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

% **Decided on: 25.01.2016**

+ LPA 51/2016

S P SHARMA

..... Appellant

Through: Mr.Barun Kumar Sinha and
Ms.Pratibha Sinha, Advocates

versus

STATE BANK OF BIKANER AND JAIPUR & ORS.

..... Respondents

Through: Ms.Kittu Bajaj, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

C.M.No.2634/2015 (for exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

C.M.Nos.2635/2016 (for delay)

For the reasons mentioned the application, the delay in filing the appeal is condoned.

The application stands disposed of.

LPA 51/2016

1. Issue notice. Ms. Kittu Bajaj, advocate accepts notice on behalf of the respondents.
2. With the consent of the parties the matter has been heard.

3. The appellant is aggrieved by the judgment and order of the learned Single Judge dated 26.11.2015 wherein his contention with respect to the continuation of the enquiry proceedings after superannuation was rejected. The brief facts are that the appellant was initially appointed by the respondent bank in 1969 as a clerk. After a series of promotions, he ultimately became chief manager. During his enquiry he was transferred to the branch of Belanganj, Agra and subsequently to Chandani Chowk. He was served with charge sheet dated 29.01.2007 on 31.01.2007, with adverse acts of misconduct in relation to the conduct of sanctioning and disbursement of housing loans to various account holders and borrowers whilst he was incharge of the Belanganj Branch at Agra. On the day the chargesheet was served, the petitioner was also to superannuate. After granting opportunity to the appellant to answer the adverse findings, the disciplinary authority in a reasoned order accepted the report and rejected his grievance; consequently the penalty of dismissal was imposed on him. The appellant's further plea is that his appeal before the higher authority was rejected. He therefore approached this Court by filing W.P.(C) No.13764/2009. On 14.05.2012 the learned Single Judge of this court allowed the said writ petition and set aside the orders dated 06.08.2008 of the penalty imposed upon the appellant and also set aside the order of the appellate authority. The narrow ground on which the learned Single Judge premised his judgment was that the appellant was not served with the complete charge sheet and related documents. The bank appealed this judgment – preferring LPA No.736/2012. On 01.02.2013, the Division Bench by its judgment and order upset the findings of the learned Single Judge as to the denial of material documents at the stage of service of

chargesheet. The case was consequently remanded to the Single Judge. On 01.02.2013, the Division Bench recorded as follows:

“6. In view of the above, we are satisfied that there is no merit in the contention of the respondent that Annexure-I and Annexure-II to the Memo dated 29.1.2007, were not received by him on 31.1.2007 and such a plea taken by him is only an afterthought. Since the order allowing the writ petition is based solely on the ground that the aforesaid annexures had not been received by the respondent on 31.1.2007, it is liable to be set aside.

7. The learned counsel for the respondent pointed out that one of his contentions before the learned Single Judge, as noted in the order dated 25.4.2012, which has been reproduced in the impugned order dated 14.5.2012 was with respect to the protection afforded to the respondent under Rule 19(2) of the State Bank of Bikaner and Jaipur (Officers) Service Regulations, 1979. Since the learned Single Judge did not advert to this plea taken by the respondent, we are of the view that the matter needs to be remitted back to the learned Single Judge for adjudication on the aforesaid plea taken by the respondent.

8. For the reasons stated hereinabove, the appeal is allowed, the order dated 14.5.2012 is set aside and the matter is remitted back to the learned Single Judge for adjudicating upon the plea of the respondent based upon non-compliance of Rule 19(2) of the State Bank of Bikaner and Jaipur (Officers) Service Regulations, 1979.”

4. The appellant's argument before the learned Single Judge as to the applicability of Regulation 19 (2) did not find favour and held inter alia that since the question was not urged before the disciplinary authority nor was any grievance made out at the relevant stage, the appellant could not do so in writ proceedings. Furthermore, the learned Single Judge recorded that the

contention was unmerited. The appellant's contention with respect to the merit of the findings recorded by the disciplinary authority on the basis of the enquiry report, were brushed aside on the ground that the Division Bench had made a limited remand on 01.02.2013.

5. Learned counsel contends that the findings recorded by the learned Single Judge as to the interpretation of Rule 19 (2) are unsustainable. It was submitted that Regulation 19 (2) states that disciplinary proceedings against a superannuated or superannuating officer or employee can be proceeded with only if (i) such proceedings were initiated before such superannuation and (ii) the Managing Director has exercised his discretion and independently took the decision to continue and conclude such proceedings. Counsel for the petitioner contends that mere issuance of the chargesheet as is in the present instance, was insufficient to say that the mandate of the regulation had been fulfilled. It was argued next that the Single Judge ought to have gone into the merits considering that earlier learned Single Judge's order confined the enquiry as to the procedural aspect i.e. furnishing of relevant document. In these circumstances the appellant was not aggrieved – it was the bank which approached the Division Bench. The Division Bench merely set aside the findings of the learned Single Judge and remanded the matter on the question of applicability of regulation 19 (2). However, there was nothing on record to indicate that the merits of the matter had been gone into; there is no reasoning indicative that the learned Single Judge or the Division Bench's rejection of the ground urged in the writ petition.

