

WA 211/2011

BEFORE

HON'BLE THE CHIEF JUSTICE MR. A.K. GOEL

HON'BLE MR. JUSTICE C.R. SARMA

(A.K. Goel, C.J.)

This appeal has been preferred against order of the learned Single Judge dated 26.5.2011 passed in W.P.(C) No.254 of 2007 dismissing the writ petition of the appellant against his dismissal from service vide the order dated 21.3.2006.

2. The appellant joined the service of the Respondent Bank as Security Officer on 3.10.1983. After 22 years of service, a charge-sheet dated 13.8.2005 was served alleging that he unauthorisedly kept the Bank revolver with him for four years after his transfer from Ahmedabad which was against security policy of the Bank and, thus, amount to misconduct. The appellant denied the charge by submitting a reply. He stated that in the course of his duty as Senior Manager (Security), he was possessing the weapon in his name, after due sanction from the Deputy Zonal Head of the Bank. He was transferred from Ahmedabad to Bhopal in September, 1999. The licence for the weapon was expiring on 31.12.1999. As per provisions of the Arms Act, he deposited the weapon with the Arms Dealer at Ahmedabad. Thus, no misconduct, as alleged, had been committed.

3. An Inquiry Officer was appointed who held that the action of the appellant was unbecoming of an officer of the Bank inasmuch he failed to advise the Bank to dispose of the weapon in the year 1995. On disposal of the weapon in the year 2005, the Bank suffered loss. The appellant failed to discharge his duties with honesty and integrity. By concealing facts, he got the weapon of the Bank to his personal name and failed to handover the revolver and cartridges to his successor on his transfer. The appellant also acted otherwise than on his best judgment in performance of his duties. The surplus revolver could not have been given to the local arms dealer. He kept the weapon in his possession illegally for over four years.

4. After perusal of the enquiry report, the order of dismissal was passed, relying on the following findings of the Inquiry Officer, as under :-

3.1 I observe that Kanpith Branch, Surat was holding Webbly Scott .32 bore revolver no.60696. On 15.02.1996, Shri A.K. Roy, placed a Note before the Competent Authority seeking permission to get the weapon transferred to his personal license. While placing the note, he did not disclose the fact that the license was in his personal name and not in the name of his official designation. Though the proposal put up by him was not in line with the Bank's policy, the then Dy. Zonal Head approved the same. Thereafter, the weapon was transferred to the license of the Shri Roy.

3.2 The entry of Banks revolver in the personal gun license of the Shri Roy reads as follows :- Enclosed the description of one .32 bore revolver no.60696 Webbly Scott purchased from Branch Manager, Union Bank of India, Kanpith Branch, Surat City license no.191/676 vide C.P. Surat City letter no.LB/Hathiyas/wastu/632/740, 836/96 dated 4/96. The said endorsement was very distressing as according to it the revolver was purchased by the Shri Roy from the Branch Manager, Union Bank of India, Kanpith Branch, which amounts to fraud on the part of the Shri Roy as the revolver was not sold to him.

3.3 Shri Roy was transferred from Ahmedabad to Bhopal in August 1999 and was relieved on 18.9.1999. On his transfer to Bhopal he was required to take immediate steps to return the weapon to the Bank. However, he preferred to deposit the revolver with a private Arms Dealer for oiling and servicing on 26.11.1999 against his personal name. He did not obtain the approval of the Competent Authority.

ty for depositing the weapon with the Arms Dealer. Shri Roy's act of depositing the weapon with the Arms Dealer instead of returning it to the Bank clearly spells out his intention of not returning the weapon with the Bank.

3.4 The Security Department came to know about the facts of the case in July 2003. Thereafter, the Chief Manager (Security), Central Office, telephonically informed Shri Roy on 26.07.2003 to get the weapon transferred in the Bank's name. In terms of letter no: SEC:BR:0316: 147 dated 27.07.2003 Shri Roy was advised by the Chief Manager (Security) to send the copy of the Safe Custody Receipt to Zonal Security Manager, Ahmedabad and to get the weapon transferred to any branch in Ahmedabad City in consultation with the Zonal Security Manager, Ahmedabad. Shri Roy, thereafter, wrote a backdated letter as of 25.07.2003 to the Police Commissioner, Ahmedabad seeking permission to transfer the weapon in the Bank's name.

