

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

% *Judgment Reserved on: January 21, 2015*
Judgment Delivered on: January 30, 2015

+ **LPA 742/2013**

D.K.GUPTA

..... Appellant

Represented by: Mr.Ashok Bhalla, Advocate

versus

PUNJAB NATIONAL BANK & ANR.

..... Respondents

Represented by: Mr.Ravi Sikri, Sr.Advocate
instructed by Mr.Gaurav Goyal and
Ms.Divyangana Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS.JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. WP(C) No.3698/1998 filed by the appellant challenging the penalty of he being removed from service has been dismissed by the learned Single Judge vide judgment dated August 06, 2013. The appellant challenges the said decision of the learned Single Judge and prays that the relief prayed for in the writ petition filed by him should be granted.

2. Employed in the Management Cadre of the Punjab National Bank, the appellant was functioning as a Senior Manager at the branch of the bank at Paharganj in Delhi. He had forwarded a proposal submitted by M/s.Manju Plywood Industries for consideration by his superior officer at the Regional Office concerning a credit facility desired by M/s.Manju Plywood Industries from the bank. The credit facility was granted and the account became sticky. The wrong thereupon surfaced.

3. On December 22, 1994 a charge memo was issued to the appellant alleging that while forwarding the proposal to the Regional Office he had

deliberately ignored adverse features in the proposal to accommodate M/s.Manju Plywood Industries and further after the credit facilities were advanced he recommended a proposal for the same to be enhanced and in respect of which the Regional Office raised 17queries requiring a point-wise reply. The reply sent attended to only three queries and that too generally. It was alleged that ₹1,07,97,533/- had become sticky and the bank was finding it difficult to recover the same. The imputation of charges against the appellant read as under:

“Charge-I

He recommended the proposal of M/s.Manju Plywood Industries for sanction of various credit facilities to the Regional Office, Delhi and the following facilities were sanctioned vide their letter dated 5.2.86 :

<i>Term Loan</i>	<i>:</i>	<i>₹8 lacs</i>
<i>CC (Hyp.) limit</i>	<i>:</i>	<i>₹6 lacs</i>
<i>BP/BD Limit</i>	<i>:</i>	<i>₹4 lacs</i>
<i>Import L/C</i>	<i>:</i>	<i>₹15 lacs (sub-limit of ₹8 lacs against 90 days DA)</i>

While forwarding the proposal to Regional Office, Delhi he deliberately ignored the adverse features therein to accommodate the party by –

a) accepting party’s sale projections of ₹70 lacs for the next year 31.3.87 against their performance of ₹62,549/- as on 31.3.85 and ₹4.40 lacs as on 30.11.85.

b) accepting collateral security by way of equitable mortgage of agricultural land market value ₹2 lacs and plant on it valued at ₹6.47 lacs situated at Village Siyana, Distt. Bulandhahr.

Charge-II

Soon after the sanction of the aforesaid facilities, he again recommended the enhancement proposal of the party to Regional Office on 15.5.86. Regional Office raised 17 queries and called for point-wise reply vide their letter dt. 19.5.86. He did not give any serious consideration to the queries raised by Regional Office, sent reply vide his letter dt. 21.5.86 attending to only 3 queries of the Regional Office, that too in a general way and forwarded a copy of party's letter dt. 21.5.86 for other objections/queries without his comments thereto.

Thus, on account of serious lapses on the part of Shri Gupta, Bank's huge funds in the above account have been put to stake. As on 6.1.92, an amount of ₹1,07,97,533/- is proving difficult of recovery."

4. The appellant denied the charges, taking a stand that he had submitted the proposal and thereafter the enhancement of the limit at the asking of his superior officers, and the Disciplinary Authority was of the opinion that since the allegations against the appellant require a consideration of various documents and a report to be submitted, an Inquiry Officer was appointed to hold an inquiry. The Management relied upon 79 documents and desired to examine three witnesses. The appellant was duly intimated the date of hearing before the Inquiry Officer with a communication that if he desired to be assisted by a Defence Assistant he should forward his name well within time, for if the Defence Assistant nominated was an employee of the bank, suitable steps could be taken to give leave to the person on the date when the inquiry was fixed so that the person concerned could be present before the Inquiry Officer.

