

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

Date of Decision: May 12, 2017

+ **W.P.(C) 4067/2017 & C.M.17887-88/2017**

PUNJAB NATIONAL BANK Petitioner
Through: Mr. Rajat Arora, Advocate

versus

SHRI MANOHAR LAL Respondent
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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Impugned Award of 1st February, 2017 upholds the finding returned in the departmental proceedings against respondent, who had rendered 21 years of service as a Clerk and had superannuated on 31st October, 2015, and substitutes the penalty of dismissal from service with that of compulsory retirement.

The challenge to impugned Award by learned counsel for petitioner-Bank is on the ground that punishment of dismissal is not shockingly disproportionate and so, the Central Government Industrial Tribunal-cum-Labour Court No.1 (*hereinafter referred to as the Tribunal*) ought not to have interfered with the penalty of dismissal

inflicted upon respondent as he was found to be having disproportionate assets of ₹5 lacs odd in his own name and in the name of his wife. Reliance is placed upon Supreme Court's decision in *Devendra Swamy v. Karnataka State Road Transport Corporation*, (2002) 9 SCC 644 to submit that the penalty of dismissal ought to be restored. Reliance is also placed upon a Division Bench decision of High Court of Orissa in *The Branch Manager, Orissa Air Products Pvt. Ltd, Gundichapada v. State of Orissa and Another*, (2017) 152 FLR 372 to submit that if the integrity of an employee is found to be adverse, then the order of dismissal ought not to be substituted with order of reinstatement in service. Nothing else is urged on behalf of petitioner.

Upon hearing and on perusal of impugned Award, documents on record and the decisions cited, I find that in *Devendra Swamy (supra)*, punishment of dismissal was not interfered with because the delinquent employee was found to be earlier involved in more than 41 cases of similar nature, whereas in the instant case, respondent has an unblemished service record.

It is settled legal position that judicial review is to be undertaken not only when the punishment is found to be shockingly disproportionate, but also when impugned Award suffers from perversity. The test to find out perversity as reiterated by Supreme Court in *General Manager (Operations), State Bank of India and Another v. R. Periyasamy*, (2015) 3 SCC 101 is to see whether the Tribunal while acting reasonably could have arrived at such a conclusion on the basis of material on record. If the impugned Award is found to be arbitrary, then certainly it is liable to be

interfered with in exercise of power of judicial review. This Court is conscious that while examining the quantum of punishment, misplaced sympathy cannot be a factor to exercise judicial review. In exercise of jurisdiction under Section 11B of *The Industrial Disputes Act, 1947*, quantum of compensation can be always looked into, in exercise of judicial review if the penalty is found to be harsh and undeserving.

In light of the fact that respondent has unblemished service record and had already superannuated way back in the year 2015 after rendering 21 years of service, I find that penalty of dismissal from service has been rightly substituted with that of compulsory retirement by the Tribunal, particularly, in view of the fact that respondent had submitted before the authorities concerned that his financial condition is bad and that he does not have money for his day-to-day expenses. In the affidavit filed by respondent before the Tribunal, respondent had categorically asserted that after his dismissal from service in August, 2013, he could not get employment. In view thereof, reliance placed by petitioner's counsel upon decision in *Orissa Air Products Pvt. Ltd (supra)* is of no avail as in the said case, the penalty of dismissal was substituted with that of reinstatement in service whereas in the instant case, the penalty of dismissal has been substituted with penalty of compulsory retirement.

A three Judge Bench of Supreme Court in *Mahindra and Mahindra Ltd. V. N.B. Narawade*, (2005) 3 SCC 134 has reiterated the parameters which govern awarding of lesser punishment than of dismissal/removal from service. One of the parameters highlighted in *Mahindra and Mahindra (supra)* is the past service record. In the instant case,

respondent had an unblemished past service record. Recently, Supreme Court in Civil Appeal No.4551/2017 arising out of SLP (C) No(s). 22167/2015 titled *The State of West Bengal and Ors., v. Abdul Karim Mallick*, while dealing with a case of proved misconduct, has restored the punishment of compulsory retirement.

In the instant case, the fact of respondent possessing disproportionate assets to the tune of ₹5 lacs odd was brought to the notice of Central Bureau of Investigation and in the facts of this case, respondent was rightly not prosecuted by CBI. This is an important circumstance which persuades this Court to hold that the penalty of dismissal from service inflicted upon respondent was indeed harsh and it has been appropriately substituted by the Tribunal with that of compulsory retirement.

In view of the aforesaid, finding no perversity in impugned Award, this petition and the applications are dismissed *in limine*.

(SUNIL GAUR)
JUDGE

MAY 12, 2017

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