$~4

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

+ **LPA 201/2018**

RAVINDER GOSAIN ..... Appellant

Through: Mr. Vivek Singh, Advocate.

versus

PUNJAB & SIND BANK ..... Respondent

Through: Mr. Kittu Bajaj, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

O R D E R

% **28.11.2018**

1. The challenge in this appeal is against a judgment dated 24th January 2018 of the learned Single Judge disposing of the Appellant's WP (C) 716 of 2018 whereby the Appellant *inter alia* questioned the penalty imposed on him vide memorandum dated 14th December 2015 issued by the Chairman and Managing Director (CMD) of the Respondent Punjab and Sind Bank (hereafter 'Bank') of reduction by two stages in the time scale of pay. The Appellant also questioned the order dated 23rd January 2017 whereby his appeal was rejected.

2. The background facts are that major penalty proceedings were instituted by the Bank against the Appellant, who was at the relevant time General Manager of the Bank, by a charge-sheet dated 20th December 2012 followed by a memorandum dated 31st December 2012 in relation to

lapses/irregularities committed by him in the accounts of M/s.Majestic Hotels (P) Ltd., M/s.Star Biotech and Sh.Naresh Kumar – Godown Construction Loan while working as a General Manager at the local head office (LHO), Chandigarh from 27th December 2010 to 17th July 2012. A further charge was concerning his lapses in supervising the affairs of the Branch Office, Sector 24, Chandigarh while working as a Zonal Manager, Zonal Office-I, Chandigarh from 28th February 2009 to 23rd December 2010.

3. A departmental enquiry followed. The Enquiry Authority (EA) was an officer of the Central Vigilance Commission. The EA by a letter dated 29th October 2014 submitted his findings. Out of the 30 allegations against the Appellant 17 were held proved, 7 partly proved and 6 were not proved.

4. A copy of the report was furnished to the Appellant who submitted his reply on 2nd December 2014. This was considered by the Disciplinary Authority (DA) who by an order dated 14th December 2015 passed a detailed order accepting the finding of the EA, rejecting the contentions raised by the Appellant and inflicting on the Appellant the major penalty of "reduction by two stages in time scale of pay permanently under Clause 4(f) of the Punjab and Sind Bank Officer Employees (Discipline and Appeal) Regulations, 1981" (D&A Regulations). It must be mentioned that the DA was the CMD of the Bank.

5. The Committee of the Board of the Bank, being the Appellate Authority (AA), considered the further appeal of the Appellant and rejected it at its meeting held on 28th December 2016. This decision of the AA was conveyed

to the Appellant by a letter dated 23rd January 2017.

6. The Appellant then filed WP (C) 716 of 2018 which came to be disposed of by the learned Single Judge by the impugned judgment. The learned Single Judge declined to interfere with the orders under challenge on merits after noting that the limited scope of proceedings under Article 226 permitted the Single Judge to enquire whether the principles of natural justice had been infringed and whether the enquiry proceedings were vitiated by arbitrariness. The learned Single Judge agreed with the EA and the DA that the misconduct of the Appellant had been duly established.

7. Turning to the question of penalty, the learned Single Judge was of the view that the Respondent Bank should "suo moto invoke its review jurisdiction" under D&A Regulations and should again consider whether the penalty imposed could be justified in view of the judgment of the Supreme Court in ***UCO Bank v. Prabhakar Sadashiv Karvade*** (decision dated 20th May 2010 in Civil Appeal No. 4725 of 2010). The Bank was asked to pass an order in review within eight weeks. As regards the Appellant's grievance of delayed payment of his retiral benefits, he was permitted to make representation within two weeks and the Bank was to decide it within six weeks thereafter.

8. Pursuant to the impugned order of the learned Single Judge, the Bank once again examined the question of penalty and by a letter dated 3rd May 2018 conveyed to the Appellant that it was reiterating the penalty imposed on him by the DA as affirmed by the AA.

9. Learned counsel for the Appellant at the outset submitted that he was not inclined to challenge the fresh decision dated 3rd May 2018 in separate proceedings and should be permitted to assail not only that order but also the order of the learned Single Judge in so far as it affirmed the finding of the EA on merits in the present appeal itself.

10. The learned counsel appearing for the Appellant has been heard at length. The charge-sheet, the enquiry report, the orders of the DA and AA and the order in review have been perused by this Court.

