur branch of the Allahabad Bank as Manager the said Sri K.N. Gupta allowed advances to small borrowers under small loan scheme and did not obtain the relative bills. As such the end- use of the loan amount was not ascertained. Few examples are as follows: -
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> Name of the Date of Amount of Borrower Advance Advance Sri Kanhiya Lal 12.4.85 Rs.6000.00 Verma Smt. Jahan Ara begum 10.4.85 Rs.6000.00 ARTICLE III That during the period from March, 1983 to April, 1986 while functioning as Manager in the Yusufpur Branch of Allahabad Bank the said Shri K.N. Gupta ignoring the

preliminary norms of Bank's financing did not obtain No Dues Certificate from other financing institutions. Few examples are as follows: -

Name of the Date of Amount of Borrower Advance Advance Sri Ram Javit 22.6.84 Rs.9000.00 Sri Janamjaya Singh 14.3.86 Rs.4750.00 ARTICLE IV That the said Sri K.N. Gupta while functioning as Manager during the period from march, 1983 to April, 1986 allowed advance of Rs.25,000/- under SEEUT scheme to Sri Shashi Kumar Upadhyay on 30.3.1984 for purchase of Tempo Taxi. Again the finance was allowed to Sri J.P. Pandey on the same vehicle without adjusting the outstanding in the loan amount of Sri Shashi Kumar Upadhyay. He has thus jeopardized Bank's money.

ARTICLE V That during the aforesaid period from March, 1983 to April 1986 while functioning in the Yusufpur Branch of the Bank as Manager the said Shri K.N. Gupta allowed advances to such borrowers just for extending them the benefit of subsidy money, few such examples are as follows: -

Name of the Date of Amount of Borrower Advance Advance Smt. Ugani Devi 1.3.86 Rs.4250.00 Sri Kapoor Chand 27.3.86 Rs.4750.00 Singh Yadav By this aforesaid negligence and irregular action Sri Gupta has violated the rules 3(1) & 3(3) of Allahabad Bank Officer Exmployees' (Conduct) Regulations, 1976 which amounts to misconduct under rule 24 of the aforesaid regulations."

After holding enquiry, he was found guilty of some of the charges and ultimately the disciplinary authority ordered his removal from service. He also failed in the appeal filed before the appellate authority challenging the order of his removal from service. Thereafter, he filed a writ petition in the High Court challenging the order of his removal from service contending that - (a) the order of dismissal was passed by an authority junior to the appointing authority, so it was violative of Article 311 of the Constitution of India; (b) none of the charges leveled against him amounted to any misconduct; (c) the findings of the disciplinary authority as well as the appellate authority were perverse and (d) that the punishment of removal awarded was wholly disproportionate to the charges leveled against him. The High court, on consideration of the material placed before it and having regard to the submissions made on behalf of either side, held against the appellant on all the points. However, as regards the point relating to awarding of disproportionate punishment, following the judgment of this Court in State Bank of India & Ors. vs. Samerendra Kishore Endow & Anr. [(1994) 2 SCC 537], the High Court was of the view that imposition of appropriate punishment was within the discretion and judgment of the disciplinary authority; it was not open to the High Court or the administrative tribunal to interfere with the quantum of punishment exercising power of judicial review. Hence, in this appeal the appellant has called in question the validity and correctness of the impugned order.

> On 8.11.1996, this Court ordered issue of notice limited to the question of the nature of the punishment to be imposed on the appellant and the respondents were directed to produce the confidential reports of the appellant. On 5.5.1997, leave was granted and the appeal was allowed. On 2.3.1998, this Court allowed the review petition filed by the respondents observing that there was an error apparent on the face of the impugned order which had not taken into account the settled position of law as profounded by this Court in State Bank of India & Ors. vs. Samerendra Kishore Endow & Anr. (supra). After setting aside the order dated 5.5.1997, while allowing the review petition, this Court directed that the special leave petition be placed for consideration afresh before an appropriate Bench in the normal course. Thereafter, on 27.4.1998, leave was granted again. It is how the appeal came up for hearing before us.