3.5 It is therefore evident that Shri Roy got the revolver transferred in his name by misguiding the Dy. Zonal Head with an ulterior motive. When he was transferred from Ahmedabad to Bhopal, he should have deposited the weapon with Kanpith branch. However, he preferred to deposit the same with the Arms Dealer. During the course of inquiry he could not give a satisfactory reply for this act. The weapon remained deposited with the Arms Dealer for almost 4 years. Had the Chief Security Advisory not been aware of the fact Shri Roy would have siphoned off the weapon.

5. The appeal filed by the appellant having been dismissed by the departmental appellate authority, the appellant approached this Court under Article 226 of the Constitution.

6. The learned Single Judge dismissed the writ petition holding that till the Bank detected the fact of gun being deposited by the appellant with the Bank Dealer on his transfer to Bhopal, the appellant did not inform the Bank authorities of this fact. Even if the Bank did not suffer any loss, the appellant mis-utilized the confidence of the Bank by transferring the gun into his name and keeping the same in his possession for four years. The findings recorded by learned Single Judge is as under :-

24. In the instant case, till the fact of possessing the gun by the petitioner without depositing the same to the Bank upon his transfer to Bhopal was detected, which was long after four years, the petitioner apart from converting the licence to his name, also got to himself the gun as if the same was his personal property. The question is not one of incurring any loss by the Bank but the same relates to the conduct of the petitioner, which on the face of it was unbecoming of a Security Officer of the Bank. Admittedly, he misutilised the confidence reposed on him, firstly, by transferring the gun into his name and thereafter keeping the same in his possession for long four years.

7. Learned counsel for the appellant submits that the appellant had already served for 22 years as Security Officer. He had earned promotions and at the relevant time he was posted as Senior Manager (Security). He did commit any act of dishonesty. On his transfer from Ahmedabad to Bhopal, he had to keep the weapon with the Gun Dealer, as per provisions of Section 21 of the Arms Act. The licence for the weapon was in his personal name for personal supervision. Licence being for Gujrat, he could not carry the weapon to Bhopal. Neither he made any gain nor caused any loss to the Bank nor he concealed any facts. Location of the weapon was not secret nor concealed in any manner. He had informed the Bank vide letter dated 15.2.1996 (Annexure-K to the writ petition) that the revolver which was in Safe Custody since 1949 should be transferred to his name as he had valid gun licence and the weapon had to be in his personal supervision. Since the revolver was not being used since long, his personal supervision was necessary. This aspect is discussed by the Inquiry Officer. It is mentioned that the appellant

got the approval for transferring the revolver for his personal use, though in letter (Ext.14) he admitted that the gun licence should be issued by designation.

In these circumstances, it was submitted that the charge alleged is merely technical. Under the provisions of the Arms Act, no person can carry a fire arm without holding a licence [Section 3(1)]. Since the appellant, in course of his duties, was required to personally supervise the gun, he had obtained a licence in his name, after due intimation to the Bank. On his transfer from Ahmedabad, the weapon was kept in the custody of the Gun Dealer. The appellant had not used the weapon for his personal use nor taken any other advantage. A letter dated 28.2.1996 (Annexure-M) was written by the Manager of the Bank to the Police Commissioner, Surat requesting for transfer of the revolver in favour of the appellant.

8. Learned counsel for the Bank supported the view taken by learned Single Judge that the appellant by converting the licence to his own name used the gun as if it was his personal property and, thus, misused the confidence reposed on him by the Bank which was a misconduct.

9. Question for consideration is whether the appellant committed any misconduct and, if so, whether misconduct was merely technical in nature which did not justify dismissal from service.

