

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No. 493/2004**

% Date of reserve: 07.11.2008  
Date of decision: 28.11.2008

M.L. KALRA .....Appellant  
Through: Mr. Ashok Bhalla, Advocate

*Versus*

UNION OF INDIA & ANR. ....Respondents  
Through: Mr. Rajat Arora & Mr. M.K. Datta, Advocates

**CORAM:**  
**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**  
**HON'BLE MR. JUSTICE MOOL CHAND GARG**

- |    |                                                                           |     |
|----|---------------------------------------------------------------------------|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not?                                        | Yes |
| 3. | Whether the judgment should be reported in the Digest?                    | Yes |

**MOOL CHAND GARG, J.**

1. The appellant has filed this Letters Patent Appeal aggrieved by the judgment of the learned Single Judge of this Court dismissing his Writ Petition No. 154/1994 vide order dated 23.2.2004.

2. The appellant who was employed as Deputy General Manager with New Bank of India (NBI) was awarded the punishment of dismissal from service by the Punjab National Bank (hereinafter referred to as

respondent No.2) vide order dated 22.3.1996 after NBI was amalgamated with the said respondent. The punishment was imposed after one year of his superannuation on the basis of the charge sheet issued to him on 19.8.1993, i.e., after a period of six years alleging lapses on his part in having forwarded the loan proposal of M/s Kashipur Steels Private (Ltd.) (hereinafter referred to as the "Borrower") sometime in 1987-88 when he was working as the Regional Head of NBI at Delhi. The appeal filed against the aforesaid order was also rejected by the Appellate Authority and thereafter, the writ petition assailing the punishment of dismissal and the order of appellate authority has also been dismissed by the impugned order.

3. It would be appropriate to take note of the brief factual matrix of the case, which is as under:-

(i) The appellant was working as the Deputy General Manager in the Regional Office of New Bank of India (NBI) as its Regional Head, Delhi in the year 1987-88.

(ii) On 2/4.11.1987, B/O Masjid Moth, New Delhi forwarded a loan proposal for sanction of Term Loan of Rs. 90 lacs and C.C. Limit of Rs.30 lacs in favour of the borrower company – for taking over a running mill. The said proposal was simultaneously received at the Regional Office as well as at the Head Office on 10.11.1987.

(iii) The Regional Office upon the scrutiny of the loan proposal, raised certain queries vide letter dated 13.11.1987, which were replied by the Branch vide letter dated 14.11.1987, whereafter the Regional Office forwarded the proposal to the Head Office on 16.11.1987 along with the queries and reply given by the Branch. Since the Head Office

had already assessed the loan proposal independently on the same day itself, the Head Office put up the loan proposal to Board of Directors for sanction, which was sanctioned by the Board on 25.11.1987.

(iv) The borrower Company, however, could not avail of the sanctioned facilities and requested that the sanctioned credit facilities be allowed for taking over another company, which was already availing credit facilities from the Bank. This request was also allowed by the Head Office and the Board of Directors on 3.2.1988 and the Head Office conveyed the sanction on 11.2.1988.

(v) The Branch, thereafter on 4.6.1988 recommended another proposal of the same borrower for the sanction of huge enhanced facilities i.e. T/L – Rs. 90 lacs, C.C. Limit – Rs. 80 lacs, Deferred Payment Guarantee (DPG) – Rs. 134.83 lacs. This was sanctioned by the CMD of the Bank on 20.8.1988 upon the recommendations of the Regional Office and the Head Office. The said sanction was conveyed by the Head Office vide letter dated 25.8.1988. The CMD of the Bank later on also relaxed vital terms of the sanction on 14.12.1988. It is not disputed that before enhancement of the credit facilities as aforesaid, the appellant stood transferred from the Regional Office in April, 1988 and therefore, had no role to play in enhancing the credit limits of the borrower.

(vi) On 19.8.1993 i.e, after the lapse of 6 years, the successor Executive Director of NBI issued the charge sheet to the appellant alleging, inter alia, that the appellant had acted in a mechanical manner and at no time raised any objection to the loan proposal of the

borrowing company sent on 16.11.1987 which contained various adverse features and as a result of his passive role, the Bank's interest to the tune of Rs. 393.75 lacs which was outstanding became doubtful of recovery.

