

R-266

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

% Date of judgment: 12.05.2011

+ **R.S.A.No. 200/2007 & CM No. 10571/2007**

PUNJAB NATIONAL BANK

.....Appellant
Through: Mr. Jagat Arora, Advocate.

Versus

R.P. PUSHKAR

.....Respondent
Through: Respondent in person.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 09.4.2007 which had reserved the finding of the trial judge dated 07.2.2002. Vide judgment and decree dated 07.2.2002 the suit filed by the plaintiff R.P.Pushkar (seeking a declaration and permanent injunction to the effect that the order of the Disciplinary Authority imposing the punishment against the

plaintiff is illegal and arbitrary; the defendant be restrained from acting upon this order dated 05.12.1992; claim for damages in the sum of Rs.99,000/-) had been dismissed. The impugned judgment had reversed this finding; suit of the plaintiff was decreed. It was held that the order of the Disciplinary Authority dated 05.12.1992 imposing the penalty upon the plaintiff was illegal; damages were also awarded in favour of the plaintiff.

2 Plaintiff had filed the present suit for declaration and permanent injunction; he was appointed by the New Bank of India (NBI) as an Accountant. NBI had thereafter been merged with the Punjab National Bank (PNB). In terms of the amalgamation scheme the assets and liabilities of the NBI were taken over by the PNB. The plaintiff was charge sheeted by the defendants on 26.2.2991. The allegation was that he had acted in a manner undesirable for an officer; he had failed to maintain good conduct and discipline; he had failed to discharge his duty with integrity and diligently; enquiry was held against the plaintiff; he was found guilty. Disciplinary Authority had imposed penalty of *“withholding of three increments with cumulative effect”*.

3 This was confirmed in appeal; thereafter review petition had been dismissed. Contention of the plaintiff was that the charge

sheet issued against him was at the behest of defendant no.3 who had stated that he will teach him a lesson and spoil his carrier; Kuldeep Kumar had been appointed as the Enquiry Officer to conduct the preliminary enquiry; he had returned a positive finding against the plaintiff; as per his preliminary report the charge of manhandling leveled against the plaintiff had not been substantiated. No prima facie case had been found against the petitioner. Plaintiff was malafidely charge sheeted on a false allegation that on 31.7.1991 he had manhandled the Branch Officer; taking the plea that defendant No. 3 had received telephonic instructions from defendant no.2 which was a false statement; the plaintiff was suspended; defendant no.2 was not competent to suspend him. The penalty imposed upon the plaintiff pursuant to the Enquiry is illegal and unjust. It is in violation of the principles of natural justice. Present suit had been filed seeking a restraint order against the defendant from enforcing the order of penalty imposed upon the plaintiff on 05.12.1992; damages had also been claimed by the plaintiff.

4 The defendant contested the suit. It was stated that a charge sheet had been served upon the plaintiff and opportunity was granted to him to defend his case; the penalty had been

Appeal) Regulations, 1982; this order dated 05.12.1992 was affirmed by the Appellate Authority; this finding in no manner calls for any interference.

5 On the pleadings of the parties, the following four issues were framed:

1. Whether the order dated 5.12.92 passed by AGM (Disciplinary Authority) is illegal and improper in view of earlier proceedings conducted by Sh.Kuldeep Kumar, if so to what effect? OPP
2. Whether the pltf. has suffered any damages, if the answer is in affirmative, how much damages he is entitled? OPP
3. Whether the court has no territorial jurisdiction to try the suit? OPD
4. Relief.

6 Oral and documentary evidence was led. The trial judge was of the view that the Disciplinary enquiry was conducted as per the regulations by which the plaintiff was governed; there was no violation of natural justice; court was of the view that a civil court cannot sit as a appellate court over the findings of the Enquiry Officer. No perversity had been pointed out in his finding. Suit of the plaintiff stood dismissed.

7 In appeal this finding was reversed. The first appellate court decreed the claim of the plaintiff. The court was of the view that the findings of the Enquiry Officer are arbitrary, perverse and opposed to the principles of natural justice; there was no reason

as to why the preliminary enquiry which was in favour of the petitioner had been ignored; documents demanded by the plaintiff had also not been furnished to him; bias was writ large.

