

\$~

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

+ **LPA No.447/2013 & CM No.9798/2013**

+ Date of Decision: 18th July, 2017

NARESH KUMAR GUPTA Appellant

Through: Mr.Arpan Wadhwa, Adv.

versus

CANARA BANK Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

LPA No.447/2013

1. The present appeal is directed against the impugned judgment and order dated 17th December, 2012 passed by the learned Single Judge of this Court in WP (C) No.439/2005. The learned Single Judge has allowed the writ petition filed by the Respondent-Canara Bank and while setting aside the award dated 4th October, 2004 passed by the learned Industrial

Tribunal, restored the order of the disciplinary authority imposing the penalty of dismissal on the Appellant.

2. Briefly, the facts are that the Appellant was appointed as a clerk with the Respondent-Bank on 6th September, 1980 and was working in the said post at the South Extension Branch, New Delhi from 27th July, 1991 till 13th August, 1996. It was alleged by the Respondent Bank that on 18th July, 1996, one account holder, namely, Ms.Omshree Sharma had deposited a sum of Rs.10,000/- in cash in her saving bank Account. On 19th July, 1996, Shri Abdul Alim who was also a saving bank account holder, had deposited a sum of Rs.30,000/- to his SB account. As per the Respondent, it had transpired that on both the dates, the Appellant herein was the cashier, and though he had issued counterfoils to the customers, he had failed to credit the said amounts on the same day and had, in fact, credited the amounts to the respective accounts on the next day i.e. 19th July, 1996 and 20th July, 1996. Similarly, on 20th July, 1996 one Mr.Surender Kumar, a saving account holder, had deposited a sum of Rs.6600/-, which was evidenced by the counterfoils with

the stamp on it produced by the account holder but the Appellant had failed to credit the said amount in the account of the said customer on the same day. Thus, the Appellant herein misappropriated the said amount with mala fide intention. This fact was further confirmed when on 13th August, 1996 on the complaint of the customer, the Appellant herein had remitted the said amount of Rs.6600/- in the account of the customer from his own pocket.

3. A charge-sheet was issued to the Appellant on the above three accounts and, during the course of inquiry, all relevant records including the shroff cash book, were produced which showed delayed crediting of the amounts. The inquiry officer, after considering the evidence led before it, submitted its report holding the Appellant guilty of charges number two and three, and not guilty of the first charge.

4. Upon consideration of the inquiry report and after giving due opportunity to the Appellant, the disciplinary authority vide its order dated 13th June, 1998 awarded the punishment of dismissal to the Appellant. The appeal to the Appellate

Authority having failed, the Appellant raised an industrial dispute, which was referred to the Industrial Tribunal on the following terms for adjudication:-

“Whether the action of Deputy General Manager, Canara Bank, Circle Office, Marshal Office, Nehru Place, New Delhi in dismissing from services with effect from 13th June, 1998 Shri Naresh Kumar Gupta (31732), New Delhi is justified, proper and valid? If not, what relief and benefit he is entitled”.

5. In view of the contentions raised by both parties before it, the learned Tribunal scrutinized the evidence led in the inquiry and came to a conclusion that none of the charges against the Appellant were proved by the evidence produced on record. He, therefore, held that inquiry was not fair and the Appellant was directed to be reinstated with full back wages.

6. Being aggrieved by the Award directing the Appellant's reinstatement in service, the Respondent impugned the same before this Court in writ proceedings. The learned Single Judge in the impugned judgment after considering the entire evidence and the contentions raised by both parties, came to a conclusion that once there was evidence produced in the enquiry against

the Appellant herein for establishing his misconduct, it was not for the Tribunal to interfere with the findings of the inquiry officer by re-appreciating the evidence as an Appellate Court. Before the learned Single Judge, the Appellant herein had also contended that, even if the order of the inquiry officer was to be upheld, the punishment awarded to him was disproportionate and, therefore, prayed that the same be converted to one for compulsory retirement. The learned Single Judge, however, did not find merit in the plea of the Appellant qua disproportionality of the punishment and, accordingly, set aside the impugned Award and restored the penalty of dismissal awarded by the Respondents.

7. By way of the present appeal, the Appellant has assailed the decision of the learned Single Judge, and has contended that the learned Single Judge has erred in law in interfering with the well reasoned Award. Counsel for the Appellant has submitted that once the Industrial Tribunal had given cogent reasons for not agreeing with the inquiry report, the learned Single Judge ought not to have interfered with the Award. She, therefore,

prayed that the judgment of the learned Single Judge be set aside.

