

S. Elhence Vs. General Manager (Operations) State Bank of India and ors.

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Court : Delhi

Decided On : Sep-22-2009

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Judge : Sunil Gaur, J.

Acts : State Bank of India (Supervisory Staff) Service Rules, 1975 - Ruls 15(2), 32(1), 32(4), 50(2) and 50A(7); State Bank of India Officers (Determination of Terms and conditions of Service) Order, 1979 - Rule 24(12)

Appeal No. : W.P. (C) No. 4901/1993

Appellant : S. Elhence

Respondent : General Manager (Operations) State Bank of India and ors.

Advocate for Def. : Rajiv Kapoor, Adv.

Advocate for Pet/Ap. : Ankur Mittal and; Pranav Kumar Jha, Advs

Judgement :

Sunil Gaur, J.

1. In the year 1981, Petitioner was a technical officer with Respondent - Bank and he had sought payment of the medical bills regarding his treatment and of his family and only upon legal notice, the payment against the medical bills was made

to the Petitioner. Petitioner claims that in January, 1987, he was transferred to Meerut and due to riots in Meerut, he could not shift his family and he was granted permission by the Respondent - Bank to leave the Station on holidays to go to Dehradun, where his family was residing. In November, 1989, Petitioner was charge sheeted for violation of Rule 50A(7) of SBI (Supervisory Staff) Service Rules, for committing serious irregularity in claiming reimbursement of false medical bills. In August, 1990, Petitioner was charge sheeted for committing irregularity in claiming reimbursement of false medical bills.

2. Precisely, the imputation of the nine charges made against the Petitioner are as under:

While posted as Technical Officer at Meerut and Dehradun Zonal Offices Shri Elhance, has committed the following lapses:

1. Shri Elhance while posted at Meerut during the period from February, 1987 to November, 1987 has claimed reimbursement of medical bills for his own treatment taken at Dehradun, when he was neither on tour nor on leave. He kept on taking treatment at Dehradun without any specific permission for the same in contravention of the Bank's instructions.

2. He has claimed reimbursement for the treatment of his family at Dehradun without any permission from the competent authority for the same.

3. He has claimed reimbursement for himself and his family members in respect of concurrent treatment taken simultaneously for overlapping periods under more than one or all, the three disciplines of medicines viz., Allopathy, Homeopathy and Ayurvedic, which are contradictory to each other as few such instances were given in Annexure 'A' the list of illustrative and not exhaustive (sic). He has, thus, claimed reimbursement of fictitious bills prepared for overlapping period.

4. He has taken reimbursement during the last 7 years in respect of 52 diseases, some of which are incurable and has submitted number of bills for self and members of his family for substantial amounts from Dr. P.K. Kukreti of Dehradun, when asked to appear before a Medical Board he submitted that he had no

disease. He has thus claimed reimbursement in respect of bills most of which have been bogus. A few such instances are given in Annexure 'B', the list is illustrative and not exhaustive.

5. He has claimed reimbursement for the treatment of 'Adenoids' for his son Deepak for the period 23.5.1988 to 1.6.1988 which is not reimbursable in respect of members of family vide para 24 (10) of D.T.C.S. Order 1979. He has, thus, violated the Banks. laid down instructions.

6. On numerous occasions he has claimed reimbursement for the cost of 'Chyawanprash. and 'Honey' which fall under the category of 'Tonics' These are not reimbursable as per para-24(10) of D.T.C.S. Order, 1979 unless forming a necessary part of the treatment and 'certified to be so' He has, thus, claimed reimbursement in respect of bills which were not payable as per the Bank's laid down instructions.

7. He has claimed reimbursement in respect of medical bills, listed in annexure 'C', issued by Vaidyaraj Harish Chandra Gupta, who is not even a Registered Medical Practitioner. He has, thus, claimed reimbursement in respect of Ayurvedic treatment taken from an unregistered medical practitioner in contravention of the instructions contained in Head Office Circular Memo. No. PER-72 of 1983.

