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

+ LPA 442/2017

PUNJAB NATIONAL BANK Appellant
Through: Mr.Rajesh Kumar & Mr.Gaurav
Kumar Singh, Advocates.

versus

MANOHAR LAL Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
% **18.07.2017**
CM No.23349/2017

Exemption allowed subject to all just exceptions.

The application stands disposed of.

LPA 442/2017 & CM No.23348/2017

1. The appellant has preferred the present petition to assail the judgment dated 12.05.2017 rendered by the learned Single Judge in W.P.(C) No.4067/2017. The learned Single Judge has dismissed the said writ petition, wherein the appellant had assailed the award passed by the learned CGIT, whereby the penalty of dismissal from service imposed by the appellant on the respondent, was substituted with that of compulsory retirement from the date of dismissal.

2. The respondent who was serving with the appellant-bank was charge-sheeted on the ground of possessing disproportionate assets to the tune of Rs.5 lakhs. The said inquiry was initiated pursuant to investigations made regarding a major fraud which had been detected in the appellant-bank. Pertinently, neither the appellant nor the CBI which investigated the fraud, linked up the said fraud or any other fraud or malpractice in the bank with the Respondent. The charge against the respondent was proved only to the effect that he had unaccounted wealth to the tune of Rs.5 lakhs and on that account, he was dismissed from service.

3. The Industrial Tribunal held in favour of the appellant insofar as the procedure adopted by the Enquiry Officer, for imposition of the penalty for the misconduct, which was proved. However, the Industrial Tribunal held that the penalty imposed was disproportionate and excessive, considering the fact that the respondent had an unblemished service record since the year 1982. The Tribunal held that the punishment of dismissal is the harshest form of punishment, which could be imposed when the misconduct is really very grave in nature. In these circumstances, the Tribunal substituted the penalty of dismissal from service, with that of compulsory retirement. The learned Single Judge has held that the decision of the CGIT did not deserve to be interfered with. The submission of learned counsel for the appellant is that the CGIT did not have the jurisdiction to interfere with the punishment imposed upon the respondent. He contends that

once the charge against the respondent was proved and his guilt was established, the choice of punishment lies with the employer.

4. We have perused the award dated 10.02.2017 passed by the CGIT, as well as the judgment of the learned Single Judge. The misconduct proved against the respondent was that he was in possession of unaccounted wealth to the tune of Rs.5 lakhs, however, the said wealth could not be connected with any misconduct or any fraud alleged to be committed by the respondent qua the discharge of his duties in the bank. Moreover, it was an isolated incident and admittedly the respondent, otherwise, had an unblemished service record of 21 years.

5. We may also refer to the judgment of the Division Bench of this Court in **Air Force Bal Bharti School & Anr. Vs. Delhi School Tribunal & Ors., 2013 SCC Del 217**, wherein the Division Bench observed as under:-

“7. This Court is now called upon to exercise second review, as it were, of the disciplinary order made by the school. The first and substantive review was undertaken by the School Tribunal which went into the matter both on facts and in law as it was duty bound to since the Teacher approached it in a first appeal against the decision of the school. The school’s grievance was articulated in proceedings under Article 226 which was really by way of judicial review against a judicial/quasi-judicial order. We only underline this aspect because this Court is now called upon to comment on the judiciousness and discretion exercised by learned Single Judge of this Court in exercise of his undoubted powers under Article 226. Whilst, there can be no gainsaying that in a given case that discretion may extend to differing from, and setting aside the Single

Judge's order, based on settled principles for the conclusions that may be drawn, we see no reason to do so, having regard to the totality of the circumstances in this case. As noticed earlier, a plain reading of the impugned judgment, especially, paragraphs 25-27 would reveal that the Single Judge has undertaken a threadbare analysis of the entire facts. In the earlier, immediately preceding portion of the judgment, learned Single Judge undertook a similar analysis with regard to position of law. We feel that the said analysis does not call for any interference by this Court. The counsel's emphasis that without a finding that the penalty in a given case is "shockingly" disproportionate, the Court cannot substitute it, exercising the jurisdiction of the decision-maker, does not persuade this Court. It is the disproportionality of the punishment, by whatever name called, i.e., "shocking", "serious" or "gross" having regard to the totality of the proven facts, which is to be seen in every case. A case might reveal facts where the penalty is shockingly disproportionate, and the Court may substitute it without saying that the penalty is shockingly disproportionate. Conversely, in another instance, the penalty might not be disproportionate at all, despite which the Court might say it is. Ultimately, it is a matter of substance, and not semantic form, that the Court has to look into. Here, the Court finds no reason to differ from the order of the Tribunal and the judgment of the Single Judge on this aspect."

6. In these circumstances, in our view, CGIT was justified in substituting the grave punishment of dismissal from service, with that of compulsory retirement, since the same was shockingly disproportionate. The punishment of dismissal is the highest form of punishment and dismissal of service, would certainly have been justified, if the possession of unaccounted wealth had been linked

with any specific misconduct of the respondent, which was admittedly not found in the present case. We are of the view that in the facts of the present case, the appellant should have taken a reasonable approach.

7. In these circumstances, we are not inclined to interfere with the judgment of the learned Single Judge and the CGIT and the appeal is therefore, dismissed.

8. The pending application is also dismissed as infructuous.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 18, 2017/gm