

\$~

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

Reserved on: 15.03.2018.
Date of Decision: 20.09.2018.

+ **LPA No.173/2015**

PUNJAB NATIONAL BANK ...Appellant
Through: Mr.Jagat Arora, Adv. and Mr.Niraj
Kumar, Adv.

versus

M.L. BANSAL ...Respondent
Through: Mr.Ashok Bhalla, Adv.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The present intra Court appeal impugns the order dated 16th January, 2015 passed by the learned Single Judge in WP (C) No.824/1999 whereby while allowing the writ petition filed by the respondent, the penalty of removal from service imposed upon the respondent by the appellant/Bank has been modified to that of compulsory retirement.

2. The facts as emerge from the record, are that the respondent/employee while working as a Chief Inspector, Inspection & Control Division Head Office of the appellant/Bank, was issued a chargesheet dated 11th March, 1994 on the ground that he had committed

irregularities while working in the Credit Department at the Head Office of the erstwhile New Bank of India and had, thus, not discharged his duty with utmost integrity by not taking adequate steps to ensure the protection and interest of the appellant/Bank. The fulcrum of articles of charge was that the respondent made a recommendation to the Board of the appellant/Bank for facilitating grant of a loan to a party regardless of the shortcomings involved in it. Upon the respondent denying the charges, a departmental inquiry was held against him whereafter the Inquiry Officer submitted his report holding him guilty of the charges, which are reproduced as under:-

“Article I

He recommended the proposal of the party in haste in order to facilitate them and jeopardised bank’s interest.

Article II

He extended undue favour to the party and jeopardised Bank’s interest.

Shri Bansal thus did not discharge his duties with utmost integrity, honesty, devotion and diligence and failed to take all possible steps to ensure and protect the interests of the Bank.”

3. It further transpires from the record that the Disciplinary Authority of the Appellant/Bank vide its order dated 22nd June, 1995, accepted the report of the Inquiry Officer and imposed punishment of removal from service on the respondent with a classification that the same would not be treated as a disqualification for any future employment to be pursued by the respondent. Aggrieved by the penalty order dated 22nd June, 1995, the respondent preferred an appeal dated 17th July, 1995, before the Appellate Authority which was rejected vide order dated 25th August, 1995.

4. The respondent, thereafter, preferred a review petition dated 17th October, 1996 before the Board of the appellant/Bank, which petition met with the same fate, having been rejected vide order dated 11th December, 1996.

5. Aggrieved by the penalty of removal from service imposed upon him, which penalty was also maintained by the Appellate Authority, the respondent preferred a writ petition before this Court. It appears that initially, the writ petition was argued in detail on various aspects in which the respondent had not only urged the ground of delay in initiation of proceedings by contending that the chargesheet had been issued to him seven years after the date of the alleged lapse on his part but had also argued on the ground that the inquiry had been conducted without providing him with the services of a defence assistance and that the inquiry officer had held him guilty without appreciating the basic fact that the onus to prove the charges against him was on the appellant/Bank. It, however, transpires that during the course of hearing, the respondent had confined his relief to the reduction of disproportionate penalty of removal from service imposed on him and had, therefore, urged only ground (S) as noted in the impugned order.

6. In support of his limited aforesaid ground, the respondent had contended that the charges against him were only of procedural irregularities and even otherwise, he was only a part of the chain of the persons dealing with the processing of the said loan as he was neither the original forwarding authority with respect to the loan nor the final loan sanctioning authority. The learned Single Judge, upon consideration of the entire conspectus of the matter, including the fact that the petitioner was only at the third stage out of the four stages of the administrative chain provided for sanctioning of the loan, the fact that the petitioner had

rendered 28 years of service with only one minor penalty of withholding of promotion for one year and the fact that the matter related to a chargesheet issued twenty one years ago, had allowed the writ petition to the limited extent by modifying the penalty from that of removal from service to compulsory retirement by holding as under:-

