

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

% Judgment delivered on: 03.02.2014

+ **W.P.(C) 7487/2000**

K.L. BHASIN Petitioner

versus

PUNJAB NATIONAL BANK AND ANR Respondents

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. Ashok Bhalla, Advocate
For the Respondents: Mr. Jagat Arora and Mr. Rajat Arora, Advocates

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J

1. This writ petition is directed against the order dated 15.01.1994, passed by the disciplinary authority whereby a major penalty had been imposed qua the petitioner. The petitioner has been dismissed from service with an attendant disqualification, which is that, the order of dismissal would impede his future employment.

1.1 The petitioner, being aggrieved, had carried the order of the disciplinary authority in appeal, before the appellate authority, constituted for this purpose.

1.2 The appellate authority vide order dated 07.12.1994, sustained the order of the disciplinary authority. It is though, the stand of the

petitioner, that he was not served with order dated 07.12.1994. The respondents, on the other hand, have taken the stand in their counter affidavit that the order was communicated. Nothing though, has been filed with their counter affidavit, suggestive of despatch of the order-in-appeal, either by post or otherwise.

1.3 The petitioner, thus, challenged the basic order, which is, the order of the disciplinary authority dated 15.01.1994.

1.4 Having regard to the above, the onus with regard to receipt of the order of the appellate authority, in that sense, would shift on to the respondents, who are required at least, to show *prima facie*, a despatch of the order of the appellate authority.

1.5 This could have been done in myriad ways including by bringing on record the contemporaneous record; which would show despatch. This is, specially so, as the order itself seems to indicate that it was despatched by post.

1.6 No evidence with regard to the same by way of even photocopies of entries in the despatch register has been placed on record alongwith the counter affidavit.

1.7 Therefore, the court would have to accept *prima facie* that, the stand taken by the petitioner, in this behalf, is correct.

1.8 In any event, the foundational order, which has been sustained by the appellate authority, is, the order dated 15.01.1994 and therefore, if that order was to be set aside, the entire edifice would fall.

1.9 The delay, in that sense, which is, one of the preliminary grounds taken by the respondents to oppose the writ petition is, thus, explained by the fact that the petitioner after having filed the appeal was not served with the copy of the order passed by the appellate authority.

2. The learned counsel for the petitioner in this behalf has drawn my attention to the letter dated 23.10.2000, written by the petitioner to the appellate authority, seeking to know the fate of his appeal.

2.1 It is not disputed by the learned counsel for the respondents that no response was issued by them to the letter dated 23.10.2000. This letter was sent by speed post and a photocopy of the receipt has been appended to the said letter.

2.2 In these circumstances, in my view, the preliminary objection both with regard to: the absence of challenge to the order of the appellate authority and the purported delay in approaching the court will consequently have to be rejected. It is ordered accordingly.

3. This brings me to the merits of the case. Before I do that, let me briefly, sketch out the background facts, in that behalf.

3.1 The petitioner, on 01.11.1969, had joined respondent no.1 bank, which at that point in time, was the New Bank of India. The said bank i.e., the New Bank of India stood merged with respondent no.1 bank i.e., Punjab National Bank.

3.2 During the course of his service with New Bank of India, the petitioner was promoted to the post of the Manager. It is, while the petitioner was serving as a Manager of the Defence Colony, New

Delhi branch of the New Bank of India, that certain advances were sanctioned under his vigil; duly approved by his superiors. The accounts, qua which umbrage has been taken by the respondents, are the following :- M/s. Super Plastics, Aakriti Steels Pvt. Ltd., M/s. Bahadur International, Missakki Electronics Pvt. Ltd. and M/s. Swadeshi Exports.

3.3 Based on the role of the petitioner in sanctioning the advances in favour of the aforementioned creditors, an investigation was conducted and a secret report was generated by the Vigilance Department qua : the petitioner; one, Sh. P.K. Saluja, a chartered accountant; and the then Assistant General Manager.