(vii) After the amalgamation of NBI with PNB, the Board of Directors of PNB resolved to lower the superannuation age of the appellant and accordingly after expiry of 3 months notice, the appellant was retired on 30.11.1994 i.e. about 1 year earlier from his normal date of superannuation in the erstwhile NBI.

(viii) In the meanwhile, PNB continued the enquiry proceedings initiated against the appellant even after his retirement by invoking Regulation 20(3)(iii) of the Officers' Service Regulations. The Disciplinary Authority vide its order dated 22.3.1996 inflicted the punishment of dismissal upon him after one year of his superannuation from service of the Bank. The appeal filed by the appellant against it was rejected by the Appellate Authority on 6.3.1997. A writ petition filed against the said order has also been dismissed vide impugned order dated 23.2.2004.

4. Before us the appellant has assailed the impugned judgment delivered by the learned Single Judge as well as the initiation of disciplinary proceedings against him, including the punishment inflicted as wholly illegal, unsustainable, discriminatory and has prayed for quashing the same, inter alia, for the following amongst other reasons:-

- (i) *The Higher Authorities were inclined to sanction the credit facilities in favour of the Borrower Company in violation of the norms.*
- (ii) *It is not the case that the Higher Authorities were ignorant about the alleged adverse features in the loan proposal which were well within their knowledge. This is evident from the deposition of SW-1, Shri Anil Mahajan, officer (management Witness) who was posted at the Head Office in Credit Department and had put up sanction note for subsequent enhancement of the credit facilities to the same borrower.*
- (iii) *The subsequent huge enhancement and relaxation of terms and conditions of sanction to which the appellant was not a party absolves the appellant of whatsoever was the responsibility.*
- (iv) *The loan proposal was independently assessed by the expert staff of Head Office and the recommendations of the appellant were merely a formality. The appellant is entitled for protection under exception Clause of Regulation 3 Sub-Regulation 3 of Conduct Regulations.*
- (v) *By alleging that the Appellant did not point out the adverse features, the then Executive Director had impliedly contended that the Board of Directors had illegally sanctioned the credit facilities.*
- (vi) *The appellant being subordinate to Board, could not have challenged the acts of the Board of Directors. Even otherwise, without challenging the acts of the*

*Board of Directors including the nominee directors of RBI and Ministry of Finance, Government of India, no action could be taken against the appellant.*

- (vii) The responsibility of the appellant being that of the recommending authority, if any, was to immediate higher authority and any third party cannot intervene or proceed against the recommending Authority, until and unless the said immediate superior authority makes a specific complaint against the recommending Authority.*
- (viii) The then Dy. General Manager (Credit) at Head Office (later on promoted as GM Planning), the immediate superior officer never complained against the appellant. On the contrary, he stated that the then C.M.D. had waived crucial stipulations of sanction, due to which security was jeopardized.*
- (ix) There was no concealment on the part of the appellant as whatever information was received by him, was forwarded to the Head Office. Even otherwise, the alleged concealment of information could not have affected the decision of the Board of Directors as subsequent enhancement was allowed in the face of disclosure of said information by the Branch.*
- (x) After the transfer of appellant from the Regional Office in April 1988, the account was showing Health Code 'A' (grading system in banks – implies good conduct of account). The account went bad due to substantial*

*enhancement in the credit facilities and thereafter, relaxation in terms and conditions of sanction.*

- (xi) Pursuant to recommending the loan proposal in 1987, the appellant vide office order dated 28.6.1990 was asked to perform the duties of General Manager by the then Executive Director of the Bank who was party to the sanction of credit facilities to the borrower meaning thereby the alleged lapses, if any, stood condoned.*
- (xii) The Enquiry Officer acted with close mind and in his anxiety to prove the allegations against the appellant, failed to appreciate that the subsequent enhancement in credit facilities and relaxation in the terms of sanction had absolved the appellant from any responsibility whatsoever.*
- (xiii) The Disciplinary Authority without taking into consideration the factual position and without appreciating that the appellant had ceased to be in the service, inflicted the severest punishment upon the appellant which was not at all commensurate with the gravity of alleged misconduct. The order of punishment "Dismissal from service, which shall be a disqualification for future employment" was passed by the Disciplinary Authority with mala fide intentions to deprive the appellant of his retiral benefits.*
- (xiv) The Board of Directors (Appellate Authority) of Punjab National Bank (PNB) without ensuring the compliance of Regulation 17 of D&A Regulations and without deciding*

