

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

% **Date of Decision: 17th July, 2017**

+ **LPA 471/2017**

BHARAT BHUSHAN GOEL Appellant
Through: **Mr.Subhiksh Vasudev,**
Advocate.

versus

PUNJAB NATIONAL BANK Respondent
Through: **Mr.Jagat Arora with Mr.Rajat**
Arora, Advocates.

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

REKHA PALLI, J. (ORAL)

C.M. Nos. 24543-24544/2017

Exemption allowed subject to all just exceptions.

The applications stand disposed of.

LPA 471/2017

1. By the present appeal, the Appellant has assailed the judgment dated 15.05.2017 passed by the learned Single Judge of this Court dismissing his writ petition, wherein he had challenged the order of his removal from service.

2. The Appellant had joined the Respondent-bank on 01.08.1977 and with passage of time, he had been promoted as an Assistant Manager on 08.07.1986. In the year 1992, the Appellant was posted as Assistant Manager of the Respondent bank in Saharanpur branch. While he was posted at Saharanpur, the Appellant was suspended on 15.03.1993 which was followed by issuance of a charge-sheet dated 10.04.1993 wherein six charges were leveled against him. The Respondent thereafter appointed an Enquiry Officer to enquire into the charge against the Petitioner.

3. It is evident from the record that the appellant initially attended the enquiry proceedings and even requested for appointment of Shri S.C. Chauhan as his Defence Representative, which request was accepted by the Enquiry Officer. The Appellant, however, did not attend the enquiry proceedings after 03.05.1994 and the Enquiry Officer after giving several opportunities to him, decided to proceed with the enquiry. The Enquiry Officer, after considering the entire evidence led before it by the Respondent-Bank, found the Appellant guilty of five out of the six charges. Based on the enquiry report dated 08.01.1996, the disciplinary authority vide its order dated 12.09.1996 imposed the penalty of removal from service on the Appellant. Aggrieved by the order of removal, the Appellant preferred an appeal followed by a representation to the Reviewing Authority which were both rejected, leading to filing of the writ petition.

4. Before the learned Single Judge, the appellant while challenging the enquiry report and the removal order passed by the Respondent, raised the following three submissions:-

- (i) The first submission being that the appellant had been denied reasonable opportunity in defending himself in the inquiry proceedings inasmuch, as, on 20.05.1993, he had sought certain reports which were denied by the Respondents.
- (ii) The second submission which, is the main contention raised before us also, is regarding non-payment of subsistence allowance, which according to counsel for the Appellant, has resulted in denial of reasonable opportunity to the Appellant to defend himself in the enquiry proceedings.
- (iii) The third submission being that in the hearing of the departmental enquiry, held on 02.05.1994, though the Appellant's request to appoint Mr.S.C. Chauhan as Defence Representative had been accepted by the Enquiry Officer, but neither any letter had been written to him by the Enquiry Officer to seek his concurrence for appearing as Defence Representative of the Appellant, nor any information was sent either to the appellant or to his Defence Representative after 03.05.1994 and 18.10.1994.

5. The learned Single Judge has vide his detailed order dealt with all the three submissions and found no force in any of the three submissions and dismissed the writ petition by the impugned order. The learned Single Judge observed as under:-

“14. Having heard the learned counsel for the parties, in so far as the first submission of Mr. Subhiksh Vasudev of denial of record by the respondents is concerned, I do not see any illegality in the respondents communicating to the petitioner that the petitioner is only entitled to the record relating to the charge sheet that is relating to his incumbency in the branch concerned and nothing more I have seen the charges which have been framed against the petitioner, the same relates to his conduct while he was posted at Kaluwala Paharipur Branch office. Any record for an earlier period when the petitioner was not posted in the said branch would not be relevant record for the purpose of the charges as framed against the petitioner and the plea that Mr. Thapa was involved in similar omissions and commissions shall not have any effect on the charge sheet issued to the petitioner. In fact during his submissions, Mr. Subhiksh Vasudev had fairly conceded on this aspect. Hence, the plea of Mr. Subhiksh Vasudev in this regard needs to be rejected.”

