

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

% ***Date of Order: October 23, 2017***

+ **W.P.(C) 12010/2016**

DEVENDER KUMAR Petitioner
Through: Mr. Shakil Akhtar, Advocate

versus

BANK OF BARODA AND ORS Respondents
Through: Mr. Bhupender Singh Chauhan,
Advocate for respondents No.2 to 5

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

Petitioner is a Head Cashier, who was charge-sheeted for shortage of cash of ₹10 lacs odd. In the departmental inquiry, petitioner was held guilty and vide impugned order of 31st October, 2016, he has been dismissed from service.

The challenge to impugned order of 31st October, 2016 in this petition is on the ground that petitioner had sought to be defended by a lawyer in the inquiry proceedings and this was denied to him in contravention of Clause 12 of *Memorandum of Settlement* of 10th April, 2002. Thus, it is submitted that the entire inquiry stands vitiated on account of lack of proper assistance being provided to petitioner and so, impugned order deserves to be set aside and petitioner be reinstated in service.

The opposition to this petition by learned counsel for respondent-Bank is on the ground that petitioner is a workman and the remedy available to him against the penalty of dismissal is under *the Industrial Disputes Act, 1947* and so, petitioner be relegated to avail of the said remedy available to him. In the alternative, it is submitted that the remedy of appeal was available to petitioner and to submit so, learned counsel for respondent-Bank has drawn the attention to Clause 14 of the *Memorandum of Settlement* of 10th April, 2002.

The stand of petitioner's counsel is that the remedy of appeal was not availed of because petitioner needs to be represented by lawyer and this right has been arbitrarily denied and so, the appeal was not preferred. It is submitted by petitioner's counsel that if petitioner is permitted to be defended by a lawyer in appeal, then petitioner would opt for filing an appeal and after the decision in the appeal, petitioner is not averse to take recourse to remedies under *the Industrial Disputes Act, 1947*.

Upon hearing and on perusal of impugned order and the copy of *Memorandum of Settlement* of 10th April, 2002, I find that under Clause 12 (a) (iii) thereof, a delinquent employee is permitted to be defended by lawyer only with the permission of the Bank. Since the remedy of appeal is available to petitioner, therefore, this Court relegates petitioner to avail of the remedy of appeal within three weeks while making it clear that the objection of limitation shall stand waived in the facts and circumstances of the instant case. Needless to say that appellate authority will go into the validity of reasoning declining petitioner's prayer for being represented by a lawyer. Clause 14 of the *Memorandum of Settlement* of

10th April, 2002 permits granting of oral hearing in appeal and to be represented by an authorised Representative in the discretion of appellate authority.

In the facts and circumstances of the instant case, it is deemed appropriate to call upon the appellant authority to entertain petitioner's appeal so filed within the stipulated period and to provide an effective hearing to petitioner's representative and if it is found that there was no good reason for not allowing petitioner to be represented by a lawyer, then the appellate authority shall permit petitioner to be represented by a lawyer in appeal. Needless to say that the appellate authority shall expeditiously dispose of the appeal.

With aforesaid directions, this petition is disposed of while relegating petitioner to avail of the remedy of appeal. It is made clear that this order will not be treated as a precedent as it has been made in the peculiar facts of the instant case.

Copy of this order be given *dasti* to counsel for contesting parties.

(SUNIL GAUR)
JUDGE

OCTOBER 23, 2017

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