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

+ **LPA 708/2018**

RAJ KUMAR Appellant

Through: Mr. G.S. Chaturvedi, Advocate.

versus

PUNJAB & SIND BANK & ORS. Respondents

Through: Mr. Rajat Arora, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

% **ORDER**
08.01.2019

C.M. No. 52128/2018

1. For the reasons stated in the application, the delay in filing the appeal is condoned and the application is disposed of.

LPA 708/2018

2. This appeal is directed against the judgment dated 12th December, 2017 passed by the learned Single Judge disposing of the Writ Petition (Civil) No. 11034/2017 filed by the present Appellant challenging an order dated 25th November, 2014 passed by the Disciplinary Authority (DA) dismissing him from service. Challenge was also laid in the writ petition to the order dated 24th July, 2015 of the Appellate Authority (AA) confirming the above penalty and the order dated 30th December, 2015 whereby the review petition filed by the Appellant was also dismissed.

3. By the impugned order, the learned Single Judge has declined to interfere with the findings returned by the Inquiry Officer (IO) holding the Appellant guilty of the charges levelled against him but has interfered only with the quantum of penalty and remanded the matter to the AA “to award appropriate penalty in light of Regulation 4 of Punjab & Sind Bank Officer Employees’ (Discipline & Appeal) Regulations, 1981” (hereinafter ‘Regulations’) while keeping in view “the parity aspect”. The above direction was in light of the fact that the co-delinquents i.e. Sardar Gurjant Singh and Shri Sukhdev Singh were awarded lesser punishments.

4. At the outset it requires to be noticed that pursuant to the impugned order, the AA once again considered the issue of penalty and passed a fresh order dated 11th April, 2018 reiterating the earlier penalty of dismissal from service imposed on the Appellant. It is stated that the said order dated 11th April, 2018 has been challenged by the Appellant separately before the learned Single Judge by way of Writ Petition (Civil) No. 10667/2018 which is listed next for 25th January, 2019.

5. A preliminary issue was raised by Mr. Rajat Arora, learned counsel appearing for the Respondent-Bank, that the Appellant is pursuing parallel proceedings before the learned Single Judge and before this Court. This Court is unable to agree with the suggestion of the counsel that this is impermissible. As already noticed, in the impugned order the learned Single Judge declined to examine the challenge to the inquiry proceedings on a short ground that “there is no procedural lapse nor these findings are

perverse.” Except examining the question whether the non-supply of documents as sought by the Appellant was improper, the learned Single Judge has not examined any other aspect concerning the challenge to the legality and validity of the inquiry.

6. In the considered view of this Court, the Appellant is entitled to challenge the impugned order to the extent of affirmation of the validity of the report of the IO since any finality attached to such finding of the learned Single Judge would prejudice the Appellant and confine the scope of the further proceedings only to that of proportionality of the punishment.

7. The facts in brief are that the Appellant joined the Respondent-Bank on 11th June, 1987 as a Clerk/Cashier. He was promoted as Manager on 30th April, 2008 and was posted as the Branch In-charge of the Bank at Roshanpur, District Patiala. He served that position till his promotion as Senior Manager in September 2011 when he was posted to the Bhawana Branch in Delhi. He handed over charge to his successor at the Roshanpur Branch on 10th September, 2011.

8. Three months thereafter, on 23rd December 2011, the Appellant was placed under suspension. That order dated 23rd December, 2011 alleged that lapses/irregularities of a serious nature had been reported in the General Ledger Head regarding interest paid on deposits and interest in Loans & Advances Portfolio at the BO Rohanpur, Zonal Office, Patiala during the Appellant’s tenure there between 30th April, 2008 to 10th September, 2011. *Inter alia*, it was stated as under:

“It is reported that interest paid on Deposits has been debited with higher amount than entered in the Long Books and the excess amount has been siphoned off to Saving Bank Accounts. Similarly, interest on Loans & Advances has been credited with lesser amount than entered in the Long Books and the excess amount has been siphoned off to Personal Accounts.”

9. It appears that on 2nd January, 2012 while he was still under suspension, the Appellant wrote a letter to the Bank in Hindi stating that if there was any mistake on his part while working as the Branch Manager at Roshanpur, he was prepared to make good the loss incurred by the Bank. He further stated that on that date he had deposited Rs. 2 lacs. It appears that a police complaint was also filed. This led to the Appellant submitting another handwritten letter in Hindi which was received by the Bank on 19th May, 2012 whereby upon the direction of the police, he deposited demand drafts worth Rs. 4,19,214.00/-. The last few lines of the said letter are significant where he stated “*sriman ji meri koi galti nahi hai bahut dabav ke karan paise jama kar raha hu. Samaaj mein apni izzat bachae rakhne ke liye kar raha hu*”. *Prima facie*, therefore, it appears that on both the occasions, the Petitioner was depositing money under pressure and neither of his letters could be actually viewed as an admission of guilt by the Appellant.

10. Be that as it may, a show-cause notice (SCN) was issued to the Appellant by the Bank on 8th September, 2012 asking him to reply within 20 days and listing out as many as 14 allegations which included other acts apart from what was noticed hereinbefore. They were mostly similar allegations concerning siphoning off the amount excess debited to the Day Book/General Ledger; reversing interest from various bank accounts;

crediting the excess debited amount from the interest paid to savings bank deposits to some irrelevant accounts on certain dates, for getting payments subsequently for his personal gains.

