

**IN THE HONOURABLE COURT OF THE HONOURABLE JUSTICE AT
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 20.03.2025

DELIVERED ON: 22.04.2025

PRESENT:

THE HONBLE MR. JUSTICE TAPASRATA CHAKRABORTY

AND

THE HONBLE MR. JUSTICE DEEPTO ROY KUMAR MITRA

MAT 1990 OF 2023

ABHISHEK NAG

- VERSUS -

PUNJAB NATIONAL BANK, PREVIOUSLY KNOWN AS THE ORIENTAL BANK OF
COMMERCE (E-OBC) & OTHERS

Appearance:

Mr. Soumya Majumder, Ld. Sr. Adv.
Ms. Sanjukta Dutta, Adv.

..... for the Appellant

Ms. Parna Roy Choudhury, Adv

..... for the Bank/Respondents

Reetobroto Kumar Mitra, J.:

1. The MAT No.1990 of 2023 arises out of WPA No. 7994 of 2021, the writ petition being dismissed by the impugned judgment passed on 2nd August, 2023 by a learned Single Judge of his Hon'ble Court upholding the penalty/punishment imposed by the concerned authority of the Oriental Bank of Commerce, which has presently merged with the Punjab National Bank.

2. The brief facts leading to the writ petition are as under:

(i) The petitioner /appellant herein was appointed on 7th April, 2010 as an officer of the Oriental Bank of Commerce in the Junior Manager Grade Scale-1, as a probationary officer for the period of 2 years.

(ii) Sometime on 24th October, 2017, the appellant was transferred from his present assignment at Jangipur Branch of the Oriental Bank of Commerce, which thereafter merged with the Punjab National Bank (hereinafter referred to as the Bank) to Dhamra Port as the Branch Manager. The appellant was thus relieved from the Jangipur Branch on 1st November, 2017. A memo dated 11th January, 2018 was issued proposing to hold an inquiry against the petitioner on two grounds, (a) that he was absent unauthorisedly from his duty since 2nd November, 2017 and (b) had left the station without obtaining prior permission of the competent authority. Thus, these were the only two grounds for which charges had been framed for violation of regulation 13(1) and 13(2) of the Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 (hereinafter referred to as the said regulation) read with regulation 24.

3. The Inquiry Authority (hereinafter referred to as the IA) submitted its report on 4th June, 2018, holding that the charges against the appellant herein have been proved. Thereafter, the Disciplinary Authority (hereinafter referred to as the DA), by its order dated 3rd August, 2018, imposed the penalty on the appellant: removal from service which shall not operate as a disqualification for future employment. The appellant preferred a statutory appeal and the Appellate Authority (hereinafter referred to as the AA) by its order on 4th January, 2019 rejected the appeal and upheld the penalty imposed by the DA. The appellant thereafter preferred a review petition against the order of the AA, which was however rejected by the Reviewing Authority (hereinafter referred to as the RA) confirming the penalty imposed by the AA, by its order of 18th September, 2019.

4. Mr. Majumder, learned senior advocate appearing for the appellant submits the appellant had not been able to join the new assignment at Dhamra Port due to his serious physical ailment, which was intimated to the concerned authority of the Bank, which was however ignored by the Bank without making any reply thereto. The act of absence was neither wilful nor deliberate and was indeed for a valid reason, relating to a medical ground. The IA conducted the inquiry in hot haste without affording an opportunity to cross examine the Management Witnesses (MW-2) and to present his defence.

5. Mr. Majumder has also raised an issue, that the charge sheet was principally on two grounds:

- i. Unauthorised leave of absence;
- ii. Leaving station without permission and not joining within the date at the new station.

However, the charge sheet seems to have an additional charge, which almost ranges in the nature of the ground of insubordination, though the same has not been mentioned in such uncertain terms.

6. According to Mr. Majumder, the punishment imposed was disproportionate to the charges levelled and alleged to have been proved, which ought to have been, therefore, quashed by this Hon'ble Court exercising Writ Jurisdiction and particularly exercising its power of judicial review.

7. Mr. Majumder contends that it was not a charge against the appellant that he had misappropriated any amount. There is also no allegation of moral turpitude against him and that as such the punishment imposed is thoroughly disproportionate. Such arguments, as advanced, before the learned single Judge were glossed over and no finding was returned over the same.

8. Ms. Roy Choudhury, the learned advocate appearing for the respondents submits that appellant had been on leave since 2nd November, 2017 without obtaining any prior permission. The appellant had been given adequate opportunity to present his case before the IA and that he had also been given the opportunity for cross examination of the management's

witnesses which he had refused. Thus, that there was no violation of the principle of the natural justice.

9. She argues that before the AA, a new case was made out that his father was old and ailing and was in the process of recovering from a major hip replacement surgery and that the appellant was prone to suffer serious nerve breakdown on account thereof.

