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

Date of Decision: September 08, 2015

+ W.P.(C) 8574/2015 & C.M.No. 18534/2015

S.S. MALIK Petitioner

Through: Mr. N. Prabhakar, Advocate

versus

THE BANK OF BARODA & ORS. Respondents

Through: Mr. Bhupinder Singh Chauhan,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Penalty of compulsory retirement from service inflicted vide impugned order of 29th January, 2002 is challenged by petitioner, who was working as Manager at Bank of Baroda, having branch at Dr. Ram Manohar Lohia Hospital at the relevant time i.e. in January, 2000.

The allegations against petitioner were that he had siphoned off the funds of ₹3,00,000/- odd in the respondent-bank where he was working. Apart from the departmental proceedings, criminal case was also registered against petitioner and as per the charge-sheet of 21st June, 2000, petitioner was put on trial for the offence of cheating and forgery whereas in the departmental proceedings, Articles of Charges were framed on 6th December, 2000 against the petitioner. Departmental

proceedings as well as criminal trial proceeded simultaneously. In the departmental enquiry, disciplinary authority has found that petitioner had caused pecuniary loss to the respondent-bank by not charging third party rate of interest on the fake fixed deposit receipt raised by him and had forged signatures of the account holder, passed fraudulent vouchers and deposited the loan proceeds in a third party account for his personal gains. The major penalty of compulsory retirement was inflicted upon petitioner vide order of 29th January, 2002 (*Annexure P-4*) which was not challenged by petitioner. However, the criminal trial ended in his acquittal vide judgment of 13th December, 2010. Petitioner has waited for five years and has approached this Court by way of civil writ petition while relying upon Apex Court's decision in *S. Bhaskar Reddy & anr. Vs. Superintendent of Police & anr.* (2015) 2 SCC 365.

At the hearing, it was strenuously contended by learned counsel for petitioner that on the same set of allegations, petitioner was tried by the criminal court and in departmental proceedings as well and honourable acquittal has been given to petitioner in the criminal proceedings and so, the departmental proceedings ought to be set aside. While relying upon *S. Bhaskar Reddy (Supra)*, it was submitted by learned counsel for petitioner that even if infliction of compulsory retirement is maintained, still by applying the ratio of Apex Court's decision in *S. Bhaskar Reddy (Supra)*, the pensionary benefits ought to be given to petitioner, as the honourable acquittal of petitioner has attained finality.

On behalf of respondent, it is submitted that this petition is barred by delay and laches. It is pointed out that petitioner in the departmental proceedings has admitted his guilt and apart from this, there is

Handwriting Expert Report, which fully proves the case against petitioner. To resist this petition, it is submitted on behalf of respondent that the level of proof required in the criminal proceedings is much higher than the proof required to prove charges in the departmental proceedings and so, acquittal of petitioner in the criminal proceedings does not justify setting aside of penalty imposed upon petitioner in the departmental proceedings.

The submissions advanced by both the sides have been duly considered and upon perusal of the order passed in the disciplinary proceedings and the judgment of acquittal as well as material on record and the decision cited, I do find that petitioner has been honourably acquitted in the criminal case because the complainant had not come forward to depose against him whereas in the departmental proceedings, the case against petitioner stands proved from documentary evidence i.e. Handwriting Expert Report etc. Moreover, there is a distinguishing feature which renders that the Apex Court's decision in *S. Bhaskar Reddy (Supra)* is not applicable to the facts of the instant case. The said feature is that petitioner himself has admitted his guilt in the departmental proceedings and has not challenged the penalty inflicted upon him by the disciplinary authority. Apart from admission of guilt, Handwriting Expert Report relied upon by the disciplinary authority substantiates the charges framed against petitioner. Otherwise also, this petition is hopelessly barred by delay and laches. Impugned penalty was inflicted upon petitioner in January, 2002 and in September, 2015, he has challenged it while relying upon judgment of the criminal court. Acquittal by criminal court is of no avail to the case of petitioner because

in the departmental proceedings, he has already admitted his guilt. The Medical Certificate of January, 2011 relied upon by petitioner to explain the delay reveals that petitioner was suffering from depression. This Medical Certificate is from a private practitioner. No previous or later medical certificate has been relied upon by petitioner.

In view of aforesaid, this petition and application are dismissed *in limini* on the ground of delay and laches as well as on merits.

(SUNIL GAUR)
JUDGE

September 08, 2015

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