8. Shri Elhance has taken reimbursement for dental treatment from Dr. R.P. Goela for chronic pyorrhea, off and on, from 23.6.83 to 13.2.86. In addition, he has also been taking dental treatment mostly for Pyorrhea from some other doctors viz. Dr. V.N. Ganeriwala, Dr. I.J. Durga, Dr. N.N. Kapadia etc. In this connection, following discrepancies have been observed:

a) He has claimed reimbursement in respect of Stolin/Emoform/Sansoform (medicated toothpastes), which is not payable.

b) He has taken payment in respect of aleradant, which is a powder for cleaning dentures and is not payable.

c) He has taken reimbursement in respect of Becosule capsules, which are Vitamin and are not payable.

d) In one of the bills the Stolin has been mentioned as tablet although it is toothpaste.

e) He has taken such a long treatment for Pyorrhea, which is not possible as the medicines (antibiotics) are quite strong and their prolonged usage cannot be normally suggested by any medical practitioner as it will lead to serious side effects.

Shri Elhance has, therefore, claimed reimbursement against bogus bills for treatment of Pyorrhea.

9. He has claimed reimbursement in respect of his wife Mrs. Sadhna Elhance who has taken treatment from two different doctors simultaneously i.e., from Dr. K.K. Gupta from 16.8.83 to 26.8.83 and from Dr. Kukreti from 16.8.83 to 15.9.83, which means that Mrs. Sadhna visited 2 different doctors, under 2 different systems on the same day viz. 16.8.83, which is unlikely.

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3. Petitioner had faced an inquiry for violation of Rule 32(4) of State Bank of India (Supervisory Staff) Service Rules and in September, 1992, an Inquiry Report (Annexure P-28) was submitted to the Disciplinary Authority holding that the charge stood proved against the Petitioner. In April, 1993, Disciplinary Authority vide order (Annexure P-30) imposed the penalty upon the Petitioner of his removal from service.

4. In June, 1993, Petitioner had preferred a Statutory Appeal (Annexure P-31) against the aforesaid penalty imposed upon him and since, the appeal of the Petitioner was not decided, therefore, in October, 1993, writ jurisdiction of this Court was invoked by filing the present petition.

5. In this writ petition, filed by the Petitioner, the relief claimed is a direction to Respondents to reinstate the Petitioner in service with effect from the date of his suspension and for all consequential benefits. Quashing of the order of

suspension dated 9.11.1989 and quashing the charge sheet dated 27th August, 1990 and the Inquiry Report dated 25th July, 1992 (Annexure P-28) and quashing the order dated 27.4.1993 issued by Respondent No. 3 is also sought.

6. During the pendency of this writ petition, order of Appellate Authority was impugned and the ground with regard to the Petitioner not being examined with the evidence before the Inquiry Officer on the circumstances appearing in evidence against him was raised and vide order of 15th July, 2004, this Court had granted liberty to the Petitioner to take this legal plea and for the Respondents to rebut the same at the time of final hearing of this petition.

7. Both the parties have been heard and the material on record as well as judgments cited on behalf of both the sides have been perused.

8. Decisions reported in : AIR 1984 SC 1361; (1982) 2 SCC 35; : AIR 1984 SC 505; : (2007) 4 SCC 566; : (2002) 7 SCC 142; : (1964) 4 SCR 718; (2001) 2 SCC 330; : (1998) 3 SCC 227; : (2007) 1 SCC 338; 104 (2003) DLT 25 (DB); (2005) 6 SCC 636; : (2006) 5 SCC 88; : (2003) 4 SCC 579 and : (1987) 4 SCC 328; : (1985) 2 SCC 35; : (2007) 7 SCC 206; : (2007) 8 SCC 609; (2005) 9 SCC 588; : (1995) 5 SCC 173; : 1993 Supp. (1) SCC 594; : (1976) 2 SCC 152; : (2003) 4 SCC 524; : (1993) 4 SCC 10; : 89 (2001) DLT 584; 90 (2001) DLT 584; 90 (2001) DLT 78 (DB); : AIR 1969 MP 213; : (2009) 2 SCC 570; : (1980) 3 SCC 304; : (1994) 2 SCC 615; : (2003) 3 SCC 605; : (2003) 4 SCC 364; : (2005) 1 SCC 13; : (2006) 7 SCC 212 and : (2005) 7 SCC 338; : AIR 2003 SC 1462; : (1995) 6 SCC 749; : (1977) 2 SCC 491; : (1990) 2 SCC 18; : (1992) Suppl. 2 SCC 312; : (2005) 1 LLJ 730; : (2001) 6 SCC 392; : (1996) 3 SCC 364, cited by counsel for the parties have been perused.

