

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

Date of decision: 13th July, 2012

+ **LPA No.951/2011**

% **PUNJAB NATIONAL BANK** **.... Appellant**
Through: Ms. Raavi Birbal & Mr. R.S. Mathur,
Adv.

Versus

R.S. SHARMA & ANR. **..... Respondents**
Through: Mr. Randhir Jain & Ms. Radhika
Jain, Adv. for R-1.
Ms. Sangeeta Rai, Adv. for R-2.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 12.09.2011 of the learned Single Judge in W.P.(C) No.643/1995 preferred by the respondent No.1. The respondent No.1 was employed with the appellant Bank. He had filed the writ petition impugning the order dated 03.06.1994 of the Disciplinary Authority of the appellant Bank imposing penalty of reduction of grade from SMG Scale-IV to MMG Scale-III on the respondent and the order dated 17.06.1995 of the Chairman-cum-Managing Director of the appellant Bank as the Appellate Authority, removing the respondent from

service. The learned Single Judge vide the judgment impugned in this appeal, though not finding merit in the challenge to the order dated 03.06.1994 of the Disciplinary Authority imposing the penalty of reduction of grade on the respondent, has set aside the order of the Appellate Authority removing the respondent from service, for the reason of the charge on the basis whereof the penalty was enhanced to that of removal from service having not been put to the respondent and the finding of the Appellate Authority thereon being based on no evidence. The respondent having attained the age of superannuation, the learned Single Judge directed the appellant Bank to release the retiral and other benefits along with arrears to the respondent, treating the respondent to have continued in service till superannuation on the grade of MMG Scale – III.

2. Notice of this appeal was issued and since a short issue was involved, the appeal, with the consent of the counsels set down for final hearing at the after notice miscellaneous stage only. The operation of the judgment of the learned Single Judge was also stayed. The respondent has preferred cross objections qua the findings of the learned Single Judge upholding the order of the Disciplinary Authority and which cross objections were also directed to be heard along with the appeal. The counsels have been heard.

3. The challenge by the respondent in the cross objections to the order of the learned Single Judge is on the ground of the inquiry purportedly held against him and on the basis whereof the Disciplinary Authority imposed the punishment of reduction of rank, being defective. It is argued that neither any admission/denial of documents was done nor was any evidence led by the appellant Bank or any of the charges proved and thus the finding that, the charges have been proved against the respondent, could not have been arrived at. It is argued that the departmental inquiry was thus vitiated. Per contra, the counsel for the appellant, from the record of the departmental proceedings has purported to show that the charge on the basis whereof the appellate authority has enhanced the punishment was framed / existed and also stood proved.

4. The learned Single Judge, insofar as the challenge to the order of the Disciplinary Authority was concerned, has found / held:

- (i) that the respondent had acceded to the procedure adopted by the Inquiry Officer;
- (ii) that the respondent, during the inquiry proceedings, did not doubt the veracity of the 859 documents produced by the appellant Bank;

- (iii) that the Inquiry Officer had recorded detailed questioning of the respondent No.1;
- (iv) that the matter turned on the interpretation of the documents;
- (v) that the Court is not to act as a Court of appeal and re-examine the evidence analyzed by the Inquiry officer unless the findings are perverse or based on no evidence;
- (vi) that the Inquiry Officer in the present case had acted objectively in drawing his conclusions and in holding some of the charges to have been not proved and some of the charges to be only partly proved;
- (vii) that there is no illegality in the Disciplinary Authority accepting the inquiry report.

5. Though the respondent as aforesaid has filed cross objections but neither has the counsel for the respondent really pressed the cross objections nor are we able to decipher any error in the judgment of the learned Single Judge insofar as dismissing the challenge by the respondent to the order of the Disciplinary Authority. Rather, the arguments have veered around to the justifiability of the Appellate Authority in enhancing the punishment from that of reduction in rank imposed by the Disciplinary Authority to that of

removal from service. We have even otherwise, after going through the record, satisfied ourselves that the procedure adopted by the Inquiry Officer cannot be said to be vitiated and the inquiry proceedings were held in a fair manner in compliance of the principles of natural justice.

