Lucknow K.Gramin Bank(Now)Allahabad ... vs Rajendra Singh on 29 July, 2013

Equivalent citations: AIR 2013 SUPREME COURT 3540, 2013 AIR SCW 4731, 2013 LAB. I. C. 3848, 2013 (5) ALL LJ 636, 2013 (9) SCALE 653, (2013) 3 KER LT 73.1, (2013) 7 ADJ 15 (SC), (2013) 5 LAB LN 100, (2013) 3 ESC 533, 2013 (7) ADJ 15 NOC, 2013 (12) SCC 372, (2013) 139 FACLR 290, (2013) 4 SCT 118, (2013) 5 SERVLR 638, (2013) 9 SCALE 653, (2013) 3 CURLR 298, (2013) 6 MAD LJ 204

Author: A.K.Sikri

Bench: A.K.Sikri, Anil R. Dave

(REPORTABLE)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOs…6142/2013
(Arising out of Special Leave Petition (Civil) No.10025 of 2012)

Lucknow K.Gramin Bank (Now Allahabad,U.P.Gramin Bank) & Anr. …..Appellant (s)

Vs.

Rajendra Singh …..Respondent (s)

With

C.A.Nos. 6143 & 6144/2013 (@ SLP (C) Nos.11211 of 2012 & 11451 of 2012

J U D G M E N T

A.K.Sikri, J.

1. Leave granted.

2. These appeals arise out of the decision dated 19th December 2011 rendered by High Court of Judicature at Allahabad, whereby three Writ Petitions filed by the respondents in these appeals have been disposed of with certain directions.

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3. Before we point out the directions of the High Court in the impugned judgment and the grievance of the appellant thereto, it would be proper to traverse the seminal facts which are largely undisputed.

4. The appellant-Bank had issued separate charge-sheets to six employees leveling identical charges. Three respondents before us in these appeals were the three employees out of those six employees to whom these charge-sheets were issued. All the six employees, including the respondents herein, filed their replies to the charge- sheets denying the charges.

5. For certain unknown reasons, the appellant-Bank initially chose to proceed and conduct the enquiry only against the respondents herein and appointed an enquiry officer. After conducting the enquiry, the enquiry officer submitted his enquiry report, returning the findings that charges leveled against the respondents stood proved. After giving the opportunity to the respondents to file their response and objections to the enquiry report, the Disciplinary Authority imposed the punishment of dismissal from service vide order dated 15th February 2008 in respect of all the three respondents, though orders were passed separately in each case. These -

respondents filed departmental appeals which were also dismissed by the Appellate Authority vide orders dated 28th April, 2008.

6. Aggrieved by the orders of the Disciplinary Authority as well as the Appellate Authority, the respondents approached the High Court by way of Writ Petitions.

7. It so happened that though the other three employees had denied the charges and the enquiry officer was also appointed in their cases (of course after the finding of guilt was recorded by the enquiry officer in the case of the respondents) before the enquiry officer, the said three employees admitted the charges and tendered unconditional apology. They also gave undertaking that they would not commit any such misconduct in future. The enquiry officer recording this, forwarded his report to the Disciplinary Authority and keeping in view that those employees had tendered unconditional apologies with the assurance, as aforesaid, all three of them were inflicted the penalty of reduction of his basic pay by one stage for one year with cumulative effect" under Regulation 38(1)(b)(ii) by separate orders dated 25th June 2008, 26th June 2008 and 30th June 2008. This is a -

major penalty as per the aforesaid Regulations though in the impugned order, High Court has termed it as "minor punishment"

8. Be that as it may, when the three Writ Petitions filed by the respondents herein came up for hearing before the High Court, the counsel who appeared on behalf of the respondents pointed out the orders of punishment passed by the Disciplinary Authority in the case of aforesaid three employees and made a statement that the respondents were also willing to tender unconditional apologies for their misconduct with assurance that they would not repeat the same and would not give any cause of grievance to the Bank in future. The High Court directed the counsel for the Bank to seek instructions as to whether the Appellate Authority (which is the Board of Directors in these cases) was willing to reconsider the unconditional apology of the respondents and award the same punishment which had been awarded to other persons charged for the same misconduct. Counsel for the Bank took the instructions and on the next date of hearing informed the High Court that he had received a letter from the Bank to the effect that since the Appellate Authority was the Board of Directors which had also decided their appeals and confirmed the order of punishment, it could reconsider the matter only if the Court issues such a direction. Taking note of the aforesaid -

instructions which the appellant-Bank had given to its counsel, the High Court disposed of the Writ Petitions by setting aside the order of the punishment passed by the Appellate Authority with the directions that these appeals of the respondents be reconsidered. However, while giving the directions for reconsideration the High Court also specifically ordered that the Appellate Authority shall take a decision and award "minor punishment" as had been done in the case of other three employees. Exact nature of this direction given by the High Court in the impugned order reads as under:

> "The petitioners shall file before the appellate authority the notarized affidavits, tendering unconditional apology in the same terms as has been filed before this Court and the appellate authority shall take a decision and pass appropriate orders accordingly awarding minor punishments, as has been done in the case of other office-bearers of the Bank's Union. This shall be done in the first meeting of the Boards of Directors, which is to take place hereinafter or in any case within next two months, whichever is earlier." It is this specific direction to the Appellate Authority, which is the bone of contention.

9. Mr. Dhruv Mehta, learned senior counsel for the Bank, submitted that once the matter was referred back to the Appellate Authority for reconsideration, it was to be left to the discretion of the Appellate Authority -

to take an appropriate view in the matter and it was not open to the Court to spell out and suggest the exact nature of penalty which the Appellate Authority is supposed to pass. His submission was that by issuing such a direction, the Court itself assumed the role of the Appellate Authority which was impermissible. He further submitted that even when the charges leveled against six employees were identical, the circumstances under which the penalty was imposed on the other three employees were totally different than the circumstances of the three respondents herein. In this

behalf, he pointed out that whereas the said three employees who were given lesser punishment, had accepted the charges on the very first day before the enquiry officer and tendered unconditional apology as well. On the other hand, in so far as these respondents are concerned, they denied the charges even in the enquiry proceedings which led to conduct full-fledged departmental enquiry. Not only this, even after the findings of the enquiry officer the respondents adopted the same posture of denial and took the matter further before the Appellate Authority. Pointing out this distinction Mr. Mehta's submission was that case of the respondents could not be treated at par with other three officials and it was permissible for the Appellate Authority to consider these circumstances and take a decision to -

impose penalty at variance with the punishment imposed upon those employees who had accepted the charges at the outset. Mr. Mehta referred to the judgment of this Court in the case of Obettee (P) Ltd. Vs. Mohd. Shafiq Khan (2005) 8 SCC 46 wherein identical features, as prevailing in this case, were held as distinctive features and different and higher punishment was held to be justified in the following manner:

> "On consideration of the rival stands one thing becomes clear that Chunnu and Vakil stood on a different footing so far as the respondent workman is concerned. He had, unlike the other two, continued to justify his action. That was clearly a distinctive feature which the High Court unfortunately failed to properly appreciate. The employer accepted to choose the unqualified apology given and regrets expressed by Chunnu and Vakil. It cannot be said that the employer had discriminated so far as the respondent workman is concerned because as noted above he had tried to justify his action for which departmental proceedings were initiated. It is not that Chunnu and Vakil were totally exonerated. On the contrary, a letter of warning dated 11.4.1984 was issued to them.
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> In Union of India vs. Parma Nanda the Administrative Tribunal had modified the punishment on the ground that two other persons were let off with minor punishment. This Court held that when all the persons did not stand on the same footing, the same yardstick cannot be applied. Similar is the position in the present case. Therefore, the High Court's order is clearly unsustainable and is set aside."
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10. Per contra Mr. Rajeev Singh, the learned counsel appearing for the respondent in one of these appeals argued that the circumstances of the two sets of cases were almost identical and therefore in the facts of this case, the directions of the High Court were perfectly in order. He pointed out that the other three employees had also denied the charges in the first instance, in their replies to the charge sheets served upon them. For some curious reasons the appellant-Bank did not hold any common enquiry even when the charges leveled in all six charge-sheets were identical. Instead the Bank first picked up only the respondents herein, and held the enquiry against them. It is only after in the enquiry the charges were established against the respondents and the punishment of dismissal was imposed on them, that the enquiry against the other three employees was

commenced. At this stage, knowing the fate of their cases, those three employees accepted the charges and tendered unconditional apologies. The learned counsel argued that the Bank had given definite advantage to those three employees by deferring their enquiries enabling them to make up their mind after knowing the result in the case of the respondents. He, thus, argued that it cannot be said that those three employees had accepted the charges at the outset. His submission was in such circumstances imposition of different and higher -

penalty to the respondents herein would clearly amount to invidious discrimination, as held by this Court in Rajendra Yadav vs. State of M.P. & Ors. 2013 (2) SCALE 416. In that case two employees were served with charge sheets who were involved in the same incident. A person who had more serious role was inflicted comparatively a lighter punishment than the appellant in the said case. This was held to be violative of doctrine of Equality Principles enshrined under Article 14 of the Constitution of India. The discussion which ensued, while taking this view, reads as under:

> "We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the facit approval of the appellant was proved in the inquiry. The charge leveled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, I was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.
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> We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same -
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> time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs." Learned counsel for the respondents made a fervent plea that the respondents herein were also entitled to the same treatment.
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> 11. The question that falls for determination is as to whether the High Court is justified in giving such a mandamus or it should have referred the matter back to the Bank with the direction to take a fresh decision in the matter?

