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

% *Date of Judgment: 9th October, 2018*

+ LPA 574/2018

K M TOMAR

..... Appellant

Through Mr. K.C. Mittal, Ms. Ruchika Mittal,
Mr. Amit P. Shahi & Mr. Yugansh
Mittal, Advocates.

versus

STATE BANK OF INDIA & ORS

..... Respondents

Through Mr. Rajiv Kapur & Ms. Khushboo
Kapur, Advocates for R-1/SBI.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J. (ORAL)

CM APPL 42104/2018 (exemption)

1. Exemption is allowed, subject to all just exception.
2. The application stands disposed of.

CM APPL 42102/2018 (delay in re-filing)

3. This application has been filed by the applicant/appellant seeking condonation of 97 days delay in re-filing the appeal.
4. Prayer made in this application is not opposed. Accordingly, the same is allowed. Delay of 97 days in re-filing the appeal is condoned.
5. The application stands disposed of.

CM APPL 42101/2018 (delay in filing)

6. This application has been filed by the applicant/appellant seeking condonation of 5 days delay in filing the appeal.

7. Prayer made in this application is not opposed. Accordingly, the same is allowed.
8. Delay of 5 days in filing the appeal is condoned.
9. The application stands disposed of.

LPA 574/2018 & CM APPLs 42103/2018 (waiving of cost)

10. Challenge in this appeal is to orders dated 08.12.2016 passed in W.P. (C) 791/2000 and dated 10.04.2018 passed in Review Petition no.147/2018 seeking review of the order dated 08.12.2016.
11. Mr. Mittal, counsel for the appellant submits that the punishment of dismissal is not commensurate to the offence. He further submits that there has been no loss to the bank and thus the bank should have considered all the relevant facts while passing the order of dismissal.
12. Mr. Kapur, counsel for respondent no.1/SBI submits that no such ground was urged before the learned Single Judge at the time of hearing the writ petition neither such a ground was taken in the petition. He submits that the only ground which had been urged before the learned Single Judge was that in case the disciplinary authority disagrees with the finding of enquiry officer then a show cause notice and an opportunity of hearing must be given to the charged officer before disagreeing with the finding of the enquiry officer. He submits that this submission was factually incorrect and rightly rejected by the learned Single Judge.
13. We have heard learned counsel for the parties. It would be useful to reproduce paras 3 and 4 of the order dated 08.12.2016 passed in W.P. (C) 791/2000 by learned Single Judge, which read as under :

“3. In my opinion, factually, the argument of the petitioner is misconceived, though legally there is no

dispute that if the disciplinary authority disagrees with the findings of the Enquiry Officer then a show cause notice and a hearing must be given to the charged officer before disagreeing with the findings of the Enquiry Officer. To show that the argument urged on behalf of the petitioner is factually incorrect that the disciplinary authority has set aside the findings of the Enquiry Officer even with respect to those imputations of misconduct of which petitioner is exonerated, let us refer to the order of the disciplinary authority dated 30.12.1991 and which order reads as under:-

“Ref./No. VIGL/DP.1671

Date 30.12.91

Dear Sir,

STAFF : SUPERVISING

I refer to the chargesheet bearing No. DAC/1389 dated the 31st October, 1989 served upon you for the alleged irregularities committed by you while posted as Branch Manager at Karawal Nagar Branch and subsequent departmental enquiry ordered into the charges leveled against you. The findings of the Inquiring Authority have since been received. A copy has already been sent to you.

2. The Disciplinary Authority has considered the findings of the Inquiring Authority and your submissions thereto, a copy of the „Note“ containing the findings of the Disciplinary Authority is enclosed.

3. I have considered the records pertaining to the enquiry in their entirety and agree with the findings recorded by the Disciplinary Authority.

4. Taking into account the gravity of acts of misconduct established against you, I have decided to impose upon

you the penalty of Dismissal in terms of Rule 49 (h) of the State Bank of India (Supervising Staff) Service Rules read with Rule 50 (3) (iii) *ibid*. Accordingly, you are thereby dismissed from the Bank's service with immediate effect. You will also not be eligible for salary and allowances for the period of suspension except the subsistence allowance already paid to you.

5. If you desire to make an appeal to the Appellate Authority against my order imposing upon you the penalty specified above, you may do so within 45 days from the date of receipt of this letter by you, as provided for in Rule 51 of the State Bank of India (Supervising Staff) Service Rules.

6. A copy of this letter has been placed in your service file.

Yours faithfully,

Sd/- CHIEF GENERAL MANAGER
(APPOINTING AUTHORITY)" (underlining added)

4. A reading of paragraph 2 of this order shows that the petitioner's submissions have been considered. Paragraph 3 of this order dated 30.12.1991 shows that the findings of the Enquiry Officer have been upheld in their entirety and whatever is held by the Enquiry Officer has been upheld by the disciplinary authority, and therefore it is factually incorrect to argue that the disciplinary authority has set aside the findings and conclusions exonerating the petitioner with respect to some of the imputations of misconduct. I do not find any such conclusion in the order of the disciplinary authority dated 30.12.1991."

14. Reading of the aforesaid order makes it abundantly clear that the submission made by counsel, who had appeared before the learned Single Judge was factually incorrect.
15. Mr. Mittal relies on a decision rendered by Supreme Court in the case of **Allahabad Bank & Ors. Vs. Krishna Narayan Tewari** reported in 2017 (1) Scale 89 to submit that this Court should exercise its jurisdiction on the proportionality of the punishment so awarded. Para 8 of **Allahabad Bank & Ors** (*supra*) reads as under :

“8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would

practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised.”

16. We are unable to accept the submission of the learned counsel for the appellant for the reason that in the order passed by learned Single Judge and review order, no such prayer was made and no such foundation has been led in the writ petition.
17. At this stage, Mr. Mittal submits that the appellant is a jobless person and a senior citizen who was dismissed from service in the year 1991 and hence, the order of imposing cost of Rs.20,000/- may be set aside.
18. For the reasons explained by Mr. Mittal and keeping the age and financial condition of the appellant, we modify the order passed in the review petition to the extent of imposing cost and the same is waived off.
19. In aforesaid terms, the appeal and the application are disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

OCTOBER 09, 2018

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