6. We therefore dismiss the cross objections preferred by the respondent.

7. Insofar as the enhancement of the punishment by the Appellate Authority is concerned:

- (i) of the four charges against the respondent, charge No.3 was as under:

“He unduly sanctioned loans to various parties by neglecting post sanction control measures and put sizeable funds of the Bank difficult of recovery.”

- (ii) in the statement of Articles of charges accompanying the charge sheet, it was further elaborated that the conduct of the accounts which the respondent was charged with having sanctioned in undue haste and ignoring the pre-sanction credit appraisal measures and by exceeding the loaning powers vested in him, was not satisfactory and the banks dues were at stake and the outstandings were doubtful / difficult of recovery;

- (iii) the Inquiry Officer in his report submitted under 36 headings framed heading No.34 as :

“34. Limits were sanctioned to various parties engaged in the manufacture of Copper Wire drawings despite restrictions placed on financing of this activity vide Zonal Office letter dated 26.07.1990, thereby leading to heavy bank’s exposure in this segment.”

and found the charge to have been proved beyond doubt. Under charge No.3 also the finding was of the same having been proved;

- (iv) The Disciplinary Authority in its order dated 03.06.1994 while concurring with the findings of the Inquiry Officer confirmed that the respondent sanctioned loans to a large number of parties in undue haste by ignoring to observe pre-sanction credit appraisal norms thereby showing utter lack of prudence to discharge his duties and further found the respondent having sanctioned the loans to various parties by exceeding his vested loaning powers and neglecting its control measure thereby putting sizeable funds of the Bank to jeopardy.

It thus cannot be said that the charge, of the bank's funds of ₹4.23 crores approximately proving difficult of recovery, was never put to the respondent and we are unable to agree with the said finding of the learned Single Judge.

8. However, that is not the end of the matter. The learned Single Judge has further held that the said finding is not based on any evidence. The learned Single Judge in this regard has further referred to Regulation 3(1) read with Regulation 24 of the Punjab National bank Officer Employees (Discipline & Appeal) Regulations of 1997 requiring it to be shown that the action of the delinquent officials was with an intent to cause loss to the management. The learned Single Judge has further held that there was no specific charge on this aspect and the observations of the Disciplinary Authority that the respondent No.1 showed "utter lack of prudence to discharge his duties" was not a conclusion drawn by the Inquiry Officer; rather the finding of the Inquiry Officer was that the petitioner's conduct was not judicious. The learned Single Judge thus concluded that the Appellate Authority could not have made the same the basis for enhancement of the penalty.

9. We have minutely combed the proceedings of the inquiry which is in the question answer form between Inquiry Officer, Presenting Officer and the respondent. Neither have we been able to find any reference pertaining to the actions of the respondent No.1 having put sizeable funds of the Bank difficult of recovery nor has the counsel for the Bank been able to point out any.

9. However, what we find is that the said charge is merely consequential to the first two charges which are as under:

“ARTICLE –I

He sanctioned loans to various parties in undue haste by ignoring the pre-sanction credit appraisal measures.

ARTICLE – II

He sanctioned loans to various parties by exceeding his vested loaning powers.”

and which the learned Single Judge also has held to have been validly proved. Once, it is held that the respondent is guilty of sanctioning loans to various parties in undue haste by ignoring the pre-sanction credit appraisal measure and by exceeding the loaning powers vested in him, the putting of banks' monies which are public monies in jeopardy is consequential. The counsel for the appellant in this regard has invited our attention to

Disciplinary Authority-cum-Regional Manger Vs. Nikunja Bihari Patnaik

(1996) 9 SCC 69 reiterated in ***Chairman and Managing Director Vs. P.C.***

Kakkar AIR 2003 SC 1571 laying down that once an officer is held guilty of acting without authority, it is no defence to say that there was no loss caused therefrom. It was held that acting beyond one's authority is by itself a breach of discipline and a misconduct of a serious nature and not casual nature.