3.4 Ironically, the petitioner himself, in and around 21/22.03.1990, had filed two police complaints against two of the five borrowers i.e., M/s. Super Plastics and Aakriti Steels Pvt. Ltd. with the Defence Colony, New Delhi Police Station.

3.5 These complaints were converted into FIR No.68/90 and FIR No.69/90.

3.6 It may be also relevant to note that though the petitioner was the complainant, he was at some stage arrayed as an accused in the criminal proceedings.

3.7 In the interregnum, on 17.07.1990, the petitioner was placed under suspension.

3.8 It is, in this background, on 18.12.1990, the petitioner was served with the charge-sheet alongwith the articles of charge.

3.9 Since, some, bit, turns on the Articles of charge, I intend to extract the same. These articles of charge were accompanied by a statement of allegations, on which, the said charges were based :-

“..ARTICLES OF CHARGE

Shri K.L.Bhasin, Manager, BO, Defence Colony, New Delhi (under suspension) during his tenure as Manager at BO, Defence Colony, New Delhi, committed various lapses/irregularities, overt acts, omissions/commissions of acts of negligence in discharge of his duties. Shri Bhasin is, therefore, charge sheeted as under:

1. He acted in a manner prejudicial to the interest of the bank;
2. He failed to discharge his duties with utmost integrity, honesty and diligence;
3. He failed to ensure and protect the interest of the bank;
4. He acted otherwise than in his best judgement while discharging his duties;
5. He acted in a manner unbecoming of an officer of the bank;
6. He misused and abused his official status/powers.

Each charge is independent of each other.

The aforesaid acts committed by Shri K.L.Bhasin constitute misconduct under New Bank of India Officers' (Conduct) Regulations, 1982, which are punishable under New Bank of India Officer Employees'(Discipline & Appeal) Regulations, 1982...”

4. Qua criminal proceedings I must note here that the petitioner claims that he had himself made a representation, on 31.01.1991, to the Assistant Commissioner of Police, Crime Branch, for expeditious and proper investigation of the aforementioned FIRs.

4.1 As indicated above, post the conclusion of the investigation, vis-à-vis the aforementioned FIRs a charge-sheet was filed against other accused including the petitioner, before the competent criminal court.

4.2 Similarly, in pursuance of the service of the charge-sheet, in the departmental proceedings on the petitioner, the predecessor-in-interest of respondent no.1 bank appointed an Enquiry Officer, who submitted his report, on 26.02.1993.

4.3 On 04.09.1993, as indicated above, the New Bank of India stood merged with Punjab National Bank; propelling the respondents herein to carry forward the proceedings vis-à-vis the petitioner.

4.4 Consequently, based on the recommendations of the Enquiry Officer, the disciplinary authority vide its order dated 15.01.1994, imposed the following punishment on the petitioner : “*dismissal from service, which shall be a disqualification for future employment*”.

4.5 The petitioner, being aggrieved, preferred an appeal with the appellate authority, on 15.03.1994.

4.6 The petitioner claims; an assertion which I dealt with above, that he did not receive a copy of the order of the appellate authority; a situation which finally, propelled him to write to the respondents vide letter dated 23.10.2000, seeking to know from the respondents, the fate of his appeal.

4.7 Importantly, in the interregnum, the judgments, in the criminal proceedings were delivered, and consequent thereto, the petitioner, was acquitted both in the case, which was registered as, FIR

No.68/1990 and, the other criminal case, which was registered as, FIR No.69/1990. Both judgments were delivered, on 30.10.1999.

4.8 It is in this background, that the petitioner, approached this court by way of the present writ petition, which was moved on 12.12.2000, when notice was issued in the petition.

4.9 Upon issuance of notice, respondents filed their reply, which was followed by a rejoinder of the petitioner. Consequently pleadings stood completed.

