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

\+ LPA 560/2014, CM APPL.13989/2014

SHRI S K GAUR ..... Appellant

Through: Mr. Manish Sharma with Ms. Jigyasa Sharma and Mr. Pranay Raj Singh, Advocates.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr. Jagat Arora with Mr. Rajat Arora, Advocates for Resp-2-7.

Ms. Manisha Saroha, for Mr. Manish Mohan, Advocate for UOI/Resp-1.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **16.03.2016**

The appellant is aggrieved by the judgment and order of the learned Single Judge rejecting his writ petition. He had impugned an order passed by the respondent (hereafter referred to as “the Bank”) dismissing him from its service. At the time of his dismissal, he was working as Chief Manager.

The appellant was issued the chargesheet with the memo containing three charges. The disciplinary enquiry which culminated in an adverse report dated 29.09.1995 recorded that the appellant was guilty of one charge (charge no.2); partly guilty of charge no.1 and not guilty in respect of the third charge. The Bank had alleged - in charge no.1 - that the appellant had facilitated the opening of an account of a small firm which according to its norms should not have been permitted credit facilities. This part of the charge was established. The second and more serious charge which ultimately led to the appellant’s dismissal was that he was instrumental in the issuance of a letter of credit on the basis of his recommendation to a firm which casts the Bank to write off ₹27 lakhs eventually. The appellant had approached the designated appellate authority but without any avail. In these circumstances, he approached this Court in 1998.

This Court had considered the submissions of the parties on the previous date of hearing. In the course of the submissions, it was urged *inter alia* that so far as the first charge was concerned, the amount due from the firm had been recovered and that the major charge of loss of ₹27 lakhs could be appropriately redressed instead of the order of dismissal. This was in the context of the appellant's submissions that he had a largely unblemished 37 years record prior to his dismissal, and that given the circumstances of his employment that he had joined the Bank as a Clerk and that on account of his merit and hard work eventually promoted as Chief Manager, he was dealt with in an unduly harsh manner in regard to the imposition of the penalty. Having regard to these facts, the Bank was asked certain details pertaining to what would be the possible effect of conversion of the penalty from dismissal to compulsory retirement - to balance the interest of both parties enable the appropriation of the terminal benefits and the pension that would accrue to the appellant in the event of such substitution.

Counsel for the Bank submits that if the commuted value of the pension would to be taken into account, the pension arrears would be worked out to approximately ₹22.53 lakhs. The other amounts due to the appellant at the time of his termination was gratuity (₹2,74,862.8).

In these circumstances, the Court is of the opinion that instead of working out the arrears on the basis of the commuted value of the pension, the Bank may calculate the full pension value after substitution/modification of penalty into one of compulsory retirement. In the circumstances, the impugned judgment is hereby set aside. The penalty of dismissal is hereby substituted with that of compulsory retirement. The appellant's pension shall be calculated from the date he was terminated (now to be treated as compulsory retiree, i.e., 16.07.1997). His pension shall be fixed as on that date and revised according to the revised pay scales/pension which such retired officials are entitled to. The arrears of such pension to the extent of the Bank's loss (₹27.02 lakhs) shall be appropriated and the balance if any shall be released to the appellant. The Bank is directed to firstly issue an order of pension fixation and thereafter based upon such fixation indicate the arrears out of which the said amount shall be adjusted. The balance shall be paid to the appellant within eight weeks from today. The appellant shall also be entitled to the pension hereafter according to the Pension Payment Order.

It has been brought to the notice of the Court that the gratuity amount was released to the appellant pursuant to the order of the appellate authority - which is challenged in the writ petition on the file of this Court. We are also informed that the Bank had deposited ₹5 lakhs towards the gratuity claim of the appellant which is pending on the file of this Court in a writ petition. The appellant is present here and submits that the said amount may also be appropriated from the pension arrears that may be paid to him as a result of the present order.

The appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 16, 2016
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