10. We are therefore of the opinion that it cannot be said that the order of the Appellate Authority enhancing penalty from that of reduction in rank to that of removal from service was without any reason or basis. All that the Appellate Authority has done in the present case is to have disagreed with the order of the Disciplinary Authority of imposing the penalty / punishment only of reduction in rank for the charge proved, of the appellant having sanctioned loans without following the requisite procedure and in excess of his authority. This, coupled with the fact that along with the charge sheet itself the respondent was notified of the monies of the banks which owing to his actions had become doubtful and / or difficult of recovery and that the respondent has not been able to make a statement that the monies have been recovered or are secured, was sufficient for the Appellate Authority to

enhance the punishment.

11. We are unable to agree with the learned Single Judge that the enhancement of penalty by the Appellate Authority was on any ground additional to that considered by the Disciplinary Authority.

12. It is not in dispute that it was within the power of the Appellate Authority to enhance the punishment. The Appellate Authority having enhanced the punishment, which it was entitled to do so, it was not for this Court to interfere, particularly when the principles of proportionality applied by the Appellate Authority are not found to be perverse. Supreme Court, in ***B.C. Chaturvedi Vs . UOI*** MANU/SC/0118/1996 held that the Disciplinary Authority, and on appeal the Appellate Authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline; they are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court while exercising power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty; only if the punishment imposed shocks the conscience of the High Court, would it be appropriate to mould the relief, either by directing reconsideration of penalty imposed or to shorten the litigation, it may itself

in exceptional and rare cases, impose appropriate punishment giving cogent reasons in support thereof. The decision of the Appellate Authority, in the facts of the present case, does not shock our conscience. The learned Single Judge also has not found any exception or rare features for this Court to impose punishment different from that imposed by Appellate Authority.

13. The counsel for the respondent has invited our attention to another office letter dated 26.07.1990 of the appellant Bank vide which the Chief Manager of different branches of the Bank were advised against financing the units engaged in Copper Wire drawing and related activity; on that basis he has argued that the sanctions by the respondent of the various funding limits to Copper Wire drawing units were of a date prior thereto as also obvious from the imputation of charges. We are however not impressed with the said argument. The violations of procedure with which the respondent No.1 has been charged with are numerous and one such letter cannot be used to interfere with the findings of the Appellate Authority. Moreover, the letter dated 26.07.1990 is not a general letter to all the Branch Managers but is specifically addressed to the respondent pointing out the heavy concentration of financing to such units and advising thereagainst.

14. It cannot be forgotten that the Chief Manager of a bank is entrusted

with public monies and though required under the social goal to encourage entrepreneurship, is required to observe prudence and sanction assistance only to those deserving and likely to repay the public monies lent to them at cheaper rates and to not jeopardize their fate. Such unpaid debts of public sector banks are eating into our economy and the officers of the Bank who are entrusted with disbursement thereof have an onerous task. An error of judgment on their part not only makes a Bank suffer loss but is always to the deprivation of a more deserving assistance seeker. Once the officer of the Bank is found guilty of neglect of the safeguards prescribed in this regard, it becomes irrelevant whether such officer acted with an intent to cause loss to the bank or not since neglect in such cases is *res ipsa loquitur* for intent to cause loss. Supreme Court in ***Ganesh Santa Ram Sirur Vs. State Bank of India*** (2005) 1 SCC 13 held that acting beyond one's authority is by itself a breach of discipline, trust and misconduct. The earlier dicta in ***Regional Manager, UPSTRC Vs. Hoti Lal*** MANU/SC/0102/2003 laying down that if a charged employee holds a position of trust and deals with public money or acts in a fiduciary capacity, trust / honesty and integrity and trustworthiness of highest degree are must and unexceptionable and it would not be proper to deal with the matter leniently, was cited with approval. In this regard, it

is also worth noticing that the period for which the respondent No.1 was the Chief Manager of the concerned Gandhi Nagar Branch was only from 15.11.1989 to 11.12.1990. The respondent, in this short span of seven months enhanced limits of parties whose past working did not justify so, sanctioned credits to family / group concerns without treating them as asset / allied concerns, all without ensuring effective post sanction credit control measures

15. We therefore allow this appeal and set aside the order of the learned Single Judge insofar as setting aside the order of the Appellate Authority. Resultantly, W.P.(C) No.643/1995 preferred by the respondent No.1 is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 13, 2012

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