10. According to Ms. Roy Choudhury it is not a case that the appellant had been found guilty on the basis of mere surmises. His guilt stands established through the specific findings arrived at by the IA, the DA and the AA. In the said conspectus, the argument of violation of natural justice is not sustainable.

11. She argues the charges proved cannot be construed to be trivial in nature and that in bank service the appellant was required to maintain an impeccable disposition and as such the punishment imposed is appropriate. In exercise of judicial review, the Court does not act as an appellate forum over the findings of the DA and does not re-appreciate evidence. In support of such contention reliance has been placed upon the judgment delivered in the case of *State of Karnataka and Another Versus Umesh*, reported in (2022) 6 SCC 563.

12. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case, as well as to the documents disclosed before us.

13. The appellant was informed of his transfer from Jangipur Branch to Dhamra Port on 24th October, 2017, by the concerned officer of the Human Resource Department (HRD) of the bank. It was to this very department, a higher officer, the General Manager to whom the appellant had made a representation on 30th October, 2017, on the ground of his father's ailment and was merely seeking a deferment of his posting by a period of 6 months to enable him to stay on with his father, till his father's significant recovery. Thus, the department which had intimated the transfer of the appellant had been informed by the appellant of his request and /or representation to make a deferment of such transfer.

14. There is absolutely no reply to such representation made by the appellant from the concerned department. In fact, by a letter of 1st November, 2017 the Branch Manager of the Oriental Bank of Commerce informed the appellant that he was relieved of his duties from office with effect from 1st November, 2017 and with an instruction to report to Dhamra Port for his next assignment.

15. By his mail on 6th November, 2017, to the HRD department the appellant had informed that due to his ailing health, which was persistent in nature, he would be unable to join his duties and sought for leave of 7 days on medical ground to enable him to recover his health and resume his duties. The said request was summarily rejected by the bank on 7th November, 2017, intimating him that his absence from duty from the 1st November, 2017, to 7th November, 2017, was unauthorised and that he should join duty immediately or else face the wrath of the Bank, which may

initiate disciplinary action against him under the concerned Officer's Service Regulation 1982.

16. A mail of 10th November, 2017, also sent by the appellant, reiterated his health issues and almost implored the authorities to grant him leave for 7 days. It appears that the appellant had produced certain medical certificates of his ill health by his mail of 16th November, 2017, as enclosure/attachment thereto, which were not taken very seriously by the concerned authorities. In fact, the reference to such certificates was made by the authority's letter of 20th November, 2017 to which the appellant replied on 27th November, 2017 reiterating his health issues and the reasons for rushing to his home town Dumka. There are several such mails by the appellant to the HRD Department of the Bank, forwarding medical proof of his ill health, medical appointments, medical reports, prescriptions and certificates issued by the various doctors, none of which were considered and even if considered, were not challenged by the Bank authorities. Even after submitting such documents, the respondent authorities, by their letter of 6th December, 2017 sought further documents, namely prescriptions, pathology reports, bills of medicine consumed, name of the speciality centre and the treatment reports of the concerned doctor, one Dr. Dilip Kr. Keshri, referred *vide* prescription on 30th November, 2017. Replies were submitted on 20th December, 2017 and 26th December, 2017 by the appellant furnishing documents to the effect as asked for by the Respondent authorities, which were not acceptable to the Bank, for reasons which remain unexplained. However, in its letter of 16th December, 2017, the Bank

has admitted in no uncertain terms that the rest advised by the doctor for 30 days had already expired and that the report submitted from the hospital did not advise any rest. The appellant was asked to report on 4th of January, 2018 at his new destination of service, Dhamra Port, within 7 days, *i.e.* by 4th of January, 2018.

17. Hearings before the IA were held on 9th March, 2018, and 19th March, 2018 which were attended by the appellant. The appellant was not present at the hearing on 2nd April, 2018, on the ground of his ill health, which he informed by a mail of even date, which was however not taken into consideration. The witness of the management, referred to as Management Witness (MW-2) was examined in chief, which was concluded on that day the witness (MW-2) was not discharged. However, interestingly enough, on the next day of hearing *i.e.* 10th April, 2018 when the appellant was present and wanted to cross examine Management Witness-2 (MW-2), the MW-2 was not present. In fact, it was the chief of MW-1 which commenced on 10th April, 2018. Clearly, the appellant was denied an opportunity to cross examine MW-2. The hearing was concluded and the finding of the inquiry officer was made on 4th June, 2018 holding *inter alia* that both charges were proved against the appellant. On the basis of the order of the IA, the DA passed an order on 3rd August, 2018, which was carried in appeal by the appellant, which also upheld the order of the DA, holding that both charges have been proved. The AA, in its order, held that the appellant herein had a '*callous approach towards his duties*' and '*wilful disobedience towards the*

orders of the Higher Authorities'. The order of the AA was carried in review, which was dismissed by the RA by its order dated 18th September, 2019.

18. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in the decision making process. There is no dispute as regards the proposition of law laid down in the case of *State of Karnataka and Another (Supra)* but the same is distinguishable on facts.