Submissions of counsels

5. Based on the pleadings, arguments on behalf of the petitioner have been advanced by Mr. Ashok Bhalla, while on behalf of the respondents, submissions have been made by Mr. Jagat Arora; ably assisted by Mr. Rajat Arora.

5.1 Mr. Bhalla, apart from trying to demonstrate that finding of the disciplinary authority, was perverse, lay particular emphasis on the fact that while six charges had been framed against the petitioner, the Enquiry Officer returned a finding only qua the first charge.

5.2 Mr. Bhalla submitted that the disciplinary authority, while passing the impugned order, overlooked this aspect of the matter and proceeded on the basis that, all charges, had been dealt with by the Enquiry Officer.

5.3 According to Mr. Bhalla, this was a fatal error in proceedings and therefore, on this short ground, the order of the disciplinary

authority, as also, the order of the appellate authority, should be set aside, as even the appellate authority, overlooked this flaw.

5.4 Mr. Bhalla, apart from the aforesaid, also submitted that the punishment accorded to the petitioner was disproportionate to the gravity of the alleged misconduct said to have been committed by him, and that, dismissal with an impediment placed for future employment was uncalled for, in the context of the charges levelled against the petitioner.

5.5 Mr. Bhalla, vehemently argued that at the relevant time when, moneys were advanced to the five entities, named above, there was no practice of conducting a pre-sanction inspection. He says that this practice was brought into force much later, and that, the petitioner had recommended the loan; which was sanctioned, at the end of the day, by a superior authority, which in this case, was the AGM.

5.6 Mr. Bhalla, also submitted that the recommendation to sanction the loan was made, inter alia, on the basis of opinion rendered by the lawyers, with respect to security furnished by the borrowers; which opinion was, the subject matter of their search reports and valuation reports. He pointed that, as a matter of fact, criminal proceedings against the lawyers, were discharged.

5.7 In respect of the quantum of punishment imposed, Mr. Bhalla sought to place reliance on the judgment of the learned Single Judge of this Court passed in **WP(C) 2895/1997**, titled ***R.B. Singh Vs. Punjab National Bank.***

5.8 Mr. Bhalla submitted that in the said case, the learned Single Judge had modified the order of removal from service to that of compulsory retirement, with all consequential benefits, arising from the said order; in somewhat similar circumstances.

6. On the other hand, Mr. Arora, who appears for the respondents submitted that this court would not re-appreciate the evidence, while exercising jurisdiction under Article 226 of the Constitution.

6.1 He further submitted that, the argument of Mr. Bhalla, that findings had not been returned by the Enquiry Officer qua all charges was misconceived, as the remaining five charges were, an off-shoot of the first charge and, therefore, in sum and substance, after complying with the principles of natural justice, a recommendation had been made by the Enquiry Officer, based on appreciation of the evidence, brought on record, which had been accepted by the disciplinary authority.

6.2 Mr. Arora, thus, submitted that the disciplinary authority looked at the enquiry report in this context and, accordingly, concluded that, viable findings had been returned by the Enquiry Officer, qua all charges.

6.3 The appellate authority, according to Mr. Arora, did likewise.

6.4 It was also Mr. Arora's contention that, the fact that, the petitioner had been acquitted in criminal proceedings, could not be a ground, to set aside the findings in the departmental proceedings, as the standard of proof in the two proceedings is different.

6.5 In sum, it was Mr. Arora's contention that, the impugned orders, deserved to be sustained.

7. The aspect of maintainability of the petition, on the ground of delay, which was also one of the objections raised by Mr. Arora, need not detain me any further, as I have, already dealt with it, in the foregoing part of my discussion.

Reasons

8. I have heard the learned counsel for the parties and perused the record.

8.1 While I concur with Mr. Arora, the learned counsel for the respondents that under Article 226 of the Constitution, it is not within the domain of the court to re-appreciate the evidence and, to interfere with the findings of the disciplinary authority, which have been sustained by the appellate authority, unless it is a case of no evidence or a case of perversity; this court can certainly interdict the proceedings, if the authorities below have not followed the principles of natural justice or have failed to return findings, qua all charges framed against the delinquent officer.