11. In response to the said SCN, the Appellant wrote to the Bank, on 28th September 2012, stating that he needed 9 sets of documents (which he listed out) which he considered “essential and relevant” for submitting a reply to the SCN. This request was turned down by the Bank by a letter dated 5th October, 2012 stating that “...it has been observed that the documents mentioned in the said letter, required for submitting reply to the show cause notice, is not relevant at this stage for filing reply to the show cause based upon actually working of the branch done your stay at the branch.”

12. When the matter proceeded before the Disciplinary Authority (DA), after the statement of allegations dated 23rd September, 2013 was served on the Appellant, he again sought, in reply thereto, the documents which he had asked for earlier. The documents were not supplied to him.

13. Before the IO, as the copies of the proceedings enclosed with the present appeal reveal, the Appellant asked for certain documents to be produced after inspecting the record of the Bank. It appears that the IO refused copies of some of those documents by holding them not to be relevant. It may be noticed at this stage that Regulation 6 (10) of the Regulations reads as under:

“10. The inquiring authority while adjourning the case as in sub-regulation (9), shall also record by an order that the officer employee may for the purpose of preparing defence:

i) complete inspection of the documents as in the list furnished to him immediately and in any case not exceeding 5 days from the date of such order if he had not done so earlier as provided for in the provision to sub-regulation (2);

ii) submit a list of documents and witnesses, that he wants for the inquiry;

iii) given notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of the documents referred to in item (ii).

Note: The relevancy of the documents and the examination of the witnesses referred to in item (ii) shall be given by the officer employee concerned. Reference Staff Cir. No. 09.11.2000.”

14. It must be also noticed at this stage that it is the case of the Appellant that along with the articles of charge, no list of documents, much less copies of the documents themselves, or the list of witnesses relied upon by the Bank were enclosed.

15. The inquiry resulted in a report dated 9th September, 2014 returning the findings as under:

“Allegation numbers 1,2,3,7,8,9,14,16,18 & 19 as proved and Allegation number 4,5,6,10,11,12,12,15&17 as partially proved.”

16. The DA then furnished to the Appellant a copy of the report and after receiving his comments passed an order dated 25th November, 2014 imposing the penalty of dismissal from service. This was confirmed by the Appellate Authority and the subsequent review petition was also dismissed.

17. Having heard learned counsel for the Appellant as well as the learned counsel for the Bank, the Court finds that in a matter of this nature where the Appellant has raised several grounds challenging the inquiry proceedings, not limited to non-supply of the documents, the learned Single Judge ought not to have dismissed the writ petition with a cursory order on the very first date of listing of the writ petition. In fact, in response to many of the queries raised by the Court, learned counsel for the Bank submitted that since there was no occasion for the Bank to file the reply to the writ petition, the relevant record which would provide the answer to many of the queries was not even brought before the learned Single Judge.

18. The Court further finds that the observation of the learned Single Judge that the non-supply of documents to the Appellant in the course of the inquiry “is of no consequence” cannot be accepted particularly because of the nature of the charges themselves. Just to give an example, one of the charges against the Appellant is that he stole the records of the Bank and in order to defend such a charge, the Appellant had been asking for a copy of the report which was prepared when the Appellant handed over charge of the Roshanpur Branch to the next incumbent. Even that document was not provided to him.

19. There was no need for the Appellant in such circumstances to further spell out the relevancy of the documents that he was seeking when the charge itself was that he had stolen documents and the report would have listed out the documents which were handed over. This aspect and the aspect of the relevancy of the other documents by the Appellant were not really

examined by the learned Single Judge and the entire issue was rejected as being of “no consequence”.

20. This Court is of the view that the writ petition requires a detailed examination in the hands of the learned Single Judge. The Court is aware that it has been more than four years since the dismissal order was passed but without the benefit of the views of the learned Single Judge, this Court would be burdened of having to examine the entire inquiry proceedings in Court in great detail which clearly would be far beyond the scope of the present proceedings before this Court.

21. Consequently, while setting aside the impugned order dated 12th December 2017 of the learned Single Judge, this Court restores Writ Petition (Civil) No. 11034/2017 to the file of the learned Single Judge to be proceeded with on merits after giving an opportunity to the Respondent-Bank to file a detailed para wise reply to the writ petition and the Appellant a rejoinder thereto. Writ Petition (Civil) No. 11034/2017 will listed before the learned Single Judge on 25th January, 2019 when Writ Petition (Civil) No. 10667/2018 is listed. Needless to state that the further orders passed by the Bank pursuant to the impugned order of the learned Single Judge would no longer survive and therefore Writ Petition (Civil) No. 10667/2018 has been rendered infructuous. The necessary orders in that regard will be passed by the learned Single Judge.

22. The appeal is allowed in the above terms but in the circumstance with no order as to costs. Given that more than four years have lapsed since the

Appellant's dismissal from service, this Court requests the learned Single Judge to dispose of the writ petition within a period of six months. Further, the applications filed with the writ petition also stand restored before the learned Single Judge. The Appellant is at liberty to seek further interim relief before the learned Single Judge in accordance with law.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 08, 2019

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