8 This is a second appeal. It has been admitted on 14.9.2009. The following substantial question of law was formulated.

“Whether the appellate court exceeded its jurisdiction in appreciating the findings of the Inquiry Officer under the facts of this case?”

9 On behalf of the appellant, it has been urged that the judgment suffers from a perversity; it has wrongly noted that the Disciplinary Authority was respondent No. 3; Disciplinary Authority was in fact respondent No. 2 Shri M.L. Sharma. Even otherwise a civil court cannot sit in appeal over the findings of the Enquiry Officer; scope of interference is limited. Learned counsel for the appellant has placed reliance upon the judgments reported in 1998 SCC (L&S) 1722 Superintendent, Government of T.B. Sanatorium & another Vs. J. Srinivasan as also another judgment of the Apex Court in 2006 (4) LLN 596 Union of India & others Vs. Dwarka Prasad Tiwari to support this submission.

10 Respondent has appeared in person. He has rebutted the submissions of learned counsel for the appellant.

11 Record has been perused. The impugned judgment had

reversed the finding of the trial Judge and had decreed the suit of the plaintiff on the ground that rules of natural justice had not been adhered to; bias alleged by the delinquent R.P. Pushkar qua defendants No.2 & 3 was substantiated. Suit was accordingly decreed in favour of the plaintiff and he had been held entitled to a decree of permanent injunction restraining the defendant from enforcing its order dated 05.12.1992 (whereby three increments of the plaintiff had been stopped); decree for sum of ₹99,000/- for damages had also been passed in favour of the plaintiff.

12 There were three charges which have been leveled against the delinquent of which charges No. 1 & 3 had been proved. Charge No. 1 was to the effect that on 19.07.1991 the delinquent office had used delaying tactics and left office unauthorizedly; due to his non-cooperative attitude, cash could not be checked; charge No. 3 which has also been proved was to the effect that on 31.07.1991, the delinquent had slapped Shri R.K. Chawla, Manager in the presence of one Net Ram an armed guard. Both these charges had been proved before the Enquiry Officer. It is not in dispute that the chargesheet had been issued against the delinquent on 26.08.1991. A fact finding enquiry had also been initiated. This fact finding was done by Kuldeep Kumar; Kuldeep

Kumar had submitted his fact finding report on 05.10.1991; his conclusion was to the effect that the charges of manhandling against the delinquent R.P. Pushkar is not substantiated or proved. This report as already noted was delivered on 05.10.1991; the chargesheet had already been filed on 26.08.1991. What was the purpose of a preliminary fact finding enquiry is not answered by learned counsel for the appellant. A fact finding enquiry is ordered as a preliminary i.e. a preliminary investigation before a chargesheet is filed; depending upon the report, a chargesheet may or may not have been filed. In this case the fact findings have been returned much after the chargesheet had been filed. Enquiry report had been submitted on 05.10.1991 and the chargesheet had already been filed on 26.08.1991. This by itself shows the prejudice and bias that the officers had against the petitioner.

13 The second bias which is evident was that admittedly Net Ram was an eye witness to the incident of 31.07.1991 when the delinquent had purportedly slapped the Branch Manager R.K. Chawla. In the fact finding Net Ram had exonerated the delinquent. The delinquent had asked for the statement of Net during the course of the enquiry proceedings in order that he could cross-examine Net Ram more effectively. This document was denied to the delinquent. A valuable right had been lost to the

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delinquent as the first statement of the Net Ram recorded in the fact finding inquiry would have been an effective tool in the hands of the delinquent for the purpose of cross-examination to contradict Net Ram under the provisions of Section 145 of the Indian Evidence Act. Denial of this document had also prejudiced his case.

14 The aforementioned submissions were well noted in the impugned judgment. The findings returned as follows:-

“9 The documents demanded by the appellant through letter dated 27/06/92 seems relevant enough since Netram was the only eyewitness to the alleged incident of slapping by appellant given to respondent no. 3. The first and the earliest statement was owned by Netram who specifically told that whatever he had stated in the Fact finding/initial inquiry is true and correct. The outcome of the Fact Finding Inquiry was in favour of the appellant, which is a matter of record. Albeit, Disciplinary Authority was within its rights not to rely on that but still some reasons should have been given, which is not the case here. Nevertheless, the appellant had every right to rely and refer the statement recorded during that proceedings while cross examining witnesses. The respondents have no answer, what to talk of any cogent explanation qua the refusal in not providing the statement of Netram recorded during the fact finding enquiry. Such a proceeding in the absence of document sought by defence, vitiates the inquiry as it deprives the appellant from a fair opportunity to defend himself and demolish the case against him.

