

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

% *Date of decision: July 03, 2015*

+ **LPA 406/2015**

PUNJAB NATIONAL BANK & ANR Appellants
Represented by: Mr.Ravi Sikri, Sr.Advocate
with Mr.Vaibhav Kalra and
Ms.Divyangana Singh,
Advocates.

versus

H N WADHWA Respondent
Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM No.11297/2015 (Exemption)

Allowed, subject to all just exceptions.

LPA 406/2015

1. The short issue in the present petition is whether the learned Single Judge was justified in directing the Appellant/Punjab National Bank to pay to the Respondent H.N.Wadhwa suspension allowance for the period of June 10, 1991 to October 31, 2008 along with simple interest @ 6% per annum in terms of Regulation 12(4) and 12(5) of the Appellant Bank.
2. A brief exposition of facts is that H.N.Wadhwa while working in New Bank of India before its amalgamation with Punjab National Bank was placed under suspension on April 02, 1988 for allegations in respect of TA/DA bills submitted by him for his disposition and temporary posting at Bhadohi. Pursuant to a charge sheet and amended charge sheet a

departmental inquiry was conducted and H.N.Wadhwa was awarded major punishment of removal from service vide order dated June 10, 1991 which punishment was upheld by the Appellate Authority vide its order dated November 19, 1991 and the Reviewing Authority vide order dated September 25, 1992.

3. On a challenge to the punishment awarded this Court vide its judgment dated December 20, 2006 in W.P. (C) No.3047/1993 set aside the order of punishment dated June 10, 1991 and directed the Disciplinary Authority to pass a fresh order of punishment within two months thereof. It was directed that H.N.Wadhwa would be entitled to his pay and allowance and other benefits treating the punishment to be non-est to the extent that H.N.Wadhwa was deprived of these benefits on account of punishment orders which may be imposed by the Disciplinary Authority.

4. In an appeal filed against the order dated December 20, 2006 in W.P. (C) No.3047/1993, the Division Bench of this Court vide order dated March 04, 2013 upheld the order of the learned Single Judge and remitted back the matter to the Reviewing Authority to take fresh decision with respect to the penalty to be awarded to H.N.Wadhwa in respect of his first charge which was the only charge established. Even the review petition was dismissed by the Division Bench of this Court on July 05, 2013.

5. Since the punishment order had been set aside H.N.Wadhwa filed representation dated July 20, 2013 seeking release of subsistence allowance and provisional pension for the intervening period which was rejected vide order of the Appellant dated January 07, 2014. This order dated January 07, 2014 was challenged by H.N.Wadhwa in W.P.(C) No.7343/2015 which writ petition was allowed by the impugned order dated May 14, 2015 as noted

above and is in challenge in the present appeal.

6. Contention of the learned counsel for the Appellant is that since the matter was remanded back to the Reviewing Authority by the Division Bench vide order dated March 04, 2013, the order of the Disciplinary Authority subsisted and H.N.Wadhwa not being under suspension but having been dismissed no subsistence allowance could be given to him for the period from June 10, 1991, that is, when the order of dismissal was passed by the Disciplinary Authority to October 31, 2008 the date on which he was deemed to have been retired. As noted above in W.P.(C) No.3047/1993 this Court vide order dated December 28, 2006 set aside the punishment of dismissal and thus H.N.Wadhwa was relegated to the position prior to June 10, 1991, that is, under suspension entitled to receive subsistence allowance. Merely because the Division Bench of this Court in LPA No.1691/2007 directed the Reviewing Authority to take a fresh decision in respect of the penalty awarded on the first charge instead of the Disciplinary Authority it cannot be held that the order of dismissal by the Disciplinary Authority subsisted and thus H.N.Wadhwa was not entitled to subsistence allowance. In fact, the Division Bench of this Court in LPA No.191/2007 vide order dated March 04, 2013 also noted that there was no ground to interfere with the order dated December 28, 2006 passed by the learned Single Judge and remitted back the matter for Reviewing Authority for fresh decision to be taken within eight months and to be communicated to the concerned person.

7. Reliance of learned counsel for the Appellant to Regulation No.12(4) of the Bank which is reproduced hereinafter is misconceived.

“12(4) Where a penalty of dismissal, removal or

compulsory retirement from service imposed upon an officer employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of the original date of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

12(5)(a) An order of suspension made or deemed to have been made under this regulation shall continue as remain in force until it is modified or revoked by the authority competent to do so.

(b) An order of suspension made or deemed to have been made under this regulation may at any time be modified or revoked by the authority which made or is deemed to have made the order.”

8. As noted by the learned Single Judge the object of the aforesaid regulation is that in the absence of the regulation it would have been open to the employee to state that once the order of departmental authority is set aside the charged employee should be taken back in service and paid all consequential benefits and thus to avoid the said position, the provision was made in Regulation No.12(4). Merely because instead of Disciplinary Authority, the punishment is being reviewed by the Reviewing Authority it would not mean that the order of punishment had not been set aside which was an order specifically passed by the learned Single Judge and upheld by the Division Bench on March 04, 2013. Thus H.N.Wadhwa had to be

restored to the position ante June 10, 1991.

9. We find no infirmity in the impugned order.

10. Appeal is dismissed.

CM No.11296/2015 (Stay)

Application is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

JULY 03, 2015

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