*the various contentions raised by the appellant, mechanically passed resolution rejecting the appeal dated 9.5.1996 of the appellant, which resolution was communicated vide letter dated 6.3.1997.*

5. The learned counsel for the appellant has also relied upon the following judgments:-

1. CBI vs. Duncans Agro Industries – (1996)5 SCC 591
2. Union of India & Ors vs. J Ahmed – (1997) 2 SCC 286
3. Vishwanath Mishra vs UPSC Tribunal Ors: (1985) 2 SLR 708
4. State of MP vs. Bani Singh JT 1990(2) SC 54
5. Lal Audhraj vs State of MP (1968) SLR 88 (DB)
6. State of Punjab vs. Bakhtawar Singh & Ors 1972 SLR 85 (SC)
7. R.P.Bhat vs. Union of India & Ors AIR 1986 SC 1040
8. A.L.Kalra vs. Project & Equipment Corp. – 1984 SCC (L&S) 497
9. Union of India & Ors vs. R.Reddappa & Anr – (1993) 4 SCC 269

The aforesaid judgments were also cited by the appellant before the learned Single Judge.

6. On the other hand, the respondents have supported the judgment delivered by the learned Single Judge by submitting that the charges were leveled against the appellant on account of serious lapses committed by him while recommending the loan proposal of the Borrower by misusing his position and having failed to safeguard the interest of the NBI. The Enquiry officer, who was the Commissioner for departmental enquiries under the Central Vigilance Commission, an independent authority, vide its report dated 01.08.1995 held that the charges against the appellant were proved and it was thereafter that

the disciplinary authority vide orders dated 22.03.1996 imposed the punishment of “dismissal from service, which shall be a disqualification for future employment” upon the appellant. His appeal was dismissed by the Appellate Authority.

7. The respondents who contested the writ petition submitted that while scrutinizing the loan proposal, the Regional Office raised certain queries on the Branch vide its letter dated 13.11.1987, which were replied by the Branch on 14.11.1987. Even though the said reply was not satisfactory and the directions contained in the letter were also not met by the Branch Office; yet on 16.11.1987 the appellant recommended the loan proposal which was a serious lapse on his part and in this manner caused loss to the Bank. They have relied upon the following portion of his letter forwarding the proposal, where it was stated:-

Shri Vinajy Rathi is an Executive Director of a Major Steel Furnace and Rolling Mills Complex situated in Ghaziabad. He is fully conversant with the latest technical developments which are taking place in the steel industry with particular relevance to its situation in and around North India.

Based on the recommendations of the Senior Manager, we also recommend that the following facilities may please be sanctioned to the party on the under-noted terms and conditions:-

xxx    xxx    xxx

8. It is submitted that merely because the appellant forwarded the proposal and the Board of Directors of NBI sanctioned the same, it cannot be said that the role played by the appellant was passive. It will also not absolve the appellant of his responsibilities.

9. It is also submitted that it is not that the appellant has been singled out but others have also been punished for the irregularities in

the account of the borrower. It is also submitted that in addition to the charges leveled against the appellant vide charge sheet dated 19.8.1993, there were 6 other charge sheets, which were initiated against the Appellant but were kept in abeyance due to the order of his dismissal. It has also been submitted that in the facts of the case and for the reasons given by the Learned Single Judge while disposing of the writ petition, it is not a case where this Court should exercise its power to interfere with the quantum of punishment. Reliance in this regard has been placed on the following cases:

1. Ramesh Chandra Sharma Vs. Punjab National Bank - 2007 II LLJ 245
2. V. Ramana Vs. A.P.S.R.T.C. – 2005 III LLJ 725 (S.C.)
3. Bharat Petroleum Corpn. Ltd. Vs. T. K. Raju – 2006 SCC (L&S) 480
4. Maharashtra State Seeds Corpn. Ltd. Vs. Hariprasad Drupadrao Jadhao – 2006 SCC (L&S) 587
5. U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal – 2006 SCC (L&S) 1905

10. We have heard the counsel for the parties and have also gone through the written submissions filed by them before us besides the record of this case.