18. The second submission of Mr. Vasudev is liable to be rejected as it is not the case of the petitioner in his representation, that he was unable to attend the proceeding for want of subsistence allowance, nor he has pleaded and proved, prejudice has caused to him. In so far as the submission of Mr. Subhiksh Vasudev that the Enquiry Officer was required to inform the date of hearing post May 3, 1994 and October 18, 1994 is concerned, as contended by Mr. Arora, many proceedings were held thereafter but no attempt was made by the petitioner to ascertain from the Enquiry Officer about the status of the proceedings is appealing. I may note, 17-20 hearings were held from May 3, 1994 till September 15, 1995 in 11 months. Surely a person in the position of the petitioner shall be keen to know next date of hearing or the developments in the proceedings. He shall not take it for granted that no date has been fixed. He after waiting for some reasonable time could have

written a letter to the Enquiry Officer or his DR to know the date of hearing / status of the proceedings. In fact there is no averment in the writ petition as what steps have been taken by the petitioner on not hearing from the Enquiry Officer with regard to the dates of hearing be it after May 3, 1994 or October 18, 1994. No doubt it was the duty of the Enquiry Officer to inform the rejection of the request of adjournment or notifying the date of hearing, which the Enquiry Officer was doing, but the communications were being received back. In any case, there is a corresponding duty on the petitioner to seek information from the Enquiry Officer on the status of the proceedings. Not even a single communication has been placed on record to show he sought information from the Enquiry Officer in that regard. It does appear that the petitioner was not keen in attending the proceedings and had allowed it to culminate without participating in the same. The petitioner cannot now plead, denial of a reasonable opportunity to him, by the Enquiry Officer. This submission is also liable to be rejected.”

6. Aggrieved by the impugned order, the Appellant has preferred the present appeal. Before us, arguing for the Appellant, Mr.Subhiksh Vasudev, Advocate pressed only two out of the three pleas which he had raised before the learned Single Judge. He has contended that the denial of payment of subsistence allowance resulted in denial of a reasonable opportunity to the Appellant to defend himself. He has relied on the judgment of the Apex Court in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679.**

7. The appellant has further contended that the enquiry proceedings stood vitiated, as there was nothing on record to show that his Defence Representative was ever requisitioned or informed about the enquiry proceedings.

8. Having heard learned counsel for the parties and examined the record, we are of the considered view that the Respondent having rejected the request of the Appellant for grant of subsistence allowance on the specific ground that the Appellant had undertaken a business, it was not open to the Appellant to subsequently challenge the enquiry proceedings on this ground. Even otherwise, as noted by the learned Single Judge, it was never the case of the Appellant that he was unable to attend the enquiry proceedings because of non-payment of subsistence allowance and, in fact, in all his communications, he has merely stated that he was in urgent need of money to meet his household expenses, school expenses of his children and medical expenses etc. We may note that in the case of **Capt. M. Paul Anthony** (*supra*), the Apex Court was dealing with the case of a Security Officer. The Court held that because of penury, the delinquent employee was unable to attend the departmental enquiry in a different town. In the present case, the Appellant was admittedly the Officer Incharge of the branch office of the respondent-bank, and he neither pleaded, nor established as to what prejudice was caused to him, because of non-payment of subsistence allowance. Thus, the aforesaid judgment of the Apex Court, relied upon by the Appellant, does not apply at all to the facts of the present case.

9. We are also of the considered view that once the appellant was aware of the ongoing enquiry proceedings against him in which he had initially participated, it was for him to ensure that he is duly represented before the Enquiry Officer and having voluntarily

stopped appearing before the Enquiry Officer after 02.05.1994, he cannot contend that he was deprived of the opportunity of fair hearing, or of adequate representation in the enquiry.

10. We therefore, do not find any merit in the present appeal and the same is dismissed.

REKHA PALLI, J

VIPIN SANGHI, J

JULY 17, 2017/gm