9. The four substantial questions raised by the counsel for the Petitioner are as follows:

(a) Whether the charges, as disclosed in the charge sheet dated 27.08.1990 constitutes any 'misconduct' within the purview of State Bank of India (Supervisory Staff) Service Rules?

(b) Whether the findings arrived at by the Enquiry Officer and as upheld by the Appellate Authority are perverse, based on surmises and conjunctures, without any evidence and liable to be set aside by this Hon'ble Court?

(c) Whether non-examination of Petitioner by the enquiry officer in violation of Rule 50(2)(xvii) of the SBI (Supervisory Staff) Rules is fatal and vitiates the whole enquiry?

(d) Whether on a complete overview of the enquiry, it is evident that the enquiry has been conducted in a manner to leave lasting impression that the enquiry has been made in an unfair manner/with a biased approach, thus vitiating the whole enquiry?

10. According to counsel for the Petitioner, the nine imputation of charges referred to, in the preceding paragraphs, do not constitute any 'misconduct' under the State Bank of India (Supervisory Staff) Service Rules, 1975 (hereinafter referred to as the Rules). A perusal of Article of Charges reveals that the Petitioner has been charged with violation of Rule 32(4) of the Rules, which reads as under:-

32.(4) Every employee shall, at all times, take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank official.

11. The contention of the Petitioner is that the aforesaid Rule is in most generalized terms and the alleged 'misconduct' of the Petitioner of having claimed reimbursement of false medical bills over the period of years would fall under Rule 24(12) of State Bank of India Officers (Determination of Terms and conditions of Service) Order, 1979, which reads as under:

24(12). An officer making a false claim or furnishing any false information shall be guilty of misconduct and shall render himself liable to disciplinary action and consequent punishment including dismissal.

12. The argument put forth on behalf of the Petitioner is that a generalized Rule 32(4) has been deliberately pressed against the Petitioner with the sole object of

widening up the umbrella of charges indefinitely and to implicate the Petitioner on the charges, which does not constitute 'misconduct'. Counsel for the Petitioner asserts that the Disciplinary Authority itself concluded that the bills in question are not bogus or fictitious and therefore the charges of claiming reimbursement on bogus bills or of furnishing false information do not stand established and the submission put forth is that claiming reimbursement on inadmissible bill would not constitute 'misconduct'. Thus, the Petitioner contends that the impugned orders are per se illegal and deserve to be set aside.

13. Respondent's counsel relies upon Rule 32(1) and 32(4) to contend that every employee shall conform to and abide by the rules and shall discharge his duty with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of the bank official. It is further urged on behalf of the Respondent that the Petitioner had furnished false information and claimed bills which were not in conformity and were contrary to the rules to support the penalty of 'removal from service'. It is also urged that the Petitioner was suffering from 30 odd diseases and instead of subjecting himself for the medical examination, he merely appeared before the Board and stated that he was fit and was not suffering from any disease. It has also averred on behalf of the Respondent that the Respondent - Bank is dealing with public money, a high degree of integrity, honesty and credibility is warranted from its officers/employees and once integrity of an official/officer becomes doubtful, the most likely punishment for such an employee/officer is removal from service, therefore, he shall not be entitled to terminal benefits in terms of the Rules. Counsel for the Respondent further submits that the Petitioner, while posted at Meerut, had claimed reimbursement of medical bill for his own treatment at Dehradun, when he was neither on tour nor on leave; he also claimed reimbursement for the treatment of his family at Dehradun without permission from his Competent Authority for the same, which according to him, is not in conformity with the rules and the bills submitted by the Petitioner were in respect of concurrent treatment taken simultaneously for overlapping period, for the reason he is liable to be removed as per Rule 80(12). Counsel for the Respondent further contended that the violation of the procedural provision should be examined from the point of view of prejudice and upon doing so, it becomes clear that Petitioner suffers no prejudice and impugned order does not

suffer from any infirmity.