10 The record falsifies the claim of an officer with regard to booking a trunk call and obtaining verbal suspension orders. The officer who purportedly gave the suspension order, albeit no telephonic conversation took place, stands by the so called telephonic suspension order and incidentally these two officers happens to be those very persons against whom the appellant had expressed

reservations even before the suspension, apprehending trouble and vendetta. What and how else the bias and prejudice can be ascertained and seen?

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11 Similar views were expressed in Kumari Ratna Nandy V/s Union of India and I. Badhan V/s Sub Divisional Inspector of Post Offices and Others.

12 The conduct of the respondent no. 2 and 3 indicates such meetings of mind which even in the absence of telephonic instructions, comes to the same conclusion of suspension of the appellant. These two, i.e. Respondent no. 2 and 3 are the officers with whom the appellant was having a kind of feud. The documents on record reflect that the official conduct of the respondent no. 3 was questioned by appellant, who prompted the respondent no. 3 in association with respondent no. 2, due to 'Official Association' to start nursing grudge against the appellant. The allegations of bias has, thus, substance. In these circumstances, the respondent no. 2 should not have been permitted to act as Disciplinary Authority and if, notwithstanding, the reservation, apprehension and opposition by appellant, it was permitted, it was against the norms of fair play. The allegations of conspiracy and bias against respondent no. 2 and 3 stands fortified by the incident of telephonic instruction qua suspension of appellant. What else could have been the reason for respondent no. 2 to own the story of telephonic suspension of appellant of late emphasis is on fairness or fair procedure in Administrative action. The Administrative Officer may not be required to act judicially, but he should under all circumstances act fairly, reference can be made to Neelam Mishra V/s. Harinder Kaur AIR 1990 SC 1402.

13 The plea of administrative bias/mala fide means an inference drawn against the backdrop of existing facts and attending circumstances and when there is a conclusion to the effect that real danger of prejudice/mala fide exists, in such circumstances bias may automatically be inferred. It may be a real likelihood or substantial possibility of bias which renders an administrative action vicious,

and in turn vitiates the entire administrative process and action. The administrative authority, while acting in a quasi judicial manner or otherwise discharging any administrative function/adjudication is expected to be impartial, fair, free from prejudice, undue influence or bias so as to discharge the function without fear or favour, taking an objective approach. Any interest in the matter whether pecuniary interest, political rivalry, personal hostility or administrative commitment which affects the working of administrative authority, should be discouraged, reference can be made to : Rattan Lal V/s Managing Committee of Hari Singh Higher Secondary School, AIR 1993 SC 2155; Secretary to the government, Department of Transport V/s Munnu Swamy, AIR 1988 SC 2232 : A.K. Karipak V/s Union of India, AIR 1970 SC 150; Mineral Development Ltd. V/s State of Bihar, AIR 1960 SC 468; Andhra Pradesh State Road Transport Corporation V/s Satyanaranayana Transports, AIR 1965 SC 1303 (1306) ; Manak Lal V/s Prem Chand, AIR 1957 SC 425.

14 No authority should be a judge in its own case because his decision then can be biased and coloured with subjectivity. If a prosecutor is also a judge, he must not record the conviction on the basis of the charges framed by himself. The rule that one should not be judge in one's own cause is stressed with all rigidity by the system of law developed in this country and can also be inferred from the maxim *nemo debet esse judex in propria sua causa*.

15 The respondent no. 3 acted as disciplinary authority whereas allegations of conspiracy against him were leveled by the appellant. Can a person be a Judge in his own case? The answer is big no and that is well established and well entrenched. Reference can be made to .Union of India V/s Permanand 1989 II LLJ (57). ; Secretary of Government, Home Department V/s Vaki Unthan 1999 (81) FLR 857, Kuldeep Singh V/s Commissioner of Police 1999 (1) SCS LG 202, ; Apparel Export Promotion Council V/s A.K. Chaudhary 1999(83) FLR 462 : R.S. Sahni Vs/ State of Punjab 1999 (83) FLR 377.. The apprehension when expressly exhibited by appellant that he does not except justice from respondent no. 2 and when reason in writing were there the respondent no. 1

should not have allowed the respondent no.2 to have any connection with the matter,

leave alone permitting him to act as Disciplinary Authority.