“10. No doubt, Courts themselves do not impose punishment and ordinarily matters are remanded back to the departmental authorities which impose punishment, but, simultaneously there are judgments of the Supreme Court that considering the large number of years which pass from the date of passing of the penalty order by the departmental authorities and till the year when the case comes up for final decision in the Court, Courts can in order to avoid any further delay themselves direct imposition of a particular punishment. In the present case, chargesheet is of the year 1994 and today we are in the year 2015 i.e around 21 years later on. This huge period of 21 years persuades me that any procedural irregularity of forwarding a note dated 28.1.1987 which is found against the petitioner, the petitioner not being either the original forwarding authority or the final loan sanctioning authority, and considering that the petitioner had 28 years of service record which will get wiped out on his removal from service thus resulting in his not getting any monetary emoluments of a retired employee as per rules, I order that the petitioner instead of being imposed the penalty of removal from service will be imposed the penalty of compulsory retirement in terms of the disciplinary authority's order dated 22.6.1995.”

7. Impugning the aforesaid judgment, the present appeal has been filed by the Appellant/Bank. The record shows that while issuing notice in the appeal, vide order dated 24th March, 2015, this Court had directed that the operation of the impugned order shall remain stayed and, thus, the respondent continues to be without any retiral benefits.

8. Before us, Mr.Jagat Arora, learned counsel for the appellant besides reiterating the same pleas as taken by him before the learned Single Judge, to contend that the respondent had been found guilty of serious charges in the departmental proceedings also urges that the learned Single Judge has erred in substituting the penalty imposed on a misplaced sympathy. He further contends that in any event, in case the learned Single Judge was of the view that the penalty imposed on the respondent was disproportionate in any manner, it was not open for him to substitute the penalty and the appropriate course of action to be followed in such an eventuality was to remand the matter back to the Disciplinary Authority or to the Appellate Authority with a direction to pass an appropriate order of penalty. He, thus, submits that the learned Single Judge has overstepped his power under judicial review by assuming the role of the Departmental Authorities which course of action is not permissible in law. In support of his contentions, learned counsel for the appellant relies on *Life Insurance Corporation of India & Ors. Vs. S. Vasanthi (2014) 9 SCC 315; Chief Executive Officer, Krishna District Co-operative Central Bank Ltd, & Anr. Vs. K. Hanumantha Rao & Anr. 2017 (152) FLR 131 & Chennai Metropolitan Water Supply and Sewerage Board & Ors. v. T.T.Murali Babu 2014 (141) FLR 772.*

9. On the other hand, Mr.Ashok Bhalla, learned counsel for the respondent while supporting the impugned judgment, contends that the learned Single Judge has considered every contention of the appellant in detail, not only with regard to the factual material, but also with regard to the role of the respondent in the alleged incident as also the fact that the penalty was wholly disproportionate keeping in view his 28 years long service. He further submits that the learned Single Judge has taken a

considered decision not to remand the matter back to the Appellant/Bank at this stage only in view of the fact that a period of twenty years had already elapsed from the date of imposition of the penalty on the respondent who is already a senior citizen. He also contends that the course of action adopted by the learned Single Judge in substituting the penalty imposed on the respondent was in consonance with the various decisions of the Apex Court wherein it has been consistently held that in cases where the Court finds that the remand of the matter to the Disciplinary Authorities would further delay the matter, the Court can substitute the penalty in exercise of its judicial review on its own.

10. From the rival contentions raised before us, we find that the parties are not at any material variance, in so far as the factual matrix is concerned and the main plea pressed by the learned counsel for the appellant is that even if the learned Single Judge was of the view that the penalty imposed on the respondent was in any manner disproportionate, the learned Single Judge ought to have remanded the matter back to the appellant/Bank instead of substituting the penalty imposed by the appellant.

11. Before we deal with the aforesaid contention, certain vital aspects as emerging from the record need to be noted. The aspect which needs to be noted is that the entire case against the respondent relates to an incident, where the respondent was alleged to have failed to exercise due care while processing a single loan transaction proposal, which proposal had been initiated by the officers junior to him in the hierarchy and was admittedly approved by the Board, which alone was the sanctioning authority for the loan. Mr.Arora has not been able to dispute the position that the Board itself failed to notice the alleged short comings of the said loan transactional proposal for which the respondent is sought to be

penalised and despite pointed queries by this Court, nothing has emerged on record to show that any action was taken against any member of the board for the same elapse, which the respondent is alleged to have committed.

12. It is, thus, evident that the case against the respondent was only of some procedural irregularities and at no stage was the respondent charged with any misconduct relating to financial irregularities or misappropriation.