5. The appellant nominated one Shri S.K.Goyal to act as his Defence Assistant who was working with the respondent bank at Burdwan Regional Office of the respondent in the city of Burdwan in the State of West Bengal and for which the appellant was informed that the Rules do not entitle him to nominate a Defence Assistant who was not stationed at Delhi.

6. The appellant did not attend the hearing before the Inquiry Officer and refused to appear on the ground that his representation was pending before the appropriate authority for permitting him to be defended by a defence assistant working with the bank in a different state and therefore the proceedings automatically stood halted. The Inquiry Officer intimated the appellant that he should be appearing on October 14, 1995. The appellant did not appear on said date. The Inquiry Officer fixed the next date as November 18, 1995 on which date in spite of notice the appellant did not appear. The Inquiry Officer then informed the appellant that he would be holding the inquiry from December 11, 1995 and informed the appellant of the same but he did not appear on the ground that the Defence Assistant nominated by him ought to be made available to him before he could be forced to participate at the inquiry and thus the Inquiry Officer was left with no choice but to conduct the inquiry ex-parte, at which only one out of the three witnesses desired to be examined by the bank was examined.

7. On basis of the proved documents the Inquiry Officer submitted a report on February 29, 1996 holding that both charges were duly proved. Succinctly stated, the Inquiry Officer held :

a) The appellant did not dispute the sales figures of M/s.Manju Plywood Industries for the period ending 31/03/1985 and 30/11/1985 which were ₹65914/- and ₹4,37,476/- respectively or the fact that the party was incurring losses even after 2 years of establishment or the adverse indices of the party i.e. the current ratio which was negative, net working capital which was in minus, Debt Equity Ratio which was very poor vis-a-vis the standard acceptable norm (12.5:1 as opposed to 3:1) or that he accepted the sales projections of the borrower for the year ending 31/03/1987 at ₹70 lacs. The appellant not having lead any evidence to show how he accepted

the inflated sales projections of such a party shows that he deliberately ignored the adverse features of the party's proposal and recommended the same to the Regional Office.

b) That the value of the agricultural land offered as collateral security for the loan was ₹0.61 lacs and the plant on it valued at ₹6.47 lacs couldn't have been legally mortgaged to the bank. The value of the collateral security was thus ₹0.61 lacs and not ₹8.47 lacs as misleadingly mentioned by the appellant in the limit proposal recommended to Regional Office.

c) That the conduct of the appellant in recommending the enhanced credit facilities to the party to the extent of ₹145 lacs is not free from suspicion for the following reasons:

- i. He recommended it within less than 3 months of previous sanction dated 05/02/1984,
- ii. The application for enhancement was submitted by the party on 14/05/1986 and the same was recommended by the appellant very next day i.e. on 15/05/1986 without any scrutiny or appraisal,
- iii. The loan application was in wrong proforma which was meant for loan from ₹25,000/- to ₹2 lacs, thus, the salient information required for processing limit of the magnitude of ₹145 lacs was not obtained by the appellant.
- iv. Out of the 17 queries raised by the RO, Delhi vide letter dated 19/05/1986 the appellant replied to only 3 that too in a general way. He thus recommended the enhanced credit facilities despite following serious deficiencies-

“Party was having meager capital of ₹65,748/- as on 31.3.86.

If the loss of ₹50,433/- is deducted, the capital is negative (exh.M-76), as such debt equity ratio was highly adverse.

Balance sheet was not audited (exh.M-76).

Detailed project report not submitted.

Basis for proposed turnover of ₹200 lacs as against actual sale of ₹15.6 lacs during 85-86, not given.

Confirmation of compliance of terms and conditions of previous sanction not given.

