

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-3088-1996 (O&M)
Date of decision:26.09.2017**

Bhagwan Sahai

....Petitioner

Versus

State Bank of Patiala and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Gaurav Chopra, Advocate for the petitioner.

Mr. Anil Ahuja, Advocate with
Mr. C.B.Goel, Advocate for the respondents-SBOP.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the validity of orders of disciplinary authority dated 12.08.1994 (Annexure P7) and appellate authority dated 03.08.1995 (Annexure P10).

2. Petitioner while working as a Branch Manager he was charge-sheeted on 20.04.1992 for which he had submitted his reply. Since the respondent-Bank were not satisfied with the petitioner's reply proceeded to hold inquiry. On 19.11.1993 Inquiring Officer has submitted his report holding that charges No. 1, 3, 6 were proved, charge no. 5 partly proved, charges No. 2, 4 and 7 were not proved. The disciplinary authority-General Manager after receipt of the inquiring officer's report proceeded to issue show cause notice to the petitioner seeking his explanation on the inquiring officer's report for which the petitioner submitted his detailed reply on

29.03.1994. General Manager who has acted as a disciplinary authority is of the opinion that it is a case for imposing major penalty for which he has no authority. Consequently, he has forwarded the papers to the Chief General Manager, appointing authority. Appointing authority proceeded to impose penalty of reduction of his basic pay by 3 steps from Rs.3540 per month to Rs. 3180 per month in the time scale of Rs.2100-120-4020 in terms of Regulation 67(e) of the State Bank of Patiala (Officers') Service Regulations, 1979. Feeling aggrieved by the order of penalty dated 12.08.1994, petitioner preferred an appeal before the appellate authority. Appellate authority confirmed the order of disciplinary authority on 03.08.1995. Thus the present writ petition.

3. Learned counsel for the petitioner tried to impress this court that it is a case of no evidence. He has taken me to various documents which were part and parcel of the inquiry report. It was further submitted that the disciplinary authority as well as appellate authority failed to appreciate the evidence on record. Therefore, the orders passed by the disciplinary authority as well as appellate authority are liable to be set aside.

4. Per contra, learned counsel for the respondents raised preliminary issue that the petitioner had the remedy of review before the reviewing authority. The same has not been availed by the petitioner. On that score itself writ petition is liable to be dismissed. It was further contended that the petitioner cannot urge any ground on merits having regard to the scope of Article 226 of the Constitution read with various decision of the Apex Court to the extent that question of re-appreciation of evidence by the High

Court is impermissible. It was further submitted that petitioner's one of the contentions is that the appellate authority has failed to give opportunity to the petitioner under the regulation read with various decisions. Appellate authority have not given personal hearing while deciding the appeal. Thus, the petitioner has not made out a case so as to interfere with the disciplinary authority's as well as appellate authority's orders.

5. Heard learned counsel for the parties.

6. The respondent's preliminary objection that petitioner has not exhausted review remedy is concerned, it is to be noted that matter is of the year 1996 and it is admitted. Therefore, relegating the matter to the review remedy may not be appropriate at this distance of time. Accordingly, preliminary objection is hereby rejected.

7. This court cannot re-appreciate evidence with reference to the fact that there is no evidence on record and there is a contradictory evidence for the reasons that in the case of ***R.R.Parekh versus High Court of Gujarat*** reported in (2016)14 SCC1 has held that only legal issue can be appreciated by the courts in a disciplinary proceedings. Therefore, this court cannot re-appreciate the evidence with reference to any contradictory evidence. The respondents have issued show cause notice along with inquiring officer's report to the petitioner for which the petitioner has raised number of contentions which is evident from the perusal of the reply dated 29.03.1994 . Whereas, perusal of the order dated 12.08.1994 it is evident that not even a single contention has been considered by the disciplinary authority while imposing penalty as is evident from the order of penalty. Up

to para iii) matter relates to dates and events like framing of charges etc. Thereafter, it is only stated that “After having considered dispassionately the entire facts of the case, I find that the acts of misconduct on the part of Shri Bhagwan Sahai substantiate that he has failed to perform his duties with utmost diligence in the grant and conduct of credit facilities. He has acted in a manner which is unbecoming of a Bank official warranting stringent punishment.” Thereafter, disciplinary authority proceeded to impose penalty. Therefore, there is total non-application of mind by the appointing authority-Chief General Manager who has imposed penalty on 12.08.1994. In other words, very object of issuance of show cause notice and seeking explanation of the petitioner on the inquiring officer's report is defeated. Consequently, order of penalty and appellate authority's order are liable to be set aside. Accordingly, penalty order dated 12.08.1994 and appellate authority's order dated 03.08.1995 (Annexures P7 and P10) are set aside. Matter is remanded to the disciplinary/appointing authority to pass a speaking order while considering each of the contentions raised by the petitioner in his reply/explanation on the inquiry officer's report dated 29.03.1994 (Annexure P-6) within a period of 3 months from receipt of this order and communicate the order to the petitioner at the earliest.

26.09.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No