8.2 In the facts of this case, it cannot be disputed that there were six charges framed against the petitioner. It is also not in dispute that the Enquiry Officer, returned a finding, only qua, Article I. This is evident from the following extracts of the Enquiry Report :-

“.. FINDING

Article: I :

Held proved.

New Delhi

(S.K. ROY)

Dated: 26.2.93

INQUIRY OFFICER &
COMMISSIONER FOR
DEPARTMENTAL INQUIRIES”

8.3 The fact that, this went unnoticed in the proceedings held before the disciplinary authority, is clearly, made out by the following observations in the impugned order :-

“ I find that the Enquiry Officer has held all the imputations contained in Annexure II and all the following Articles of Charge contained in Annexure I as proved:-

- He acted in a manner prejudicial to the interest of the bank.
- He failed to discharge his duties with utmost integrity, honesty and diligence.
- He failed to ensure and protect the interest of the bank.
- He acted otherwise than in his best judgment while discharging his duties.
- He acted in a manner unbecoming of an officer of the bank.
- He misused and abused his official status/powers.

The points raised by Shri Bhasin in his representation dated 16.12.93 do not merit consideration because the charge sheet was served in terms of provisions of Discipline & Appeal Regulations. The charges framed against Shri Bhasin are specific. Further, the enquiry proceedings have been conducted in terms of Discipline & Appeal Regulations and report of the Enquiry Officer is in terms of provisions of aforesaid Regulations. A close scrutiny of submissions of Shri Bhasin further reveals that in fact he has admitted the charges indirectly by stating that the responsibility of

other officials for alleged lapses was much more than the charged officer's.

I concur with the findings of the Enquiry Officer and hold Shri Bhasin guilty of the proven charges..."

(emphasis is mine)

8.4 Furthermore, the fact that even the appellate authority did not notice this flaw, in the order of the disciplinary authority is, borne out from the following extract of its order dated 07.12.1994:

“.....The Disciplinary Authority has held Shri Bhasin guilty of the following proven charges:

- He acted in a manner prejudicial to the interest of the Bank.
- He failed to discharge his duties with utmost integrity honesty and diligence.
- He failed to ensure and protect the interest of the Bank.
- He acted otherwise than in his best judgment while discharging his duties.

He acted in a manner unbecoming of an officer of the bank.

- He misused and abused his official status/powers.”

8.5 Therefore, in my view, the impugned order of the disciplinary authority will have to be set aside on this short ground alone.

8.6 The argument advanced by Mr. Arora that all other charges (charges 2 to 6) were an off shoot of charge no.1, in my view, cannot be accepted for more than one reason. When the delinquent officer / employee is furnished with Articles of charge, it is incumbent upon the Enquiry Officer to return a finding qua each and every charge.

8.7 This is important for the reason that when, a disciplinary authority finally takes up the report of the Enquiry Officer, it needs to consider the matter from various angles, including, as to the quantum of punishment, which is required to imposed, in a given case.

8.8 Even if, I were to accept Mr. Arora's contention that charges 2 to 6 are an off shoot of charge no.1; in deciding the quantum of punishment, the aggravation, if any, of the first charge, would be a relevant criteria to be kept in mind by the disciplinary authority.

8.9 The disciplinary authority, could not have assumed that all charges had been proved, when clearly, the Enquiry Officer had returned a finding only qua Article-1.

9. Apart from the general principle, this is also the requirement of Regulation 6 (21)(i) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulation 1977 (in short Regulations). For the sake of convenience, the same is extracted hereinafter.

“ ...6. PROCEDURE FOR IMPOSING MAJOR PENALTIES:

X X X X X

X X X X X

(21) (i) On the conclusion of the inquiry, the Inquiring Authority shall prepare a report which shall contain the following:

- (a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) a gist of the defence of the officer employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor...”