11. It is first sought to be submitted by learned counsel for the Appellant that the charge-sheet itself was erroneous and responsibility was wrongly sought to be affixed on the Appellant for the acts of his subordinates; that he was just one of the officers in the hierarchy and he alone could not be isolated for the fastening of liability. He also took the Court through the evidence pertaining to the individual articles of charge and sought to submit that the finding of guilt in respect of those charges was not justified.

12. As already noticed, there were three articles of charge pertaining to lapses/irregularities in regard to specific accounts maintained with the Bank and a fourth general article of charge regarding improper supervision of the affairs of a branch office. The Court notes that the Appellant was in a senior managerial position and irrespective of who else in the hierarchy might be responsible for the lapses, he certainly was answerable. He cannot possibly seek to escape responsibility by pointing to his subordinates whose work he had to supervise. Even otherwise, there is ample evidence on record to show

that he was indeed responsible for the acts of misconduct with which he was charged.

13. The Court finds that not only the report of the EA but even the order of the DA has discussed the entire evidence in respect of the each of the articles of charge and given detailed reasons why the Appellant is guilty of those charges. There is a limited scope of interference with the disciplinary enquiry proceedings under Article 226 of the Constitution, as rightly noted by the learned Single Judge. With the Appellant unable to point out to any procedural error whatsoever in the conduct of the enquiry, the Court concurs with the view of the learned Single Judge that the merits of the enquiry does not warrant interference.

14. The only question that the learned Single Judge had to examine was that of punishment and here the submission of the Appellant based on the Punjab and Sind Bank Employees Pension Regulations, 1995 (Pension Regulations) found favour with the learned Single Judge. Consequently, a direction was issued to the Bank to review the aspect of punishment to be imposed on the Appellant.

15. It must be noted for the purpose of this issue that during the pendency of the enquiry proceedings, the Appellant retired. The plea of the Appellant is that the major penalty of reduction by two stages in the time scale of pay permanently in terms of clause 4(f) of the D & A Regulations was impermissible in law and for this purpose he placed reliance on ***UCO Bank v. Prabhakar Sadashiv Karvade*** (supra).

16. Under Regulation 46 of the Pension Regulations, provisional pension is payable to an employee who retired on attaining the age of superannuation or otherwise against whom departmental proceedings were instituted and continued. However, he is not entitled to gratuity till the conclusion of such proceedings. Regulation 43 of the Pension Regulations which permits the Competent Authority (CA) to withhold or withdraw the pension reads thus:

> "**43. Withholding or withdrawal of pension**
> The competent authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pension is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct.
>
> Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension, per mensem payable under these regulations."

17. Under Regulation 48 of the Pension Regulations the CA may withhold or withdraw pension if in departmental or judicial proceedings, "the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or acts done fraudulently during the period of his service." The board is to be consulted before a final order is passed. The second proviso to Regulation 48 of the Pension Regulations reads thus:

> "Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service."

18. In the present case, in terms of second proviso to Regulation 48 read with Regulation 43(1), it was open to the CA to propose a cut in the pension since the disciplinary proceedings which commenced while the Appellant was still in service continued thereafter.

19. In the present case, the reduction to a lower stage in the time scale of pay for a specified period has the effect of resulting in a cut in the pension as far as a retired employee is concerned and this is permissible in terms of Rule 43 read with Rule 48(1) of the Pension Regulations. In the considered view of the Court, the penalty imposed on the Appellant was not impermissible in terms of the D&A Regulations as well as the Pension Regulations.

20. The facts in the case of ***UCO Bank v. Prabhakar Sadashiv Karvade*** (supra) were different. There the penalty imposed on the employee who had retired before the conclusion of disciplinary proceedings was one of dismissal from service. It was in the above context that the Supreme Court held that the said order was *ex facie* illegal. The observation that there was nothing in the language of the Regulations from which it could be inferred that the DA had the power to impose a "substantive punishment on a retired officer" has to be understood in the above context. It was in the context of the punishments like dismissal or removal from the service that the Supreme Court observed that none of the substantive penalties specified in Regulation 4 could be imposed.

21. Consequently, this Court finds no reason to interfere with the decision of the Bank communicated to the Appellant by the letter dated 3rd May 2018

pursuant to the impugned judgment of the learned Single Judge.

22. For the aforementioned reasons, the appeal is dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 28, 2018 /tr