

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

Date of Decision: November 16, 2017

+ **W.P.(C) 7491/2017 & C.M. 30851/2017**

N M JAIN

..... Petitioner

Through: Mr. Ashok Bhalla, Advocate

Versus

VIJAYA BANK AND ORS.

..... Respondents

Through: Mr. Jagat Arora & Mr. Rajat
Arora, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

1. Consequent upon a departmental inquiry, punishment of *Dismissal from Service* was inflicted upon petitioner, which was challenged by him. In the first round of litigation, petitioner had succeeded in the writ petition filed by him. The operative portion of order of 27th February, 2015 (*Annexure P-19*) passed in the writ petition, reads as under:-

“18. In view of above discussion and in view law laid down in case of J. Ahmed (supra), T.V. Choudahry (supra), Tata Engineering & Locomotive Col. Ltd. (supra), Kailash Nath Gupta (supra), Raj Pal Singh (supra), Rajender Yadav (supra) and Manju Khanna (supra) this Court is of the view that the petitioner has not committed any major misconduct

rather the branch of the bank followed the procedure with regard to handling of public issues of three companies and that the punishment of dismissal of the petitioner from service of the bank is not appropriate. The dismissal order dated 12.10.1999 as well as order dated 22.03.2000 passed by the appellate authority are quashed.

19. As dismissal order dated 12.10.1999 and order dated 22.03.2000 passed by the appellate authority have been quashed, the petitioner would be entitled for consequential benefits thereof.

20. However, the bank management would be at the liberty to pass the fresh order on the premises of inquiry report dated 30.06.1999 (Annexure P-5) after giving an opportunity of hearing to the petitioner.

21. Accordingly, the writ petition is partly allowed. No order as to costs."

2. Respondent-bank had preferred Letters Patent Appeal, which was dismissed by the Division Bench vide order of 23st March, 2016 (Annexure P-20) by holding as under:-

"We find no reason to interfere with this order. The bank/ appellant, is however, at liberty to also make consequential orders as to the manner in which the period between 12.10.1999 and the date on which the respondent superannuated is to be treated in accordance with the service and pension rules."

3. Since the respondent-Bank was given liberty to pass a fresh order on the basis of Inquiry Report against petitioner, therefore, respondent-Bank had given a Notice on 12th November, 2016 (Annexure P-22) to petitioner for personal hearing. In response to the said Notice of 12th November, 2016 (Annexure P-22), petitioner had submitted a Reply on 14th December, 2016 (Annexure P-23), wherein Regulations 12 (4) & 12

(5) of Discipline & Appeal Regulations and Regulation 46 of Pension Regulations, were quoted and provisional pension was sought from 1st January, 2003 in terms of Regulation 46 of PNB Employees' Pension Regulations. It is a matter of record that petitioner did not appear for personal hearing despite opportunity given because the provisional pension was not released to him. However, respondent-Bank vide order of 6th January, 2017 (*Annexure P-26*) has imposed penalty of "*Removal from Service*" upon petitioner.

4. Impugned order of 6th January, 2017 (*Annexure P-26*) is assailed in this petition by learned counsel for petitioner while drawing the attention of this Court to order of 27th February, 2015 (*Annexure P-19*) to point out that the discretion with the respondent-Bank was to impose a minor penalty, as the misconduct of petitioner was found not to be major one. Petitioner's counsel submits that there is utter non-application of mind by the authority passing the impugned order, as penalty of "*Removal from Service*" has been imposed, which is for major misconduct. Attention of this Court is drawn to Minor Penalties (e) of *Vijaya Bank Officer Employees (Discipline & Appeal) Regulations, 1981* to show that only minor penalties can be inflicted for minor misconduct. So, it is submitted by petitioner's counsel that impugned order 12th November, 2016 (*Annexure P-22*) deserves to be set aside and penalty of "*Removal from Service*" be substituted with a minor penalty with consequential benefits.

5. On the other hand, learned counsel for respondent-Bank, supports the impugned order and submits that gravity of misconduct committed by petitioner is dwelled upon in detail in the impugned order, which justifies

the imposition of penalty of “*Removal from Service*”. So, it is submitted by respondents’ counsel that this petition deserves dismissal.

6. Upon hearing and on perusal of the material on record, I find that the impugned order of 12th November, 2016 (*Annexure P-22*) imposing penalty of *Dismissal from Service* runs counter to the decision of this Court rendered on 27th February, 2015 (*Annexure P-19*). Since the misconduct committed by petitioner has been found to be minor one in the order of 27th February, 2015 (*Annexure P-19*) passed in the writ petition as well as order of 23st March, 2016 (*Annexure P-20*) in the Letters Patent Appeal, which have attained finality, therefore, it was not open to respondent-Bank to have imposed penalty for major misconduct. Impugned order so far as it inflicts penalty of “*Removal from Service*” is hereby set aside and penalty imposed is substituted with minor penalty of reduction to a lower stage in the time scale of pay for a period not exceeding three years without cumulative effect, which shall not adversely affect petitioner’s pension in terms of Clause (e) of Minor Penalties of *Vijaya Bank Officer Employees (Discipline & Appeal) Regulations, 1981*. Harshest of Minor Penalty is inflicted upon petitioner in the facts and circumstances of this case. As far as impugned order qua grant of salary and allowances for the period 12th October, 1999 till 30th November, 2002 is concerned, it is not being interfered with. Petitioner shall be entitled to consequential benefits upon infliction of the afore-noted substituted penalty. Let compliance be made within twelve weeks, failing which the arrears payable to petitioner shall carry interest @6% p.a.

7. With aforesaid directions, this petition and application are disposed of.

**SUNIL GAUR
(JUDGE)**

NOVEMBER 16, 2017

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