12. Indubitably, the well ingrained principle of law is that it is the Disciplinary Authority, or the Appellate Authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the Disciplinary Authority. In the matter of Apparel Export Promotion Council vs. -

A.K.Chopra reported in 1999 (1) SCC 759 this principle was explained in the following manner:

"22 …….The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. …..The High Court should not have substituted its own discretion for that the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone. ….." Yet again, in the case of State of Meghalaya & Ors. Vs. Mecken Singh N.Marak reported in 2008 (7) SCC 580, this Court reiterated the law by stating:

"14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment -

imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

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17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to

> impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."
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> 13. As is clear from the above that the Judicial Review of the quantum of punishment is available with a very limited scope. It is only when the -

penalty imposed appears to be shocking disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/Appellate Authority to take a decision afresh and it is not for the court to substitute its decision by prescribing the quantum of punishment. In the present case, however, we find that the High Court has, on the one hand directed the appellate authority to take a decision and in the same breath, snatched the discretion by directing the Appellate Authority to pass a particular order of punishment. In normal course, such an order would clearly be unsustainable, having regard to the legal position outlined above.

14. The peculiar feature, however, is that the High Court has done so proceeding on the presumption that these three respondents are equally and identical placed as the other three employees who had admitted the charges, though this parity is not spelled out in the impugned order. Whether this approach of the High Court is tenable, looking into the facts of this case, is the moot question.

15. If there is a complete parity in the two sets of cases imposing different penalties would not be appropriate as inflicting of any/higher penalty in one -

case would be discriminatory and would amount to infraction of the doctrine of Equality enshrined in Article 14 of the Constitution of India. That is the ratio of Rajendra Yadav's case, already taken note above. On the other hand, if there is some difference, different penalty can be meted out and what should be the quantum is to be left to the appellate authority. However, such a penalty should consumerate with the gravity of misconduct and cannot be shockingly disproportionate. As per the ratio of Obettee (P) Ltd. Case even if the nature of misconduct committed by the two sets of employees is same, the conduct of one set of employee accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.

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16. This, according to us, would be the harmonious reading of Obettee (P) Ltd. and Rajendra Yadav cases.

The principles discussed above can be summed up and summarized as follows:

> (a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;
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> (b) The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;
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> (c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;

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(d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

(e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable.

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17. It is made clear that such a comparison is permissible only when the other employee(s) who is given lighter punishment was co- delinquent. Such a comparison is not permissible by citing the cases of other employees, as precedents, in all together different departmental enquiries.

18. Applying these principles to the facts of the present case, we may observe that, no doubt the charges in respect of two sets of employees were identical. Though the other set of employee accepted the charges on the first day of enquiry, a factor which is to be kept in mind, that even those employees had denied the charges in the first instance and accepted these charges only in the

departmental enquiry, that too after realizing that similar charges had been proved against the respondents herein in the departmental enquiry. Therefore, it was not a case where those employees had expressed the unconditional apology in the first instance. This may be a mitigating circumstance for the appellants herein. At the same time, we are of the opinion that all these aspects are to be considered by the appellate authority. The High Court did not look into all these aspects and mandated the appellate authority to pass orders imposing a specific penalty only. This direction of the High Court is, accordingly, set aside and the matter is remitted back to the appellate authority to take a decision imposing -

appropriate penalty on the respondents herein. We are confident that the mitigating circumstances pointed out by the respondents herein would be given due consideration by the appellate authority, keeping in view the ratio of Rajendra Yadav's case as well. It would be open to the respondents herein to make representation in this behalf to the appellate authority on the basis of which the respondents want to contend that they should be given same treatment as meted out to other three employees. Such a representation will be given 15 days from today. Appellate Authority shall pass appropriate orders deciding the appeals afresh within 2 months from today.

19. Appeals are allowed in the aforesaid terms. No costs.

.....J. (Anil R. Dave) .....J. (A.K.Sikri) New Delhi, Dated: July 29, 2013