

**Devendra Nath Sinha Vs. Central Bank of India and Ors.**

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**Court :** Jharkhand

**Decided On :** Jul-28-2017

**Appellant :** Devendra Nath Sinha

**Respondent :** Central Bank of India and Ors.

**Judgement :**

1 W.P.(S) No. 6312 of 2006 In the matter of an application under Article 226 of the Constitution of India .. Devendra Nath Sinha Petitioner Versus 1. The Central Bank of India, through its Chairman 2. The Chairman, Central Bank of India, Mumbai 3. The General Manager, Central Bank of India, Mumbai 4. The Zonal Manager, Central Bank of India, Lucknow ... .. Respondents .. PRESENT HON'BLE MR. JUSTICE ANANDA SEN .. For the Petitioner : Mrs.Ritu Kumar, Advocate Mr. Samavesh Bhanj Deo, Advocate For the Respondents : Vijay Kumar Roy, Advocate .. Ananda Sen, J Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner was appointed in the Central Bank of India on 01.09.1980 (herein referred to as the Bank). He met with an accident on 18.03.2004. When he was hospitalized in Ranchi, at that point of time, he was holding the charge of Central Bank of India Regional Office, Ranchi with the additional charge of Central Bank of India, Branch Office, Jamshedpur. On the request of the petitioner, the bank allowed the petitioner to continue the work at Regional Office, Ranchi for 45 days. The said order dated 17.05.2004 has been brought on record at Annexure-1 to this writ application. The petitioner, in- spite of best treatment, did not recover fully and

had to undergo two surgeries within a span of three months. The bank, to meet the expenses, sanctioned Rs. 30,000/- as an advance for surgery. This document of sanction is brought on record as 2 Annexure-3, to this writ application. The doctor allowed the petitioner to join his duty from 13.10.2004, but, with restricted use of his hand for six months and he was also advised for regular physiotherapy. The petitioner filed a representation making request to the Bank to allow him to work at Ranchi for atleast another six months. The Bank Authorities without considering the case of the petitioner relieved him from Ranchi and directed him to join Central Bank of India, Branch Office, Jamshedpur vide letter dated 18.10.2004. The petitioner claims that though he was not in a position to join Central Bank of India, Jamshedpur, yet as he had no intention to disobey the order of Superior Authority, he immediately gave his joining and against all odds he started discharging his duties there. It has been stated that his health deteriorate and from 28.10.2004 he was not in position to attend his duty. He informed his Senior Officials, thereafter he went on leave. The petitioner again on 16.11.2004 requested the authorities to allow him to go on leave with a loss of pay for better treatment to abroad, but the same was not accepted and instead of considering the case of the petitioner sympathetically, vide memo no. JSR/PRS/04- 05/366 dated 22.12.2004, the petitioner was informed that in terms of letter dated 22.12.2004 issued by the Zonal Office of the Bank Patna, the petitioner has been transferred to the Zonal Office, Lucknow. Vide the same letter dated 22.12.2004 the petitioner stood relieved to give his joining at Zonal Office of the Bank at Lucknow. In the meantime, the petitioner again got 3 hospitalized and remained in hospital from 27.12.2004 to 2.1.2005. The petitioner, thereafter on 14.01.2005 made a request to consider his case sympathetically and also made a request to cancel his transfer order, but, his leave application was returned on the ground that he already stood transfered to the Zonal Office, Lucknow vide order dated 22.12.2004.

3. The petitioner was physically and mentally distressed. He sent a letter offering his resignation and made a request to waive the notice period, taking into consideration his ailment. The said offer of resignation has been brought on record by the petitioner at Annexure-10 of this writ application. The bank received the said letter and vide letter dated 19.03.2005 intimated the petitioner that he cannot

be deemed to have been retired on the expiry of three months notice period unless and until a specific communication in this regard is received by the petitioner from the management. No communication on the offer of resignation was received by the petitioner at any point of time. Thereafter, vide order dated 08.10.2005 a memorandum of charge was issued to the petitioner stating therein that the petitioner has committed misconduct as he remained unauthorisedly absent. A departmental proceeding was initiated against the petitioner. The article of charge suggests that because the petitioner remained unauthorisedly absent since 29.10.2004, after being relieved from Branch Office, Jamshedpur from 22.12.2004, and as the petitioner has not joined the Zonal Office, at Lucknow, he has committed 4 misconduct. It was also mentioned that prior to the issuance of the charge-sheet, the petitioner was also absent and suffered loss of pay for 25 days in August, 2004, 30 days in September, 2004 and 19 days in October, 2004.

4. The petitioner on receipt of the departmental charge- sheet, sent a representation to the bank stating therein that since he was suffering from health problems arising out of the accident it was not possible for him to go to Lucknow. He also made a request to the disciplinary authority for conducting the enquiry at Ranchi, as it is not possible for him to attend the proceeding in Lucknow.

5. On the aforesaid background, the petitioner had filed this writ application praying for a direction upon the respondent to waive the notice period and accept his resignation.