10. We are conscious of the legal position that in the exercise of power of judicial review, this Court does not sit in appeal over the findings recorded by the Inquiry Officer or with the quantum of punishment imposed. At the same time, the Court is concerned to see whether any misconduct has been duly proved and whether penalty imposed is shockingly disproportionate to the said misconduct. [State of Orissa and others -Vs.-Bidyabhushan Mahapatra, AIR 1963 SC 779 (CB); Union of India -Vs.- H.C. Goel, AIR 1964 SC 364(CB); Bongaigaon Refinery and Petrochemicals Ltd. Vs. Girish Chandra Sarma, AIR 2007 SC 2860; B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749; State of U.P. Vs. Jaikiran Singh, (2003) 9 SCC 228 and State of M.P. Vs. Hazarilal, (2008) 3 SCC 273].

11. From the facts narrated above, it is clear that objectionable act alleged against the appellant is that he got the licence of the gun transferred to his own name and kept the weapon with the gun dealer without informing the Bank. In these circumstances, the said act can at best be termed as technical irregularity.

12. Admittedly, the appellant was transferred from Ahmedabad to Bhopal in September, 1999. The licence was valid upto 31.12.1999. The appellant deposited the gun with the Gun Dealer at Ahmedabad on 26.11.1999 while proceeding for his duty at Bhopal. It is also clear from the records that the appellant had informed the Bank and the Bank authorities informed the police authorities that the gun licence is to be transferred in the name of the appellant (letter dated 28.2.1996, Annexure-M). The gun was not being held by the appellant without the knowledge of the Bank. He did not put it to personal use. Neither he made any gain nor caused any loss to the Bank nor concealed anything. The gun was of the year 1948 and not in use. As per statutory requirement, the gun had to be kept with the police authorities or with the gun dealer on expiration of the gun licence or when not in use, as per Section 21 of the Arms Act, 1959. The appellant was transferred outside Gujrat and had no licence to carry the gun outside Gujrat. The Bank could have easily known this fact from the appellant.

13. Thus, the licence of the gun being in the name of the appellant with the consent of the Bank, it was his responsibility to deposit the same with the police or with the Gun Dealer as the licence with him was valid only upto to 31.12.1999. At best, it is a case of the appellant's failure to inform the Bank about this fact. There is absolutely nothing to show that the appellant committed any dishonesty. As already noted, the Bank itself had informed the police that the licence of the gun be transferred to the name of the appellant which has been ign

ored by the disciplinary authority and the enquiry authority. Ignoring this vital fact renders the report of enquiry officer and the order of the Bank perverse.

14. Learned counsel for the appellant fairly states that since he has already reached the age of superannuation on 16th March, 2012, only relief he prays for is that from the date of dismissal i.e. 23.12.2006, he may be deemed to have retired so that he is not deprived of his pensionary benefits after having rendered 23 years of service.

15. In view of what we have found above, the misconduct, if any, is mere technical. Neither the appellant has made any gain nor caused any loss to the Bank nor there is any deliberate act of concealment or misstatement. In these circumstances, the punishment of dismissal from service after rendering service for 23 years, is shockingly disproportionate. A person who completes his tenure of service cannot be denied terminal benefits at the end of the day in absence of dishonesty or some serious misconduct.

16. Normally, we may have remitted the matter to disciplinary authority for passing a fresh order but in view of facts and circumstances mentioned above, punishment of dismissal cannot at all be justified. The appellant is not pressing for any more relief than converting order of dismissal to that of compulsory retirement. Grant of such prayer in appropriate cases is not impermissible by this Court.

17. Accordingly, we allow this appeal and quash the order of dismissal and direct that order of dismissal will stand modified to that of compulsory retirement from the date of dismissal. The appellant is entitled to all consequential benefits from such modified punishment. The Bank may now pass a fresh formal order to this effect. The retirement benefits of the appellant be worked out and paid to him within three months from the date of receipt of this order.