11. It is the case of the respondents that they noticed the acts and omissions/lapses on the part of the appellant in forwarding the loan proposal later. However, they have not specified the point in time when the aforesaid lapses were detected. It is a matter of record that it

is only after six years they served the charge sheet, which reads as under:

ARTICLES OF CHARGE

Shri M.L. Kalra, Officer on Special Duty (Accounts) during his tenure as Deputy General Manager, Regional Office, Delhi committed serious lapses/irregularities and acts of omission and/or commission, while recommending for sanction of facilities in favour of M/s Kashipur Steels Ltd., details as per statement of allegations as Annexure 'B'. Shri M.L. Kalra, is, therefore, charged as under, each charge being independent of the other.

1. He failed to ensure and protect the interest of the Bank.
2. He acted in a manner unbecoming of an Officer of the Bank.
3. He acted otherwise than in his best judgment while discharging his duties.

The charges enlisted above constitute misconducts within the meaning of Regulation 3 read with Regulation 24 of New Bank of India Officer Employees' (Conduct) Regulations, 1982 and are punishable under Regulation 4 of New Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1982.

(G. NARAYANAN)  
EXECUTIVE DIRECTOR  
(DISCIPLINARY AUTHORITY)

12. In his reply to the charge sheet, the appellant denied the allegations and stated that he had not committed any misconduct and that the loan was sanctioned by the Head Office and the Board of Directors in a hurry. Their keenness was writ large inasmuch as on the same day when the proposal was sent by the Regional Office, the Head Office put up the proposal before the Board of Directors, who sanctioned the loan within a week or so. The appellant was only a junior officer and was not competent to overrule the Board. On his part, he had sent the proposal along with the queries raised by the Regional Office and the reply given by the Branch. Before us, he also relied upon the testimony of Anil Mahajan, who appeared as SW-1 during the enquiry. From the statement of this witness, it is apparent that the entire material was placed before the Board.

13. It is also of importance to note that the proposal was sent on 16.11.87 to the Head Office who put up the proposal to the Board of Directors on 16.11.87 itself and on 25.11.1987 the Board of Directors sanctioned the loan without even taking into consideration the shortcomings if any in the proposal and violation of Banking guidelines. In this regard it is again not disputed that the proposal sent by the Regional Office was accompanied with the queries raised by the Regional Office as well as the replies sent by the branch.

14. It is also not in dispute that the request made by the same borrower for the sanction of enhanced cash credit limits and other facilities forwarded by the same branch when the appellant was no more in the regional office was accepted by the CMD without any role played by the appellant. Even the norms for grant of such facilities were also relaxed by the CMD of the bank. It is thereafter the party defaulted. The aforesaid facts do not form part of the Charge Sheet and have not been dealt with by the enquiry officer, disciplinary authority or by the Ld. Single Judge even though a reference to the same was made by the appellant in his reply to the charge sheet. It is also a matter of record that no action has been taken by the bank against the members of the Board of Directors or the CMD.

15. Before the writ court, the initiation of disciplinary proceedings against the appellant which resulted in the passing of an order dismissing the appellant from service after one year of his superannuation were assailed as wholly invalid ab initio, inter alia, on the following amongst other grounds;- i.e.

- (i) *Inordinate delay in issuing the charge-sheet which caused serious prejudice to the appellant. It was contended that the loan was sanctioned during 1987-88 and charge-sheet was issued in the year 1993. Delay was of 6 years which had caused prejudice. Reliance was placed upon the Judgment of the Apex Court reported in JT 1990 (2) SC 54, **State of M.P.V. Bani Singh**.*
- (ii) *The lapses alleged against the appellant did not constitute any misconduct. Reliance was placed on 1979 (2) SCC 286, **Union of India Vs. J. Ahmad** and 1985 (2) SLR 708, **Vishwanath Mishra Vs. UPSC Tribunal**.*
- (iii) *The loan was sanctioned by the Board of Directors of NBI. The appellant being a junior officer could not be charged for any misconduct. 1996 (5) SSC 591, **C.B.I. Vs. Duncans Agro Industries** was relied upon. In this regard it was also submitted:*
  - (a) *Role alleged against the appellant was that of being passive which was not a misconduct and, therefore, the very charge sheet was required to be quashed and as a consequence thereof everything which emanated from the charge sheet or was a result thereof was to be quashed.*
  - (b) *The loan proposal was sanctioned by the Board of Directors. The primary liability was of the sanctioning authority and without proceeding against the Directors no action could be taken against the appellant.*
  - (c) *The appellant was only a recommending authority and his responsibility was, therefore, subjected to the decision of the immediate specified superior authority. Appellant's immediate superior authority made no complaint against him and therefore, no proceedings could be initiated against the appellant.*
  - (d) *Appellant being the Regional Head merely forwarded the loan proposal. It was at the Head Office that the loan proposal was scrutinized and examined. It was put up to the Board of Directors. Thus, the appellant had no role in the sanctioning of the loan.*
  - (e) *The charge-sheet was also served for the same set of facts upon Shri S.K. Abrol, the then Deputy*