8. The other alternate plea raised by the Appellant before us is that the punishment awarded to the Appellant is shockingly disproportionate to the gravity of the misconduct, since at the time of his dismissal from service, the Appellant had put in almost 18 years of blemishless service in the Respondent-Bank. She further submitted that it was not a case where the penalty of dismissal was warranted, especially in view of the fact that the Industrial Tribunal had, after examining the entire evidence, come to a categorical conclusion that there was no evidence to show that the Appellant was guilty of any misconduct.

9. We have considered the submissions of the counsel for both the parties and have also perused the record.

10. There is no merit in the submission of the Appellant that the learned Single Judge ought not to have interfered with the Award in the facts of this case. We entirely agree with the finding of the learned Single Judge that the Industrial Tribunal exceeded its jurisdiction in re-appreciating the evidence

recorded in the enquiry proceedings. The Tribunal could not have interfered with the findings returned in the domestic enquiry, even if a different view could possibly be taken. It has also been urged before us by the counsel for the Appellant that the penalty of dismissal from service was wholly disproportionate to the gravity of the charges against him.

11. Having considered the facts of the case as well as the evidence led before the inquiry officer and the circumstances under which the misconduct was committed, we are of the view that the penalty of dismissal imposed on the Appellant is indeed shockingly disproportionate, and by no stretch of imagination it can be held to be proportionate or commensurate with the charges levelled against the Appellant. The Appellant had rendered 18 years of service before his dismissal. He had not been found guilty of any misconduct during his service tenure, except on the occasion which led to his removal from service. Even on this occasion, he was chargesheeted in respect of three transactions, the first being of Rs.10,000/- (deposited on 18.07.1996); second being of Rs.30,000/- (deposited on

19.07.1996) and, third being of Rs.6,600/- (deposited on 20.07.1996). In respect of the first two charges, the allegation was that the Appellant gave credit for the said deposits into the accounts of the respective account holders on the following day. The same may have been a result of the Appellants inefficiency, since the said amounts were given credit on the following day, even before anything came to light. However, the third transaction was more serious inasmuch, as, the amount of Rs.6,600/- received by the Appellant on 20.07.1996 was not credited into the account of account holder even till 13.08.1996 when it came to light, and the Appellant deposited the amount of Rs.6,600/- from his pocket, when confronted.

12. Thus, it would appear that the Appellant was certainly guilty of a serious, but solitary lapse. In this background, keeping in view the decision of the Supreme Court in ***S.R. Tewari Vs. U.O.I. & Anr. (2013) 6 SCC 602***, we are of the view that the punishment of dismissal from service which is the most severe punishment, and entails forfeiture of all retiral dues of the employee, is shockingly disproportionate in the facts of

this case. We, however, do not find any error in the findings of the learned Single Judge regarding the guilt of the Appellant.

13. Based on our aforesaid conclusion, the matter could have been remanded back to the disciplinary authority with a direction to reconsider the penalty imposed. However, keeping in view the fact that the Appellant was dismissed from service nineteen years ago, and he has already spent almost nineteen years in different judicial forums, it would not be in the interest of justice to remand back the matter to the Disciplinary Authority for imposition of an appropriate penalty. The same considerations have been noticed by the Supreme Court in *S.R. Tewari (Supra)*. We are of the considered opinion that in the peculiar facts of the case, in order to shorten the litigation, it would be appropriate if the punishment of dismissal imposed on the Appellant is substituted with the punishment of compulsory retirement.

14. We, accordingly, substitute the punishment of dismissal imposed on the Appellant with that of compulsory retirement with effect from the same date on which he was dismissed from

service. The Appellant will be entitled to all benefits as are admissible under the rules in case of compulsory retirement, keeping in view his length of service.

15. The impugned order dated 17th December, 2012 passed by the learned Single Judge is set aside to the above extent only and, accordingly, appeal is disposed of in the above terms.

CM No.9798/2013

16. In view of the appeal having been disposed of, this application does not survive for adjudication and is dismissed as such.

**(REKHA PALLI)
JUDGE**

**(VIPIN SANGHI)
JUDGE**

JULY 18, 2017/aa-f