16 It is of fundamental importance that justice should not only be done, but should also manifestly and undoubtedly be seemed to be done; reference can be made to .State of West Bengal V/s Shivananda AIR 1998 SC 2050, Gurdip Singh V/s State of Punjab (1997) 10 SCC 641 Commerce (Taxation) V/s Har Bhajan Singh, AIR 1996 SCW 2429.

17 The facts of the instant case when tested on the above parameters, and as discussed above, it appears that the appellant was having strained relations with respondent no. 2 & 3. He alleges that he has been framed in this departmental enquiry by the respondent no. 2 & 3 deliberately as they had also threatened to him to teach a lesson. The appellant was not provided with the documents he demanded without assigning any reason whereas he is able to show that the statement of Net Ram recorded by Mr. Kuldeep Kumar, who held the initial fact finding enquiry could have been an important piece of evidence in order to demolish the case of the department. The respondent no. 2 ordered a full-fledged enquiry notwithstanding the findings of initial enquiry held by Kuldeep Kumar. The respondent no. 2 may be right in this respect but then it would have been proper to give reasons as to why the respondent no. 2 felt the need of the detailed enquiry. In any case, the appellant should have been provided with the documents demanded by him. The denial of the same has, apparently, deprived the opportunity to him to present and defend his case properly. Then again, when the appellant was having strained relations with the respondent no. 2 & 3 in that case at least respondent no. 2 should have dis-associated himself from the proceedings if not the respondent no. 3 for the reason that the respondent no. 3 was complainant in the matter. The allegations of bias have further surfaced where the appellant was suspended by the respondent no. 3 on the oral instructions of respondent no. 2 purportedly received by him on telephone. The appellant has been able to show that no such telephonic instruction was received by the respondent no. 3 from the respondent no. 2. The respondent no. 3 subsequently ratified and owned the act

of respondent no. 2, thus the theory of bias gets further strength otherwise there was no need with the respondent no. 2 to side with respondent no. 3 that too in respect of the fact which is incorrect. The time of suspension of the appellant has been very strategic, he was promoted on 29.07.1991 and was to join, after being relieved, the Shahajahanpur branch, whereas he, instead of being relieved, suspended from the service. This does not seem to be an accident against the backdrop of the facts and circumstances. This seems to be a deliberate act which stands fortified with the fact that even in the absence of telephonic instructions from the respondent no. 2, the respondent no. 3 suspended the appellant by asserting that he has received a telephonic instruction. No call was made on that day at all from the branch of the bank where the appellant and respondent no. 3 were posted to the Regional Office. This indicates conspiracy and bias and nothing else. Then again, suspension of appellant was against the rules of respondent no. 1 qua the rules of Departmental Enquiries. Regulation 12 of the 'Manual on Service Conditions & Benefits/Facilities to PNB Officials' provides that competent authority can suspend an official, where a disciplinary proceedings is contemplated or pending or where a criminal case is under investigation, enquiry or trial. The case of the appellant on the day of suspension, did not fall in either of the two, thus, his suspension, even otherwise, fails to qualify the test.

18 In view of these facts and circumstances, the departmental enquiry initiated against the appellant stands vitiated and loses its sheen and authority. As such, the appellant cannot be penalised on the basis of such enquiry. Ld. Trial Court has not appreciated these aspects which resulted in the shape of impugned judgment. As such, the impugned judgment is set aside. The claim of the appellant being correct, therefore, decree of declaration is hereby passed to the effect that order dated 05.12.1992 passed by AGM/Disciplinary Authority being against the principles of natural justice is quashed."

15 They do not in any manner call for any interference. They can in no manner be said to be perverse.

16 Substantial question of law is accordingly answered in favour of the respondent and against the appellant. Appeal has no merit. Appeal as also pending application are dismissed.

INDERMEET KAUR, J.

MAY 12, 2011

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