*General Manager (Credit) who in his defence never stated that he was misled by the appellant.*

- (f) Senior Manager of the branch at Masjid Moth was the person at the grass-root level and it was he who was obliged to personally verify the correctness of the information supplied. Being at the Regional Office, appellant was only to ensure that the loan proposal was properly processed. He did so by letter dated 13.11.1987 addressed to the branch office which confirmed that all procedural requirements were complied with and necessary enquiries were made.*
- (iv) That in between 1987-1988 when the proposal was sent and 19.8.1993 when charge-sheet was issued, appellant was promoted and, therefore, charges stood condoned. 1968 SLR 88, **Lal Audhraj Vs. State of M.P.** was relied upon.*
- (v) That the Order of dismissal stated no reasons and as such it was a case of non-application of mind. 1972 SLR 85 (SC), **State of Punjab Vs. Bakhtawar Singh** and 1984 SCC (L&S) 497, **A.L.Kalra Vs. Project & Equipment Corporation** were relied upon.*
- (vi) The Order rejecting appeal also stated no reasons. It was again a case of non-application of mind. AIR 1986 SC 1040, **R.N.Bhatt Vs. Union of India** and 1993 (4) SCC 269, **Union of India Vs. R. Reddappa** were relied upon.*
- (vii) That the punishment imposed upon him was disproportionate. More so when the members of the Board were not even questioned on the issue.*

16. The appellant has submitted that the learned single Judge has not appreciated the facts of this case in the correct perspective and has simply dittoed the line of reasoning given by the enquiry officer even though the role of the Board of Directors was not even analysed or discussed by the enquiry officer who were primarily responsible for having sanctioned the loan proposal despite alleged deficiencies, if any, which were within their notice in respect of the proposal and the replies received from the branch were forwarded along with the loan

proposal by the appellant. The learned Single Judge has also ignored the enormous delay in initiating the proceedings against him and the punishment imposed which is highly disproportionate and discriminatory against him qua other officers who were posted in the same branch and who initiated the loan proposal.

17. Before the learned Single Judge, the learned counsel for the respondent-bank accepted that the loan proposal was sanctioned by the Board of Directors but this was justified on the ground of hierarchy of the banking system. It was stated that sanction of loan by the Board of Directors does not absolve the appellant from his responsibilities. *However, neither any justification was furnished before the writ court nor it has been submitted before us as to why further facilities were sanctioned for the same party subsequently on the same facts when the appellant was not even the Regional Head and stood transferred. There is also no explanation as to why no action was taken against the Board members.*

18. The learned Single Judge accepted the stand of the respondents by relying solely upon the report of the enquiry officer but without referring to the reasons for the extension of the loan facilities and by observing that the appellant had not criticized the findings of the enquiry officer, which is not so because the writ petition also assails the findings of the enquiry officer and the initiation of the enquiry itself including the disproportionality of the punishment and the role played by the Board of Directors in the whole episode.