14. To appreciate the aforesaid contentions, finding returned by the Inquiry Officer on the charges against the Petitioner, needs to be looked into for a limited purpose. This Court is conscious of the fact that the adequacy of the evidence is a domain, which is not to be treaded upon, nor the evidence led has to be re-appreciated by this Court. Relevance or quantum of evidence is not required to be done. To judge the correctness of the decision taken by the Disciplinary Authority is also not required to be looked into. The common thread running through all the afore referred decisions cited before this Court is that the Court should not interfere with Administrator's decision, unless it is illogical or it suffers from procedural impropriety or it shocks the conscious of the Court, in the sense that it defies logic or moral standards. In nutshell, the Courts should not substitute its decision with that of the Administrator. The scope of judicial review is limited to see whether there is deficiency in decision making process. The Apex Court in 'Indian Railways Construction Co. Ltd. v. Ajay Kumar' : (2003) 4 SCC 579, has noticed the consistent trend of judicial opinion regarding scope for judicial interference in matters of administrative decisions, in the followings words:

It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary.

If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.

Therefore, to arrive at a decision on 'reasonableness' the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

15. In the light of the aforesaid position of law, one can conveniently classify under three heads, the grounds on which administrative action is subject to control by judicial review. The first head is 'illegality', the second 'irrationality' and the third, 'procedural impropriety'. These principles were highlighted by Lord Diplock in 'Council of Civil Service Union v. Minister for the Civil Service' (1984) 3 All.ER 935 (commonly known as CCSU case), which has been quoted with approval by the Apex Court in the above referred case. Thus, I proceed to test the impugned decision on the touchstone of reasonableness.

16. On the first two charges, the finding returned are that the Petitioner had not taken any permission to leave the Station and had claimed reimbursement of medical bills for treatment at Dehradun (outstation). Failure on the part of the Petitioner to take the permission of Competent Authority before taking treatment, outside the Headquarter, would not amount to 'misconduct', because neither the Inquiry Authority nor the Appellate Authority specified as to from which Authority the permission has to be sought. In any case, it cannot be said that the Petitioner had deliberately not sought the permission. Therefore, the finding returned on these two charges are clearly erroneous and liable to be quashed.

17. Now coming to the third charge, the finding returned against the Petitioner by the Inquiry Officer is as under:

In view of the above and the deposition and cross-examination of PW.IV and DW.I, it is corroborated that no medicine can be taken with Homeopathic system of medicine. Allopathic medicines can be taken after discontinuing the Ayurvedic medicines. Hence, I hold this charge as proved that concurrent treatment cannot be taken simultaneously for overlapping periods under more than one or all the three disciplines of medicines viz. Allopathy, Homeopathy and Ayurvedic. It also stands proved that OPA claimed reimbursement of fictitious bills on the basis of deposition of PW.IV. It is also based on the deposition of DW.II because he had stated that he had given only consultations and there are no prescriptions and as such he is unable to state anything more. Hence, it is also held as proved that OPA claimed reimbursement of fictitious bills.

18. The fourth charge against the Petitioner was of taking reimbursement of the medical bills pertaining to 52 diseases during the last seven years and some of them were said to be incurable and the Petitioner had not appeared before the Medical Board stating that he was not suffering from any disease whatsoever. The finding on this charge reads as follows:

On the basis of Ex.P.45 and the deposition of PW.IV, it is in evidence that OPA stated that he was suffering from 52 diseases and he did not consult Medical College, Meerut, AIIMS, New Delhi or P.G.I. Chandigarh or specialists. It is also in evidence that he did not take long Medical Leave. When directed to appear before Medical Board, he did not appear and stated that he is not suffering from any disease whatsoever. He did not give any reason for not appearing before Medical Board. OPA himself had admitted that many of the diseases listed in Ex.P.45 are same and are named differently.