(emphasis is mine)

(c)

9.1 A bare perusal of the aforementioned Regulation, would show that the Enquiry Officer has to prepare a report, which is required to contain: a gist of articles of charges and statement of imputations of misconduct or mis-behaviour; a gist of the defence of the officer employee, in respect of, *each* article of charge; assessment of the evidence in respect of *each* article of charge; and lastly, finding(s) on *each* article of charge and, give his reasons thereof.

9.2 Admittedly, the needful has not been done by the Enquiry Officer and, therefore, the conclusion reached by the disciplinary authority and the appellate authority, are clearly flawed.

9.3 As indicated above, therefore, the impugned order of the disciplinary authority will have to be set aside. If that order is set aside, quite naturally, the order of the appellate authority, will also fall.

9.4 Ordinarily, I would have remanded the matter for a fresh enquiry in the matter with a direction that a report be generated in respect of the remaining charges, framed against the petitioner. However, the fact of the matter is that, charges against the petitioner were framed in 1994. The petitioner, was put under suspension on 17.07.1990. The petitioner, was served with a charge-sheet, on 18.12.1990 and, the impugned order of the disciplinary authority, was passed on 15.01.1994. The petitioner was, thus, dismissed from

service in 1994. The petitioner has been involved in litigation; first before the appellate authority and, now, before this court, since 2000.

9.5 Undisputedly, more than two decades have passed since, punishment was imposed, on the petitioner. Moreover, in the interregnum, that is, on 30.10.1999, the petitioner has been acquitted in the criminal proceedings instituted against him.

9.6 While, Mr. Arora, may be correct in his submissions that the criminal proceedings may not have a bearing on the departmental proceedings unless they relate to the same transaction and are based on the same evidence, it is certainly a fact, which may have to be taken into account in taking a decision as to the quantum of punishment to be imposed on the petitioner, even if, fresh proceedings are commenced and, the petitioner, is found guilty of the remaining charges, as well.

9.7 In these circumstances, I have put to Mr. Bhalla, the learned counsel for the petitioner, as to whether, he would be interested in having the petitioner relegated to a fresh enquiry or, would he, be willing to suffer a lesser punishment.

9.8 The petitioner, is present in court. Mr. Bhalla has obtained instructions from him. Mr. Bhalla says that, in view of the fact that the petitioner is now 70 years of age, if the petitioner is relegated to a fresh enquiry, the proceedings will not perhaps not get concluded, during his lifetime. Mr. Bhalla, has also submitted that the petitioner is suffering from various ailments and requires some financial

support, which can only happen if, the punishment is reduced. In these circumstances, Mr.Bhalla says reduction in quantum of punishment will be a preferable option than, the petitioner being asked to participate in a fresh enquiry.

9.9 Mr. Arora, the learned counsel for the respondents cannot but contend that there has been a delay of nearly two decades, in the conclusion of the case.

10. Mr. Arora, quite candidly says that if, fresh proceedings are triggered against the petitioner, it may not get concluded perhaps in the petitioner's lifetime.

11. In the facts and circumstances of this case, Mr. Arora says that he would much rather leave the decision with regard to reduction of the petitioner's punishment, to the discretion of the court.

12. Having regard to the aforesaid circumstances, I am of the view that the interest of justice, would be served if, the punishment of the petitioner is, converted to compulsory retirement. It is ordered accordingly. It is made clear though that the petitioner will be entitled to all consequential benefits, which would have otherwise followed an order of compulsory retirement, had it been passed on the date, on which, the disciplinary authority passed the impugned order dated 15.01.1994.

13. Mr. Bhalla, at this stage re-emphasizes that his client i.e., the petitioner, will rest with aforesaid direction, which this court has issued, having regard to peculiar facts and circumstances of the case.

14. With the aforesaid directions in place, the captioned petition is disposed of.

RAJIV SHAKDHER, J

FEBRUARY 03, 2014

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