

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

Date of Order: November 03, 2017

+ **W.P.(C) 9696/2017 & CM No.39491-92/2017**

HARI OM SHARMA Petitioner
Through: Mr.Ashok Bhalla, Advocate

versus

BANK OF BARODA AND ORS Respondents
Through: Mr.Arun Aggarwal, Advocate for R-1 to
R-3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. In a departmental enquiry, petitioner had been inflicted with punishment of compulsory retirement by the Disciplinary Authority vide order of 3.5.2017 (*Annexure P-20*) which was challenged by the petitioner by way of an appeal (*Annexure P-21*).
2. The grievance of petitioner herein is that without being heard in appeal, the show cause notice on 28.09.2017 (*Annexure P-22*) has been received by him for enhancement of penalty from compulsory retirement to dismissal from service. Learned counsel for petitioner submits that petitioner's appeal stands impliedly dismissed without there being any finding and without petitioner being heard. It is pointed out by petitioner's counsel that despite there being a specific request in the appeal (*Annexure P-21*) seeking an opportunity of personal hearing,

petitioner has not been heard and this is contrary to the principles of natural justice.

3. Upon hearing and on perusal of the impugned show cause notice, I find that it is not evident therefrom that the Appellate Authority had come to a conclusion that there is no requirement of personal hearing and no reason is forthcoming as to why personal hearing was not afforded to petitioner. To say the least, the Appellate Authority is required to apply its mind to the facts of the case and give a proper reasoning to come to a conclusion as to whether the finding of petitioner being guilty, is justified or not and then only the question of proportionality of punishment is to be considered. In the impugned show cause notice, the grounds taken in the appeal have not been dealt with. Moreover, the opinion of the Appellate Authority is quite categoric in the impugned show cause notice that the penalty needs to be enhanced and that too without considering the stand of petitioner.

4. At the appellate stage, the Appellate Authority has to first return a finding by giving adequate reasons as to whether the finding of petitioner's guilt is justified or not and thereafter only a tentative opinion is to be expressed regarding enhancement of punishment.

5. In view of the aforesaid, the impugned show cause notice is set aside with a direction to the Appellate Authority to first return a categoric finding on the petitioner's appeal while dealing with the pleas raised therein and by passing a speaking order and thereafter only call upon the petitioner, if a case for enhancement of punishment is made out. It is made clear that this Court has not commented upon the aspect of

enhancement of punishment and it is left open to the Appellate Authority to make up its mind after forming an opinion on merits of the appeal.

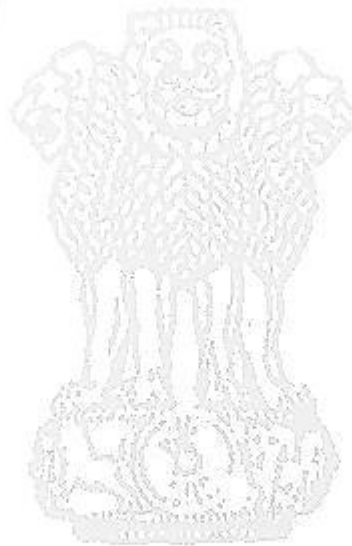
6. This order shall not preclude the Appellate Authority from giving a notice for enhancement of punishment if it comes to a conclusion that such a course is to be adopted.

7. With aforesaid directions, this petition and the accompanying applications are disposed of.

(SUNIL GAUR)
JUDGE

NOVEMBER 03, 2017

mamta



नित्यमेव जयते