Break even point was at 90% of Projected Sale and about 11.5 times the sale during 85-86, which is highly adverse (exh.M-14)."

d) The plea of the appellant that proposal was considered by the other authorities of ENBI and accepted by a hierarchy of 4 tier structure is not tenable as it is no justification of the serious lapses on his part more so as it was he who was the incumbent in charge and the authority working at the grass root level.

e) In respect of the outstanding balance of ₹1,07,97,555 due from the party as on 31/03/1992 the defence of the appellant that till his departure from the branch the account was regular is not true in view of Ex. M-45, M-46, M-50, M-51, M-52, M-53, M-56, wherein the appellant himself pointed out serious deficiencies in the account during his tenure.

f) The stand of the appellant in his reply that he acted under the instructions of superior officer was itself a misdemeanor serious enough to indict the appellant who was holding a responsible position in the bank as a Senior Branch Manager.

8. Considering the report of the Inquiry Officer, the Disciplinary Authority levied the penalty of removal from service upon the appellant vide Order dated December 09, 1996 against which appeal filed by the appellant was rejected by the Appellate Authority on July 14, 1997.

9. The appellant thereupon filed the writ petition challenging the penalty levied and raised four issues before the learned Single Judge at the

hearing of the writ petition. It was firstly urged that the disciplinary proceedings could not be initiated after six months of the alleged wrong in view of a PNB Inspection & Control Division Circular No.1016 dated July 28, 1984. Second contention was that in view of a PD circular No.1454 dated October 31, 1994 he was entitled to a Defence Assistant of his choice and since the bank denied him one, he was prejudiced at the inquiry before the Inquiry Officer. The third contention was that along with the charge sheet he had not been supplied the documents on which the department was relying and thus regulation 6 (5) of the PNB Officer Employees (Discipline & Appeal) Regulations 1977 was violated. The last contention was that penalty levied on one Mr.Kalia, the Regional Manager, who was higher in the hierarchy was of stoppage of salary by four stages for the same transaction and thus penalty of being removed from service levied upon the appellant was disproportionate.

10. The learned Single Judge has negated all four contentions, and arguing the appeal before us, learned counsel for the appellant re-agitated the same four points which were urged before the learned Single Judge.

11. We would therefore note the reasoning of the learned Single Judge on the four contentions advance and would simultaneously deal with the same.

12. The PNB Inspection & Control Division Circular No.1016 which has been annexed as Annexure A-22 in the writ petition takes cognizance of the fact that on basis of inspection reports when irregularities are detected the issue concerning fixing of responsibility is initiated long after the transfer of the concerned person from the bank and thus directs that the successor incumbent in-charge, while taking over charge of a branch, must point out the irregularities, but simultaneously notes that in some cases irregularity may not be detected and may surface later and in such cases no

time limit could be prescribed for initiating departmental action. Recommending that a period of six months would be the guiding factor for initiating departmental action, the policy circular clearly recognizes that no time limit can be fixed for each and every case.

13. The learned Single Judge has held that the policy circular does not prohibit initiation of disciplinary proceedings after six months of an alleged wrong being committed.

14. We have pithily noted the contents of the policy circular in question in paragraph 11 and would thus concur with the reasoning of the learned Single Judge, with the additional reasoning that the policy circular lays down a guideline for a six month period to be reckoned as the one within which action should be taken but does not prohibit action being taken thereafter. Acts of fraud or overlooking deficiencies in proposals to confer favour upon customers by Managers of a bank may not surface till when the account becomes sticky. It is trite that till an actionable wrong does not surface limitation cannot even otherwise commence to run. Further, the policy circular envisages transfer of the employee from the branch in question as resulting in a handicap to the employee for defending himself, because by not being in the branch and memory fading, it may be difficult for somebody to explain what he did long time back while managing a seat.

