

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

% ***Date of Order: 9th March, 2018***

+ **W.P.(C) 2156/2018 & CM No.8916/2018**

RAJEEV SAXENA Petitioner
Through: Ms.Isha Aggarwal, Advocate and Mr.Akhil
Sharma, Advocate

versus

THE CHIEF GENERAL MANAGER, BANK
OF BARODA & ORS Respondents
Through: Mr.Bhupendra Singh Chauhan, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Petitioner was a Senior Manager with respondent-Bank who was departmentally tried for committing 26 general irregularities and 46 account specific irregularities which have been spelt out in the statement of allegation of 10th December, 2015 (*Annexure P-5*). The Disciplinary Authority vide impugned order of 30th July, 2016 (*Annexure P-2*) has taken note of the findings returned by the Inquiry Officer on the charges levelled against petitioner in detail and has concluded as under:-

“Thus, Mr.Rajiv Saxena sanctioned facilities without generating CIBIL reports and did not carry credit ratings thus rate of interest not entered properly in the system he did not get the documents vetted from the advocates. He did not ensure to obtain Book – Debt statements and Stock statements regularly and thus DP was not updated in

finacle. He did not make appraisal on proper format for the accounts. He did not get terms & conditions of sanction accepted from borrowers and guarantors. He made disbursements in Term Loan accounts through borrowers' saving Bank/Current Account/through their family members' SB A/c without obtaining margin amount. Documentary evidence for payment of Margin Money was not obtained. He did not obtain Insurance cover for the hypothecated goods, did not obtain ROC search report, did not obtain Mutation of mortgaged properties. He obtained CMA data which were not signed by the borrower. He accepted improper Pre Sanction Inspection Reports from the officers. He accepted bills in which TIN No./VAT No. are either not mentioned on bills, did not verify end use of funds as he disbursed entire amount in cash in accounts, did not obtain signature of mortgagor on Attendance Register, did not ensure that adequate stamp papers are attached at the time of equitable mortgage of property, did not verify Sales of the firm from VAT returns.

Mr.Rajiv Saxena did reckless financing. He did not care for the rules and procedures of the Bank. There are Balatant violations of rules and procedures of the Bank. He misused his position. His acts are unbecoming of an officer."

2. Appellate Authority vide impugned order of 9th January, 2018 (*Annexure P-1*) has dismissed petitioner's appeal against the penalty of compulsory retirement inflicted upon petitioner by the Disciplinary Authority.

3. Learned counsel for petitioner assails the order of Disciplinary Authority, Appellate Authority as well as order of 27th September, 2017 (*Annexure P-4*) vide which petitioner's gratuity has been forfeited and also the pension order (*Annexure P-3*) vide which petitioner's 1/3rd pension has been deducted in light of Regulation 33 of *Bank of Baroda (Employees')*

Pension Regulations, 1995. It is the submission of petitioner's counsel that petitioner was performing administrative functions and was not expected to closely scrutinize the financial proposals as it is the function of the Credit Officer to do so. It is also submitted on behalf of petitioner that on account of the alleged irregularities, respondent-bank has not suffered any financial loss and so the penalty inflicted upon petitioner is disproportionate to the alleged misconduct. Attention of this Court is drawn to Supreme Court's decision in *S.R.Tewari Vs. Union of India & Anr.* (2013) 6 SCC 602 by petitioner's counsel to submit that in a case of misconduct of administrative nature, like in the instant case, penalty of compulsory retirement was substituted with penalty of withholding of two increments for one year without cumulative effect. Reliance is also placed upon Supreme Court's decision in *Bank of Baroda Vs. S.K.Kool (Dead) through LRs & Anr.* (2014) 2 SCC 715 to submit that denial of superannuation benefits to petitioner is wholly unjustified as in the case of removal from service, superannuation benefits have been granted and the denial of gratuity to petitioner is not at all justified. So, it is submitted by petitioner's counsel that impugned order deserves to be set aside.

4. On the contrary, learned counsel for respondent supports the impugned order and submits that the penalty awarded to petitioner is commensurate with the misconduct committed by him and the decisions relied upon by petitioner's counsel have no application to the facts of the instant case.

5. Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that petitioner was not performing purely

administrative functions but was also sanctioning overdraft limits etc. and was also dealing with cash credit limits. Not only this, petitioner had not observed four eye principle as Appraisal Notes and Sanction Letters were prepared and signed by him singly which was against the bank's guidelines. Not only the order of Disciplinary Authority but even the Appellate Order is well reasoned one. Merely because petitioner was intimated on 29th November, 2017 that his appeal is barred by time and so would not be entertained, it would not justify quashing of Appellate Order of 9th January, 2018 (*Annexure P-1*) as it not only dismisses the appeal as time barred but also deals with the merits of the case. Although petitioner's stand is that no financial loss has occurred due to his misconduct but in the impugned order, it is categorically recorded that the lapses committed by petitioner are of very serious nature which had exposed respondent-bank to a loss of more than ₹2 crores.

6. During course of hearing, petitioner's counsel had sought to dispute the financial loss caused to respondent-bank but no meaningful arguments were raised to dispute the potential loss of more than ₹2 crores caused by the lapses committed by petitioner. Reliance placed upon decision in *S.K.Kool* (supra) is of no avail as penalty of removal from service with superannuation benefits was inflicted by the Disciplinary Authority but on what charges, is not evident in the said decision. In *S.R.Tewari* (supra), the charge was of purely administrative nature of taking away the escort vehicle and was not relating to financial bungling as in the instant case and so reliance placed upon Supreme Court decision in *S.R.Tewari* (supra) is of no assistance to the case of petitioner. Regarding the proportionality of the

punishment inflicted, I find that the penalty of compulsory retirement awarded to petitioner commensurate with the proven misconduct of the petitioner. So far as deduction of petitioner's 1/3rd pension is concerned, I find that it is justified in view of Regulation 33 of *Bank of Baroda (Employees') Pension Regulations, 1995*. Regarding the forfeiture of gratuity, petitioner has to seek remedy under *The Payment of Gratuity Act, 1972*.

7. In view of the aforesaid, I find that no case is made out for quashing the impugned orders and as such this petition and the application are dismissed.

(SUNIL GAUR)
JUDGE

MARCH 09, 2018
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