6. The Bank, in response had filed their counter-affidavit stating therein that the petitioner was unauthorisedly absent. It has also been mentioned in the counter-affidavit that the petitioner was duly informed that there is no provision of deemed acceptances of the resignation on completion of notice period. It is mentioned that there must be an acceptance of the offer of resignation and then only it will be deemed that the resignation of the petitioner stand accepted. It has also been mentioned that since the petitioner who remained unauthorizedly absent, a departmental inquiry was initiated against him. It has been mentioned that the dates fixed in the departmental proceeding was 27.02.2006, 13.03.2006, 5 28.03.2006, 17.04.2006, 2.5.2006 and 30.05.2006. As, the petitioner did not

appear in person in inquiry thus the inquiry proceeding was concluded ex-parte on 30.05.2006. It has also been submitted that since the resignation of the petitioner was not accepted and he was requested by the Management to report at the Zonal Office, Lucknow, which he failed to do so, his absence from duty has been treated as unauthorized absent. It has been mentioned that the petitioner did not cooperate in the departmental inquiry as he did not participate in the inquiry also. It has been mentioned that this act of the petitioner is a serious misconduct.

7. It is pertinent to mention that during pendency of this writ application, the Bank concluded the departmental proceeding, and passed an order dismissing the petitioner from service vide order dated 11.10.2006 as contained in Memo No. ZO:HRD:DAD:2006-07:656. The effect of dismissal from service will also stand as a disqualification for future employment. This order of dismissal was also challenged by the petitioner by way of filing an amendment application which was allowed by this Court vide order dated 04.12.2006.

8. Learned counsel for the petitioner submits that the order of dismissal of the petitioner is absolutely bad and on the facts this petitioner could not have been dismissed. It is submitted that it was well within the knowledge of the Bank Authorities that the petitioner was suffering from several physical ailment because of the accident. She submits that the Bank Authorities themselves have sanctioned Rs. 30,000/- for his treatment and also allowed the petitioner to work from Ranchi for 45 days which shows that it was within the knowledge of the Bank Authorities that this petitioner was unable to work. She submits that in spite of ill health, to obey the orders of the Superior Authority, he joined at Jamshedpur, but, while he was hospitalized, with a malafide intention the petitioner was transferred, from Jamshedpur to Lucknow. It has been submitted that his transfer from Jamshedpur to Lucknow, in view of the physical disabilities of the petitioner shows the attitude of the authorities towards the petitioner. It is submitted that the petitioner had earlier made a request, to transfer him from Jamshedpur to Ranchi which was not accepted, but in its place he was transferred to Lucknow which is a far from Ranchi (where he was undergoing treatment). It is submitted that there was sufficient ground for not joining at Lucknow because of his ill health as such his absence cannot be said to be unauthorized. She submits that since the

petitioner was not in a position to work, he tendered his resignation but unfortunately the same was also not accepted and the petitioner was made to suffer. It is also submitted only with a vindictive attitude the departmental proceeding was initiated and the petitioner was dismissed by the impugned order. Learned counsel for the petitioner argues that when it was known to the respondent that he was not in a position to work, there was no hindrance in accepting his resignation. In spite of accepting the resignation the petitioner was dismissed from service with the only object to deprive the petitioner from all/any monetary benefits. Lastly it is submitted that on the facts of this case the punishment does not commensurate with the alleged misconduct and it is too harsh. To buttress the arguments, she relies upon decisions in the case Manindra Kumar Vs. Union of India and Ors, reported in 2001(1) 282 JLJR, in the case of Santosh Kumar Das Vs. Bharat Coking Coal Ltd. & Ors. reported in 2008 (4) JCR345(Jhr) and in the case of Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and another reported as AIR 2004 SC2131 9. Learned counsel appearing on behalf of the Bank submits that admittedly the absence of the petitioner is unauthorized. He submits that the petitioner has failed to bring on record any document/order to suggest that leave was granted to the petitioner. He submits that the petitioner has violated the transfer order and has not joined his transferred place at Lucknow and the Bank was well within its jurisdiction to initiate a departmental inquiry. The petitioner did not appear in the proceeding which concluded ex-parte and ultimately the petitioner was dismissed. He lastly submits that there is no illegality or irregularity in the departmental proceeding and that being so, the court has got no jurisdiction to interfere with the impugned order. Thus, as per the respondent-bank this writ application needs to be dismissed. 8

10. From the facts of the case, as narrated above, I find that the petitioner was an employee of Central Bank of India. Admittedly, he met with an accident and underwent surgery, at least twice. He was allowed to work from Ranchi, in spite of holding a post at Jamshedpur, by the Bank taking into consideration his physical disability. The petitioner made a request to continue him to be posted in Ranchi, which was not accepted and rather he was relieved to join at Jamshedpur. The petitioner joined at Jamshedpur and has worked till 28.10.2004 and thereafter, his health did not permit to work at Jamshedpur. He went on leave. His request for

leave without pay was also not accepted. The Bank, thereafter transferred him to Lucknow vide order dated 28.12.2004. As the petitioner was not in a position to work and to serve the bank, he tendered his resignation, but the bank did not accept the same. The bank, since the petitioner did not join at Lucknow, initiated a departmental proceeding and continued with the proceeding ex- parte and thereafter, dismissed the petitioner from service vide order dated 16.11.2004.