Under the circumstances explained, and the fact that there is no supporting cash Memo, in token of having purchased these medicines. The medicines re stated to have been supplied by Dr. Kukreti himself on all the Ex.P.46 to Ex.P.83. I hold this charge as proved.

19. It is a matter of record that the Appointing Authority vide order Annexure P-30, while inflicting the penalty of removal from service, upon the Petitioner, has concurred with the findings of the Inquiring Authority except to a part of third and fourth charges, regarding Petitioner claiming reimbursement on fictitious and bogus medical bills.

20. Findings on the third and fourth charge, regarding Petitioner and his family members taking treatment in three different disciplines simultaneously and of Petitioner suffering from 52 diseases during the last seven years and refusing medical examination is assailed by the Petitioner's counsel by contending that these findings returned are perverse and are based on conjectures.

21. After having gone through the findings of the Inquiry Officer on the third and fourth charge, I find that it would not be fair to label the findings returned on these two charges to be lacking particulars or being perverse because the necessary

details in support of these two charges are contained in Annexure-A and Annexure-B to the imputation of charges (Annexure-II) and evidence has been led in support of the charges. Therefore, it cannot be said that the present case is of no evidence. Merits of these two charges is not required to be re-appreciated because this Court is not sitting in appeal over the finding recorded by the Inquiry Officer and confirmed by the Appellate Authority. It cannot be reasonably said that the third and fourth charges do not amount to 'misconduct'. There is nothing on record to suggest that the approach of the Inquiring Authority or the Appellate Authority was unfair or biased.

22. Violation of Rule 15(2)(xvii) of State Bank of India (Supervisory Staff) Service Rules, 1975 has been alleged. This Rule reads as under:

15(2)(xvii). The Inquiring Authority may, after the employee closes his evidence, and shall if the employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

23. The omission on the part of the Inquiry Officer to call upon the Petitioner to give a statement after the recording of the evidence is not fatal to the inquiry proceedings for the reason that it is not shown as to what prejudice the Petitioner had suffered on account of his non-examination by the Inquiry Officer. In any case, no one had stopped the Petitioner from making a request to the Inquiry Officer to give a statement after the evidence is recorded in the inquiry proceedings. Therefore, the inquiry proceedings do not stand vitiated on this account. The findings on these two charges, do not suffer from any arbitrariness or irrationality.

24. The fifth charge relates to claiming of reimbursement for treatment of 'adenoids' by the Petitioner and since it was not reimbursable, therefore, this charge was found to be proved against the Petitioner in the inquiry proceedings.

25. Even if it is taken that the fifth charge of claiming reimbursement of medical bill, which is not reimbursable, stands proved, still, it has to be seen as to whether it amounts to 'misconduct' or not. What the term 'misconduct' means has been

considered by the Apex Court in 'Inspector Prem Chand v. Government of NCT of Delhi,' : (2007) 4 SCC 566, wherein definition of 'misconduct' as given in Black's Law Dictionary, has been quoted with approval and it is as under:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

26. In view of the above, it becomes clear that 'misconduct' means a conduct arising from ill motive and acts of negligence, errors of judgments or innocent mistakes, do not constitute 'misconduct'. It is nobody's case that the Petitioner had deliberately taken reimbursement of the medical bill pertaining to treatment of 'adenoid' while knowing that it was not admissible. Therefore, the conduct of Petitioner claiming reimbursement for the treatment of 'adenoid' does not fall within the mischief of 'misconduct' and so finding returned on this charge is manifestly erroneous and is liable to be quashed.

27. The Inquiry Officer has exonerated the Petitioner on sixth and seventh charges framed against him. The eighth charge is sub-divided into four parts. Inquiry Officer had found that charge 8(a), 8(b) and 8(c) do not stand proved and the findings returned on charge 8(d) and 8(e) do not appear to be in consonance with these charges and therefore, these two charges needs to be highlighted as under:

(d) In one of the bills the Stolin has been mentioned as tablet although it is toothpaste.