13. The second aspect that needs to be considered is the entire basis of the charge against the respondent pertain to the initiation of a note by the respondent on 28.01.1987 and the charge-sheet in this regard was issued to him only on 11.03.1994 i.e. after an inordinate delay of more than seven years. The fact that the respondent had rendered almost blemishless service of almost 29 years, wherein except one minor penalty, whereby his promotion had been withheld for one year, nothing untoward was ever found in his record, also remains uncontroverted.

14. In the light of the aforesaid circumstances, when we examined the impugned judgment, we find that the learned Single Judge was fully conscious of the fact that the Court should in the ordinary course remit the matter back to the Disciplinary Authority for passing a fresh order of penalty but keeping in view the time period which had already elapsed since the respondent's removal from service and only with an aim to shorten litigation for a senior citizen who had served the Bank for almost 29 year, had taken upon him the task of modifying the penalty of removal from service to compulsory retirement. The only effect of the modified penalty in the evening of his life, would be to at least get some retiral benefits.

15. We may now refer to the decisions relied upon by the learned counsel for the Appellant and find that in so far as the decision in ***Chief Executive Officer, Krishna District Co-operative Central Bank Ltd. & Anr. Vs. K. Hanumantha Rao & Anr, 2017 (152) FLR 131*** concerned, the same relates to case where the Apex Court after considering the nature of misconduct, had opined that in the facts of those cases, the penalty imposed by the Disciplinary Authority could not be held to be disproportionate and had, therefore, set aside the decisions of the High Court, allowing the writ petitions on the premise that the penalty was disproportionate.

16. In so far as the decision in the case of ***Life Insurance Corporation of India & Ors. Vs. S. Vasanthi (2014) 9 SCC 315*** is concerned, on which heavy reliance has been placed by learned counsel for the appellant, we find that the said decision reiterates the well settled legal position that Court cannot assume the function of Disciplinary/Department Authorities to decide the quantum of punishment.

17. On the other hand, we find that the decision in the case of ***Allahabad Bank & Ors. Vs. Krishna Narayan Tewari 2017 (1) SCALE 89*** relied upon by the respondent, which deals with a case wherein the High Court, after finding that the inquiry and the order passed by the Disciplinary Authority as also by the Appellate Authority was vitiated, had exercised its power of judicial review in directing the release of the retiral benefits of the employee instead of remanding back the matter for a fresh inquiry. We find that the Apex Court, while dealing with the aforesaid situation had observed that there may be situations where because of a long time lag or such other supervening situations, where the writ Court considers it as unfair harassment or otherwise unnecessary

to direct a fresh inquiry or fresh order by the Competent Authority, it may pass a considerable order itself. Thus we have no hesitation in rejecting the contention of the learned counsel for the appellant that in no circumstances should the Court substitute the penalty imposed on the employees.

18. At this stage, we may also note that in ***Jai Bhagwan Vs. Commr. of Police & Ors. 2013 (8) SCALE 392*** and ***S.R. Tewari Vs. Union of India & Anr. 2013 (7) SCALE 417***, the Apex Court had substituted the penalty imposed on the employees, keeping in view the long period of time which had elapsed from the date of imposition of penalty.

19. In the light of the settled legal position and having considered the facts of the present case, we find absolutely no reason to defer with the course of action adopted by the learned Single Judge. In our view, in the light of the admitted position that the charge against the respondent related to procedural irregularities committed by him in the year 1994 and that too when he was only part of the hierarchy of officers, which was responsible for processing the loan proposal, the learned Single Judge was justified in modifying the penalty imposed on the respondent by taking into consideration respondent's 29 years of almost blemishless service as also the fact that the penalty order related to the year 2015, in no case can the Court interfere with the quantum of penalty. In our opinion, the justification to exercise of such a power by the High Court, cannot be put in a straight jacket formula and would necessarily depend upon the facts of each case.

20. In our considered opinion, in the facts of the present case, the remand of the matter back to the appellant at this belated stage for re-

consideration of the penalty to be imposed on the respondent when he is already in the evening of his life, is not at all warranted.

21. For the aforesaid reasons, we find no merit in the present appeal which is dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

SEPTEMBER 20, 2018/aa