11. From the facts mentioned above, it is clear that the petitioner did not join his transferred post at Lucknow. Admittedly, there was no order from the Superior Authorities of the Bank sanctioning any leave to the petitioner. Thus, this petitioner was absent from duty without any order or without any authority. This makes the leave of the petitioner unauthorised. Since the absence of the petitioner was 9 unauthorized, the bank had no other option to initiate a departmental proceeding. Admittedly, in the departmental proceeding the petitioner did not appear. The bank, thus proceeded ex-parte and inflicted punishment of dismissal of the petitioner vide dated 11.10.2006. The effect of the punishment of dismissal is disqualification for future employment. Further he will not get his monetary benefits. On the facts of the case since the petitioner was unauthorizedly absent, I feel that the initiation of the proceeding against the petitioner is justified.

12. Now, the question is what would be the quantum of punishment. It is well settled principal that punishment should commensurate with the misconduct committed. In this case, one has to see whether the misconduct was deliberate or the petitioner was prevented by some circumstances beyond his control to attend his duties.

13. From the record, I find that the petitioner was seriously ill and had undergone several surgeries and could not attend his duty. This fact was also intimated to the bank by the petitioner. Bank was having knowledge of this fact, as advance was granted to him and he was allowed to work from Ranchi. The situation was such that the petitioner had to tender his resignation also. This action of the petitioner suggest that he was not in a position to work. Thus he was prevented from attending duty for the reasons beyond his control. Thus his absence is not deliberate, though, it can be termed as unauthorized. Thus the punishment of

dismissal do not commensurate with the charge. 10 14. A punishment inflicted in a departmental proceeding, which is shockingly disproportionate, can definitely be interfered with, by the Court in the exercise of jurisdiction under Article 226 of the constitution of India. The Hon'ble Supreme Court in the case Chairman-cum-Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhuri and others reported in (2009) 15 SCC620 has held that the doctrine of proportionality is well-recognized of judicial review in Indian Jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. Further in the said judgment the Hon'ble Supreme Court laid down the test in para 20 which reads as follow:-

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In the said case of Chairman-cum-Managing Director, Coal India Limited (Supra) the employee was unauthorizedly absent for which a departmental proceeding was initiated and he was 11 removed from service. The workman explained the reason for his absence which was not accepted by the employer. The Hon'ble Supreme Court, thus, held, that where delinquent being charged of the misconduct fairly admits his guilt and explain the reasons for his absence, punishment of removal was not only unduly harsh but grossly in excess of the allegations.

15. In the case of V . Ramana vs. A.P.SRTC, as quoted in Jagdish Singh Vs. Punjab Engineering College and ors (2009) 7 SCC301 the Hon'ble Supreme Court has held that in a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

16. Thus, by applying the ratio of the aforesaid judgments, I find that in this case the petitioner had satisfactorily explained the reasons for not joining the transferred post. The employer was supposed to act reasonably in the instant case, more so when the petitioner himself have offered to resign because of his ill health. It is also pertinent to mention at this stage that though the bank has stated in the counter-affidavit that the petitioner cannot be deemed to have resigned from the service till any communication is received by him to this effect, but till date no communication has been received by the petitioner on his application for resignation from the Bank. It is expected from a model employer to decide and pass an order on the resignation application of the petitioner, at the earliest on the facts of the 12 case. It is open to the bank to either accept or to reject, the application, but it cannot keep the same pending. In this case no communication was sent from the bank to the petitioner either rejecting or either accepting the said resignation. Submission of resignation letter, clearly goes to show that there was a genuine difficulty on part of the petitioner. As he was not in a position to work it was his intention to resign from service. On this background the bank should have considered the case of the petitioner with a pragmatic approach. The bank without being sympathetic, dismissed the petitioner from service. This Court feels that the punishment of dismissal is not proportionate with the charge levelled against the petitioner on the facts of this case. The petitioner was genuinely prevented from joining his service and infact he was not in a position to do so which is supported from the fact that the petitioner intended to resign.

17. Thus, I have no hesitation to hold that the punishment of dismissal of the petitioner from service was absolutely bad on the facts of the case. The same is shockingly disproportionate. Thus, the order dated 11.10.2006 so far as it relates to inflicting punishment of dismissal is set aside. The matter is remanded to Chief Manager, Central Bank of India, Mumbai with a direction to reconsider the quantum of punishment, of the petitioner taking into consideration his resignation and the condition which prevented him from attending duty, for passing a fresh order. It is expected that the concerned respondents, Chief 13 Manager or his nominee, will pass a reasoned order within a period of eight weeks from the date of receipt of a copy of this order along with the representation of the petitioner after taking into consideration the observation made above.

18. With the aforesaid observations and directions this application stands partly allowed. (Ananda Sen, J.) High Court of Jharkhand, Ranchi dated, the 28th July, 2017 AFR Amar-cp-03

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