19. The learned Single Judge has also not appreciated the delay of 6 years in issuing the charge sheet in the correct perspective even

though the learned Judge has relied upon the judgment of a Division Bench of this Court delivered on 29.10.2003 in LPA No. 39/1999, i.e., the case of **DDA Vs. D.P. BAMBAH**, which lays down the legal position in respect of an action brought seeking quashing of a charge-sheet and inordinate delay in completion of the disciplinary enquiry which have been crystallized as under:-

- (i) Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is no period of limitation for initiating the disciplinary proceedings;
- (ii) Since delay in initiating disciplinary proceedings or concluding the same are likely to cause prejudice to the charged employee, courts would be entitled to intervene and grant appropriate relief where an action is brought;
- (iii) If bona fide and reasonable explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter;
- (iv) While considering these factors the court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-à-vis the handicap which the department may be suffering in the initiation of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defence on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.
- (v) In considering the factual matrix, the court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge sheet unless, of course, the right of defence is found to be denied as a consequence of delay.
- (vi) It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay.
- (vii) The sword of Damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary enquiry should be completed against him within reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary enquiry.

20. However, the impugned judgment does not specify as to why the principles mentioned above were not applicable in the present case despite the fact that the appellant was charge sheeted after 6 years of sending the proposal and none of the Board members were even questioned about their role for their lapses in accepting the proposal and sanctioning further credit facilities to the same borrower.

21. At this stage, reference can also be made to the enquiry report which does not mention anything about the circumstances leading to enhancement of further credit limits in 1988 or in respect of the violation of the circulars which have been referred to by the appellant in his reply and which were very much within the knowledge of ED/CMD/Board, for not granting sanction of loan for taking up the shares of other companies. In para 40 of the report it has been observed:-

As per Bank circular dated 3.1.1984, the bank was to refrain from granting loan for taking up of shares of other companies. The CO has stated that the circular was within the knowledge of the HO officials as well as ED/CMD/Board and yet they did not raise any objection to the proposal.

22. It is nobody's case that the Board of Directors were not competent to have returned the proposal or to have insisted upon following the circulars and other guidelines for the sanction of such facilities to the Borrower. This also lends support to the contentions urged by the appellant that the lapses alleged against him did not constitute misconduct on his part. However, the Id. Single Judge observed that the charges leveled and proved against him showed that he acted otherwise than as per his best judgment while discharging his duties and therefore, committed an act of omission and commission

which resulted in sanction of loan facilities in favour of the Borrower, whereby the bank lost over a crore of rupees, without appreciating that the initial loan facilities were increased subsequently when even the appellant was not in the Regional Office and it is only thereafter, the borrower became a sick unit. The Learned Single Judge also misread the judgment delivered in the case of **J. Ahmad (supra)** relied upon by the appellant, wherein it has been held:-

There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be indicative of negligence and the degree of culpability may indicate the grossness of the negligence.

23. A very important aspect is the role played by the Board of Directors with respect to the loan proposal in the form of queries raised and reply received from the branch. Instead of returning the proposal and giving the directions to meet out the deficiencies the members of the Board even enhanced the loan facilities to a great extent just after few months even when the appellant was not in the Regional Office having been transferred from there in April, 2008. This gives credence to the stand of the appellant, that it was the H.O./CMD/Board of Directors who were more interested in extending loan facilities to the borrower and the proposal forwarded to them by the Regional Office was nothing else but complying with the directions of the Head Office to forward the proposal as early as possible. This aspect has simply been ignored.

24. A perusal of the deposition made by Shri Anil Mahajan, who appeared as SW-1 before the enquiry officer, reveals that the entire material i.e. the queries raised by the Branch on the Regional Office with respect to the loan proposal as well as the reply of the Branch was very much placed before the Board of Directors when the initial loan proposal was sanctioned by the Board on 5<sup>th</sup> November, 1987. This witness has also stated that there were legal complications in respect of EISL and it was all the more necessary to obtain legal opinion and search report in respect of the assets of EISL before recommending the proposal. However, the Board of Directors had not taken any such action. They have also not returned the proposal to the Branch for doing the needful. The witness also stated that as per exhibit S-14 permission from DDA for mortgaging the property has not yet been obtained, which is essential for creating a mortgage. Despite that the loan was sanctioned by the Board of Directors. Similarly, as per the statement given by him the permission from the Central Government under Section 372 of the Company Act for taking over more than 30% shares of another company was also not obtained even though the loan was sought for that purpose, yet the Board has not taken any action on the proposal. At point 'f' of the proposal, the group affiliation of the Borrower with Rathi Group of Industries was mentioned while recommending the proposal which clearly revealed group affiliation of the borrower with the Rathi Group of industries. The name of guarantor given as P.R. Rathi also clarifies that aspect, yet the appellant has been blamed for having not disclosed the necessary particulars. These aspects have also not been taken note of by the learned Single Judge while passing the impugned judgment. In these

circumstances, it cannot be said that it was the misconduct committed by the appellant, as alleged.