15. With respect to the second contention advanced, the PD circular No.1454 dated October 31, 1994, which has been annexed as Annexure A-21 to the writ petition would ex-facie show that there is no absolute right in a charged employee of the bank to avail the services of any Defence Assistant. The learned Single Judge has noted the language relevant to be noted, and we do so. The policy reads that a Defence Assistant from outside the State would be paid TA/DA *'provided the bank was satisfied*

that it is not reasonably possible for the charge sheeted officer to get an experienced Defence Representative from within the same State’.

16. The learned Single Judge has noted that it was not the case of the appellant that no experienced person was available at Delhi.

17. We concur with the view taken by the learned Single Judge for the reason the policy circular hedges the right of a charged employee to have a Defence Assistant of his choice by restricting the same to the person desired to be allowed to act as the Defence Assistant being within the State where the inquiry would be held with the exception that if no experienced person was available within the State, the bank would accept the request of a Defence Assistant being made available from outside.

18. Even in the appeal learned counsel for the appellant did not urge that no experienced person was available at Delhi. The only contention advanced was that the right of the appellant to be defended at the inquiry by a Defence Assistant of his choice was illegally denied. The argument has no legs to stand on.

19. The third contention advanced was that documents relied upon the charge sheet were not supplied to the appellant and thus Regulation 6 (5) of the PNB Officer Employees (Discipline & Appeal) Regulations 1977 was violated.

20. The learned Single Judge has held that the violation was of a technical nature. Regulation 6 (5) of the PNB Officer Employees (Discipline & Appeal) Regulations 1977 reads as under:-

“(5) The Disciplinary Authority shall, where it is not the inquiring authority, forward to the inquiring authority :

- i) *A copy of the articles of charges and statements of imputations of misconduct or misbehavior;*

- ii) *A copy of the written statement of defence, if any, submitted by the officer employee;*
- iii) *A list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;*
- iv) *A copy of statements of the witnesses, if any;*
- v) *Evidence proving the delivery of the articles of charge under sub-regulation (3);*
- vi) *A copy of the order appointing the 'presenting officer' in terms of sub-regulation (6)."*

21. The reasoning of the learned Single Judge that the violation is of a technical nature needs a proper explanation by us, for the reason it would strike any reasonable person that it would be a violation of a principle of natural justice if the documents relied upon against a person charged of a wrong are withheld from him. The Regulation in question only requires the Disciplinary Authority to forward to the Inquiry Officer the Articles of Charges with the Statements of Imputations of the misconduct with copy of the Written Statement of Defence submitted by the charged employee, if any is submitted, along with a List of Documents and the List of Witnesses by whom the charges are proposed to be substantiated. There is no requirement that the Disciplinary Authority would give to the charged officer the relied upon documents. It was for the appellant to have moved an application before the Inquiry Officer praying that either the photocopies of the documents relied upon by the bank were supplied to him or he was given an inspection thereof. The appellant has shown no document to us of having written to the Inquiry Officer that he be either provided with a photocopy of the documents relied upon by the bank or be given an

inspection thereof. With these reasons, we hold that the third contention advanced to challenge the impugned orders is without any legal or factual basis.

22. The last contention concerning proportionality in the penalty with the Regional Manager cannot be urged by the appellant unless there were pleadings qua the role of the Regional Manager in sanctioning the proposal submitted by M/s.Manju Plywood Industries for grant of a credit facility and later on enhancement thereon. It is trite that unless complete parity in a wrongful role is shown, with respect to the penalty levied, question of proportionality cannot be urged.

23. Before bringing the curtains down, we simply highlight a fact noted in the Inquiry Report, that the appellant virtually admitted the charge against him when he took the stand in his reply to the charge sheet that he acted under the instructions of senior officers. In fact the appellant had submitted a written brief to the Inquiry Officer on March 09, 1996, in which he had reiterated said stand.

24. The wrong committed by the appellant resulted in over ₹1 crore being not recovered by the bank, which is a public sector bank and the loss is ultimately that of the public.

25. Finding no merit in the appeal we dismiss the same but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 30, 2015
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