6. Counsel for bank argues that as far as interpretation of Regulation 19 (2) goes, the appellant's contentions did not find any favour even when

considered by the Single Judge in remand as is evident from the impugned order. On the question of the finding on merits, she argued that the appellant did not argue any infirmity with the findings and consequently made no grievance of this either in a review, before the Division Bench or before the learned Single Judge. In these circumstances, there cannot be any grievance that the merits were not gone into; in fact they were consciously given up.

7. It was evident from the above discussion that two questions have been considered and decided in this appeal. The first pertains to the interpretation of Regulation 19 (2) of the State Bank of Bikaner and Jaipur (Officers) Service Regulation, 1979. It reads as follows:

3. Mr. B.K. Sinha, learned counsel appearing for the petitioner has drawn my attention to Regulation 19(2) of the Regulations of 1979, the same is reproduced as under:-

“19 (2) In case disciplinary proceedings under the relevant regulations of service have been initiated against an officer before he ceases to be in the Bank’s service by the operation of, or by virtue of, any of the said regulations or the provisions of these regulations, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said regulations as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.”

8. The appellant would have us to believe that mere issuance of a charge sheet is insufficient and that the pre-condition for the continuation of an enquiry is when departmental proceedings are pending and consequently

that such proceedings would be justified only and only if the Managing Director passes a separate order deciding to continue such proceedings. This Court is of the opinion that this contention is without merit. The issuance and service of a charge sheet itself signifies the commencement of the departmental proceeding. In the present case, the charge sheet was issued on 29.01.2007; it was apparently served on the appellant on 31.01.2007. This charge sheet contained all the elements that would trigger the proceedings before the enquiry officer i.e. imputations, articles of charges and the lists of witnesses and materials relied upon. In other words, the reply could have only made a significant difference had the appellant admitted to all or any of the charges. Concededly, he did so. In these circumstances, this court is of the opinion that as on 31.01.2007 itself disciplinary proceedings were “pending” within the meaning of expression under regulation 19 (2).

9. As to the second contention that the Managing Director had to pass a separate order independently deciding to continue with the enquiry, this Court is of the opinion that the submission merits rejection. The competent authority and the Managing Director in this case were aware of the fact that the appellant was to retire on that day itself i.e. 31.01.2007. Even if, the appellant’s contentions were correct, implicit in the act of issuance of the chargesheet itself is the decision of the Managing Director that notwithstanding his retirement or superannuation the proceedings could be continued against the appellant.

10. As far as the other ground that the merits of the enquiry proceedings and the charges were never gone into is concerned, the order of the learned Single Judge dated 14.05.2012 merely records the submission regarding the

procedural lapse alleged against the bank. In para 6 the learned Single Judge recorded that he heard the counsels for the parties. After this length of time, it is not possible for the Court to go into as to what the learned Single Judge in fact did hear but what he applied his mind was only as to the question of procedural infirmity in not furnishing material documents. On that basis alone, the findings of the enquiry officer and the penalty imposed were set aside. Quite naturally, only the bank was aggrieved by this order – the appellant did not and could not have filed an appeal. The Division Bench remitted the matter. Although the bank would have us believe that the remand was limited to the question of Regulation 19 (2) nevertheless there is nothing in the order itself which precludes a consideration of the merits viz-a-viz the contention of the findings of the enquiry officer as accepted by the disciplinary authority. It goes without saying that the grounds urged before the Court of the first instance have to be gone into by it lest or the litigant who approaches the court would be prejudiced. In the present case, that seems to have happened, perhaps unwittingly.

11. In view of the above findings, this court is of the opinion that the petition has to be considered afresh on the grounds urged before the learned Single Judge as to the findings recorded by the disciplinary authority based upon the conclusions of the enquiry officer's report. The appeal, therefore has to succeed. W.P.(C)13764/2009 shall now be decided on the merits as to the findings recorded by the enquiry officer and accepted by the disciplinary and appellate authorities ultimately leading the penalty of dismissal.

12. The appeal is allowed in the above terms. The learned Single Judge shall consider expediting and deciding the matter at his convenience preferably within six months from today

13. The parties are directed to appear before the learned Single Judge on 02.02.2016.

14. The appeal is allowed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 25, 2016

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