25. Vide our order dated 15.10.2008, we called upon learned counsel for the respondents to obtain instructions as to whether they were willing to consider reduction in punishment imposed upon the appellant in view of our order dated 18.09.2008. The background for passing this order was the submission made by the appellant regarding enhancement of loan facilities to the same party subsequently in the circumstances as aforesaid for which the appellant was not to be blamed and which is the reason for the party becoming a defaulter. This aspect is also clear from our order dated 15.10.2008. Both the orders are reproduced hereunder for the sake of reference :

Order dated 18.09.2008

Arguments concluded.

Learned counsel for the parties seek time to file a short synopsis of the submissions.

Learned counsel for the respondents also seeks some time to obtain instructions whether in the given peculiar facts and circumstances of the case, more importantly what is recorded at page 207 and the petitioner having attained superannuation prior to the proceedings (petitioner in now no more), the punishment of dismissal from service can be converted to one discharge from service with retirement benefits to put an end to the litigation.

List for directions on 15.10.2008

Order dated 15.10.2008

Learned counsel for the parties have filed their respective synopsis along with citations. Learned counsel for the respondents states that he has obtained instruction that the respondents are not willing to consider any reduction in punishment as observed in order dated 18.09.2008.

Learned counsel for the respondent to produce the record of the process pursuant to order dt. 18.09.2008. Learned counsel for the respondents further states that his synopsis does not incorporate the aspect of subsequent enhancement of the loan. Admittedly, the appellant was not a party to the enhancement of loan and thus it should be stated whether any disciplinary action was taken against the officers who enhanced the loan as also the process followed for such enhancement of loan.

Learned counsel for the respondents seeks time to file further synopsis on this aspect and produce the records.

List for directions on 7.11.2008.

26. In their response to our aforesaid directions, the respondents have given no explanation as to why the loan facilities were extended to the same party whose initial loan proposal was defective. Similarly, no explanation has been furnished as to why no action has been taken against any of the members of the Board who sanctioned the loan proposal earlier or who were a party to the enhancement of the loan facilities to the same Borrower. The only disclosure made is about the action taken against some other officers of the bank who were posted in the Branch and who have not been awarded the punishment of dismissal which only shows that the respondents have tried to make the appellant a scapegoat for the omissions and commissions of the members of the Board of Directors of NBI, who from the circumstances appeared more keen to sanction the loan proposals even though it had deficiencies and the proposal was contrary to the guidelines, circulars of the bank itself, which was within the knowledge of the Board members.

27. The learned Single Judge had also rejected the submissions of the appellant that the punishment imposed upon the appellant was disproportionate by upholding the order of Disciplinary Authority without appreciating that the penalty of dismissal was inflicted upon the appellant after 1 year of his superannuation and by making it specific that the said punishment would be a disqualification for his future employment. This also deprived the appellant of his retiral benefits even though no action has been taken by the respondents

against the concerned Board members or the CMD, who, in fact, were responsible for sanctioning the loan facilities and for further enhancing the credit limits.

28. As per the disclosure made by the respondents in their additional affidavit, the persons who were posted in the branch and were responsible for forwarding the proposal have been awarded lesser punishments and have not been dismissed from service. The Board of Directors were simply kept out of the investigation and thus, no action was ever proposed against them.

29. We have also gone through the judgments cited by both the parties and are satisfied that the impugned judgment passed by the learned Single Judge cannot be sustained for the following reasons :-

- (i) It was the Board of Directors of NBI who were in a hurry and keen to sanction the loan facilities to the borrower. This is apparent inasmuch as the loan proposal which was forwarded by the Regional Officer to the Head Office on 16.11.1987 was put up before the Board of Directors on the same day by the Head Office and was sanctioned by the Board on 25.11.1987.
- (ii) The Board of Directors, who were the sanctioning authority while scrutinizing the loan proposal were duty bound to have taken note of the deficiencies, if any, and to return the proposal back to the Regional Office, if it was not acceptable but they have not done so. In these circumstances, it is apparent that the role played by the appellant was only a passive role and not an active role.