19. The following issues are undisputable:

1. Seeking leave by his letter of 30th October, 2017 by the appellant;
2. Information of leaving station by his mail of 27th November, 2017;
3. Furnishing requisite documents showing his ailment as well as the fact that his father was old and ailing after a rather serious surgery;
4. That he was seeking deferment of transfer by a period of 6 months, not asking that the transfer be revoked.

20. On these admitted and undisputed facts, one is left to wonder as to why the IA, the DA, AA and RA were not satisfied with the documents submitted by him. All of which show or reveal that he was ailing and had a medical condition which could not be retrieved or redressed in a short

span of time. All such documents had been accepted, the veracity whereof has never been questioned by any of the authorities dealing with the matter. The prescription and the test reports given were never questioned as to their authenticity by any of the authorities. That the ailment of the petitioner's father was somewhat serious has not been questioned by any of the authorities. Clearly, leave had been sought for by the appellant, and equally clearly, the letter of 30th October, 2017, by which the appellant sought for leave, was completely ignored by the Respondents.

21. The respondents sought to make out a rather novel defence that the mails were addressed to the HRD Department, which was not authorised or equipped to deal with such instances of leave. Ironically, it was the very same HRD Department which had intimated his transfer. The appellant had argued that a concerned mail id was inaccessible on account whereof intimations were made to the HRD Department through mail, which were obviously received. There is no intimation from the HRD Department that such information and intimation ought to have been given to a different Department of the Bank.

22. It is also undisputed that the MW-2 had been examined prior to MW-1 and even though his examination of chief was concluded, the witness had not been discharged, in spite whereof, the witness was not present on the next day of the hearing *i.e.* 10th April, 2018. Thus, it is equally indisputable that the appellant had not been given an opportunity to cross examine MW-2. There is indisputably, violation of the principles of natural justice in conducting the inquiry. Interestingly, while considering the Review Petition, the RA had not returned any finding on

the appellant's specific case that the AA had not considered any of the submissions or the supporting documents which were necessary evidence.

23. The respondents have argued that the chief of MW 1 is identical to the chief of MW 2. Having been given an opportunity to cross examine MW1, the appellant herein had refused to do so, and hence, by implication, it may be assumed that insofar as the cross examination of MW2 is concerned, he would have likewise, refused the same. This argument is in the realm of conjectures and surmises and cannot be made in a Court of law to overcome the perils of violation of the natural justice. The respondents have also argued that a new case was made out before the AA by the appellant. This is again an argument from the bar, which does not find any support from the order of the AA.

24. In the present case, the absence from the station without permission could not be successfully assailed by the respondents. It is true that the appellant had applied for leave, which was ignored and glossed over by the authorities. The other factor is that a period of 30 days of leave had been granted by the respondents while conducting the inquiry and disposing the appeal, leaving an unauthorised leave of only 30 days.

25. In this backdrop of the charges proved, the impetus towards imposition of the severest punishment, of removal from service is lacking. Charges levelled against the appellant are not one of misappropriation or of total loss of confidence of the management in the appellant. There is

also nothing on record to show that there was any remark on account of dereliction of duty against the appellant.

26. In a case as made out in the charge sheet, the extreme penalty of removal from service without discussing the mitigating factors involved, which in the present case were substantial, would be grossly disproportionate. The imposition of such a severe and major punishment as removal from service would cause irreparable loss to the appellant. The appellant is aged approximately 37 years with a family to look after. The imposition of the punishment of removal from service would severely impair his livelihood. For an alleged unauthorised leave of about 30 days, inflicting a major punishment such as removal from of service seems totally disproportionate.

27. Measure, magnitude and degree of misconduct needs to be taken into consideration for weighing the proportion. Regard being had to the facts involved and the nature of post held by the petitioner, we are of the opinion that the doctrine of proportionality is invokable.

28. In view of the discussion made above, we find that the punishment of dismissal imposed on the petitioner was far too harsh in the facts and circumstances of the case and to put a quietus to the matter and to shorten the litigation, it would be appropriate to direct substitution of the punishment of dismissal. Since in a case where the original punishment is set aside, only to be substituted by a new punishment, pursuant to an order of judicial review, then ordinarily such substituted punishment would relate back to the date of original punishment.

29. The order of removal dated 3rd August, 2018 is, accordingly, set aside and the respondents are directed to impose a minor punishment of withholding of increment of pay, without cumulative effect, for a period of two years. In the totality of the facts and circumstances of the case, it would not be proper for us to grant back-wages to the appellant. However, the respondents shall reinstate the appellant and he shall be provided notionally the benefit of continuity of service.

30. The above directions shall be carried out by the respondents within a period of two months from the communication of this judgment.

31. The order impugned in the present appeal is, accordingly, set aside and the appeal stands allowed to the extent indicated above.

32. With the above observations and directions, the writ petition is disposed of.

33. There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)