The learned counsel for the appellant, confining his argument to the quantum of punishment, urged that the appellant was initially appointed as Clerk in the respondent-Bank on 3.2.1959 and because of his hard work, devotion to duty and integrity, he was promoted to the officer cadre on 24.10.1973; from time to time, he rose in the hierarchy; his competency, merit and ability are well-reflected in the records; he had put in more than 30 years' unblemished service; the irregularities found against him do not reflect about his misconduct or any dishonest intention or misappropriation of any money. According to the learned counsel, the appellant acted only on the basis of the circulars issued by the Bank and at any rate, the extreme penalty of his removal from service was shockingly disproportionate to the charges held proved against him. The learned counsel also submitted that the decision in the case of State Bank of India & Ors. vs. Samerendra Kishore Endow & Anr. (supra) does not hold the field any more. There has been great change in approach of this Court even with regard to the proportionality of the punishment to the charges proved. He cited few decisions in support of his submissions. He also added that the appellant was removed from service on 28.3.1988; he could have superannuated on 31.8.1994; even assuming that on account of irregularities said to have been committed by the appellant, a small loan amount of Rs. 45,000/- in all, which could not be recovered from borrowers and could be deducted from his retirement benefits.

On the other hand, the learned counsel for the respondents made submissions in support of the impugned order. The learned counsel further urged that having regard to the nature of charges which were held proved against the appellant, the punishment imposed on him was quite justified. Under the circumstances, the impugned order may not be disturbed.

We have carefully examined the submissions made by the learned counsel for the parties. The High Court did not go into the question as to whether the order of removal of the appellant from service was grossly disproportionate in view of the decision of this Court in State Bank of India & Ors. vs. Samerendra Kishore Endow & Anr. (supra).

This Court in Union of India & Anr. vs. G.Ganayutham [(1997 7 SCC 463] considered the question whether judicial review powers in administrative law permit the High Courts or the administrative tribunals to apply the principle of "proportionality". In the said judgment, reference is made to

leading cases in England and also to the rulings of this Court touching the question of "proportionality". In para 15, reference is made to the case of Ranjit Thakur vs. Union of India & Ors. [(1987) 4 SCC 611). In that case, after finding the appellant guilty in court martial, he was dismissed from service and a sentence of imprisonment was also imposed as permitted by Army Act. While quashing the said punishment on the ground that it was "strikingly disproportionate", this Court, in para 25 observed thus:-

> "25.... The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concert of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In the said case, the "doctrine of proportionality" was treated as part of judicial review in administrative law.

A Bench of three learned Judges of this Court in B.C.Chaturvedi vs. Union of India & Ors. [(1995) 6 SCC 749], while dealing with the power to interfere with the punishment imposed by the disciplinary authority, in para 17, stated thus:-

> "The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in State of Orissa vs. Bidyabhushan Mohapatra (AIR 1963 SC
>
> 779) held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment.

The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in Union of India vs. Sardar Bahadur [(1972) 4 SCC 618}. It is true that in Bhagat Ram vs. State of H.P. [(1983) 2 SCC 442] a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of

the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to if by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami vs. State of T.N. [(1989) supp. 1 SCC 686], a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India case where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment."

It is also further stated in the same judgment that "the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof."

In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantifies at about Rs.46,000/-) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service. These aspects do not appear to have been considered by the High Court in the proper perspective. In the fitness of things, therefore, the High Court should examine these aspects afresh. The consideration shall be limited only to the quantum of punishment and not to any other question. As the appellant would have superannuated in the normal course in the year 1994, and the matter is pending for a long time, the High Court is requested to dispose of the matter within six months from the date of receipt of this order. It is made clear that no opinion has been expressed by us as to what would be the appropriate punishment. In this view, the impugned order is set aside. The writ petition is remitted to the High Court for disposal in the light of what is stated above.

The appeal stands disposed of in the above terms with no order as to costs.