(e) He has taken such a long treatment for Pyorrhea, which is not possible as the medicines (antibiotics) are quite strong and their prolonged usage cannot be normally suggested by any medical practitioner as it will lead to serious side effects.

28. The finding returned by the Inquiry Officer on the aforesaid two charges, is as under:

Under the circumstances, and the deposition of Defence Witness No. 2, I hold this part of the charge as not proved. It is established that OPA had purchased certain medicines without prescriptions. Even the prescriptions are not specific as these do not mention the No. of days, the medicine is to be used etc.

29. Aforesaid finding is quite generalized and does not contain the necessary details to support the charge nor the evidence referred to, does so. Clearly, the finding on charge 8(d) and 8(e) disclose utter non-application of mind not only by the Inquiring Authority but also by the Appellate Authority. Thus, the finding on charges 8(d) and 8(e) are liable to be quashed, being manifestly arbitrary.

30. The last charge against the Petitioner pertains to Petitioner's wife taking treatment from two different doctors, under two different systems of medicines on the same day, i.e., on 16th August, 1983. The finding returned by the Inquiry Officer on this charge is as under:

On re-examination by OPA, the Defence witness admitted that OPA's wife had taken medicines under the two systems of Medicines. It is also correct that Mrs. Sadhna Elhence took treatment from Dr. K.K. Gupta during the period 16.8.83 to 26.8.83 and 9.9.83 to 14.9.83 under Allopathic systems. She took treatment from Dr. Kukreti during the period 16.8.83 to 15.9.83 as per Ex.P.152 to P.154, which means that Mrs. Sadhna visited 2 different doctors practicing under different systems of medicines on the same day, when it was possible to take treatment from Dr. K.K. Gupta. It is also in evidence that simultaneously medicines under both systems cannot be taken. Hence, I hold this charge as proved.

31. Upon reading the ninth charge, it becomes abundantly clear that this charge of Petitioner's wife taking treatment under two different systems of Medicines on the same day, i.e., on 16th August, 1983, being unlikely, is quite presumptive. The finding returned of this charge is based upon surmises and conjectures for the reason it proceeds on the assumption that it is not possible to take treatment from two doctors at a time. Where is the bar to taking treatment under two different disciplines of medicine for different ailments at a time There is utter non-application of mind by the Inquiry Authority as well as by Appellate Authority, as neither in the charge nor in the findings returned, it has been alleged/concluded

that for the one ailment, Petitioner's wife had taken treatment in two different disciplines of medicine at the same time. Therefore, the finding returned on this charge, being illogical, is liable to be quashed.

32. In conclusion, since in the finding of the Inquiring Authority on third and fourth Charge alone, have withstood the judicial scrutiny, therefore, the quantum of punishment needs to be looked into afresh by the Appellate Authority. In fact, proportionality of the punishment has not been considered by the Disciplinary Authority nor by the Appellate Authority. This is a case where irregularity has been found in claiming reimbursement of medical bills over a period of seven years and the total amount of the medical bills is just about Rs. 40,000/-, the overlapping period is also of hardly ten days. These factors have not been taken into consideration by the Appellate Authority. In any case, it is for the Appellate Authority to see as to what would be the appropriate punishment in the light of only two charges, out of nine charges being established against the Petitioner.

33. In this view of the matter, impugned order of Disciplinary Authority as well as the Appellate Authority returning findings against the Petitioner on the third and fourth charge being established calls for no interference by this Court. However, since findings returned on the other charges are hereby quashed, therefore, Petitioner requires to be heard afresh by the Appellate Authority on the quantum of punishment. Penalty of removal from service imposed upon the Petitioner is hereby set aside and the Appellate Authority is directed to reconsider the proportionality of the punishment and to pass appropriate order regarding nature of punishment to be imposed upon the Petitioner, within four months of being apprised of this order.

34. With above said directions, this petition is allowed to the extent indicated above.

35. No costs.