- (iii) Moreover, the CMD also sanctioned further enhancement of credit facilities and loan facilities to the same party on 20.08.1988, which were much higher on the basis of a proposal given by the Branch on 04.06.1988 when the petitioner was not even the Regional Head. Not only the facilities were extended but even the norms were relaxed.
- (iv) The charge sheet was served upon the appellant on 19.08.1993 after a lapse of 6 years without any explanation.
- (v) On the date of inflicting the punishment of dismissal the Appellant stood superannuated one year before by virtue of an action taken by the Bank which acquired New Bank of India after its amalgamation to lower down the superannuation age of Appellant after giving a notice of 3 months. Yet they continued inquiry proceedings by invoking Regulation 20(d)(iii) of Officers' Service Regulations for no rhyme or reason despite the promotion of the appellant subsequent to the release of the first loan to the borrower.
- (vi) The punishment imposed upon the appellant of dismissal from service after one year of superannuation with a rider that the said punishment would be a disqualification for his future employment smacks of mala fide and is unsustainable, more so when no action has been taken against the members of the Board, who apparently were responsible for creating a situation which made the bank suffer a loss by extension of facilities further in 1988. In this regard, it has also come on record that after the sanction of the first loan the account of

the borrower had ‘A’ grading and it is only after the enhancement of loan it became the defaulter’s account.

(vii) Despite opportunity granted, the respondents have failed to explain as to what action they have taken against the Board of Directors. In fact, disclosure made by them in having taken action against the Branch Officers who floated the loan also goes to show that they have discriminated against the appellant in respect of the punishment order to those officers. The chart submitted by the respondents in this regard is reproduced hereunder:

| Name           | Designation | Charge Sheet Date | Punishment                                                                                                                                                                                                                                                                                                        |
|----------------|-------------|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sh. J K Nagpal | Sr. Manager | 14.7.94           | Reduction of salary by one stage in pay scale in which he is placed for a period of one year with further direction that he will not earn any increment of pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing the future increment of pay. |
| S K Ahuja      | Sr. Manager | 14.07.1994        | The disciplinary proceedings have been kept in abeyance in view of his dismissal in connection with the charge sheet dated 20.04.1993.                                                                                                                                                                            |
| K Poornam      | D.G.M.      | 12.07.1994        | Minor penalty of Censure                                                                                                                                                                                                                                                                                          |
| SK Abrol       | G.M.        | 19.08.1993        | Major Penalty of reversion to next lower grade.                                                                                                                                                                                                                                                                   |

(viii) The aforesaid officers were in fact junior officers of the appellant and were actually responsible for having forwarded the loan proposal. Their role was more serious and active

than that of the appellant, who simply forwarded the proposal along with the queries raised and reply received.

- (ix) The submissions made on behalf of the respondents in their written submissions that the punishment of dismissal is also justified on account of pendency of six other charges against him, which are dated 10.4.1992, 14.8.1992, 5.3.1994, 14.12.1994, 12.1.1995 and 24.03.1995 is again of no consequence because there was no impediment on the part of the respondents to have tried the appellant in respect of the aforesaid charges when they tried the appellant for the charge sheet served upon him on 19.8.1993, which as stated above was itself issued after six years. These charge sheets could not have been issued to the appellant being highly belated and thus cannot support the plea of the respondents that the punishment of dismissal is justified.
- (x) The judgment delivered by the Learned Single Judge has ignored all these facts including the judgments cited before it in their correct perspective.

30. We, therefore, issue a writ of certiorari quashing the disciplinary proceedings taken by the respondents against the appellant right from serving the charge sheet, the report of the enquiry officer, the punishment of dismissal awarded to him, the order of the appellate authority. The judgment of the learned Single Judge is also set aside. Directions are issued to the respondents to treat the appellant in service till the date of his superannuation and to release all his retiral benefits to his legal representatives within a period of three months from today, as the appellant has already died.

31. The appeal is accordingly allowed, leaving parties to bear their own costs.

**MOOL CHANG GARG, J**

**SANJAY KISHAN KAUL, J**

NOVEMBER 28, 2008  
ag/dc