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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19.02.2019

Pronounced on: 12.03.2019

+ W.P.(C) 2908/2016

AKASH ARYA

..... Petitioner

Through Mr.Shanker Raju, Adv. with
Mr.Nilansh Gaur, Adv.

versus

PUNJAB NATIONAL BANK & ORS

..... Respondents

Through Mr.Rajat Arora, Adv. with Mr.Murad
Khan, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks directions as under:
 - a) Quash and set aside impugned penalty order dated 30.05.2013
(Annexure P-1) impugned appellate order dated 29.08.2014
(Annexure P-2) and the impugned order in review dated
09.06.2015 (Annexure P-3) and also the inquiry report dated
09.10.2012 at Annexure P-4 and direct the respondents to reinstate
the petitioner in service with all consequential benefits;

- b) Declare Regulation 4(i) of PNB Officers (D&A) Regulations, 1977 (**Annexure P-5**) as ultra vires on being discriminatory to the extent of denial of superannuation benefits to the officer employee as compared to workman employee or in the alternative;
- c) Extend the benefit of Clause 6 (b) of Bipartite Settlement dated 10.04.2002 to the petitioner and he be declared entitled to superannuation benefits and gratuity etc. with arrears from the date of removal.

2. The petitioner has joined Punjab National Bank as Management Trainee on 26.02.1990. When the petitioner was posted as Manager of the respondent bank at Gautam Budh Nagar on 11.09.2009, a performance certificate was issued to the petitioner on 20.05.2010 indicating that the petitioner achieved the goal of budget with impressive growth of the bank. During the course of working as Manager, the petitioner was sanctioning loans in the different heads which were being duly repaid by the customers as per loan agreement and methodology of the bank. However, the petitioner was served a chargesheet alleging that the petitioner did not conduct proper pre-sanction approval and sanctioned various loans without recommendation of the second officer and also failed to observe proper post-sanction follow

up in various borrower accounts. It was also alleged that the petitioner failed to follow Bank's system and procedure. Though the petitioner was put under suspension, however, the same was revoked vide order dated 08.10.2011. The petitioner filed a reply to the chargesheet while denying the allegations and stated that due to his efforts various new accounts were opened resulting into deposit of ₹60 crores. The petitioner has also highlighted that accounts were opened for getting land compensation. The petitioner also mentioned procurement of ₹70 lakh as LIC premium. As per the record in 2010, Kasana Branch of the Bank earned a profit of nearly ₹2 crores and this was followed in the next year. Each and every loan was sanctioned with the tacit oral consent as well as written orders except few files which were unintentionally left unrecommended of the second man working at the time including Sh. V. K. Jain and also recommended by Sh. H. K. Bhatt and Ms. Gargi Gupta on oral as well as tacit concerned and Sh. V. K. Jain, left certain files unrecommended. It is further stated that all the loans were safe and the loan amount regularly reimbursed by the customers, thus ruled out any loss to the bank.

3. However, the respondent was not satisfied with the reply of the petitioner and thereafter, an Inquiry Officer was appointed. During the

course of inquiry, only one witness i.e. Sh. M. L. Sharma, Internal Senior Auditor was listed as a witness to prove document number 146. Although, the files were 152 in number and none of it was testified by their maker regarding genuineness of the documents. These documents could not have been used against the petitioner as per Regulation 6 (13) of the Rules. During the course of inquiry, the Presiding Officer submitted documentary evidence marked as ME-1 to ME-159. The petitioner was also asked to submit the defence documents for which he preferred a list showing the relevant documents and the reference to the charge and also the attendance register. But the Inquiry Officer had insisted without any context the submission of relevancy of the documents and ultimately despite showing the account number described in the chargesheet, the petitioner in the absence of further details of the documents like the documents submitted for loan, the Inquiry Officer denied these documents to the petitioner.

4. During the course of inquiry, Sh. M. L. Sharma was called for examination. Since the report of Sh. M. L. Sharma was not ready to prove the documents, accordingly, his evidence was not recorded. The Inquiry Officer has examined a new witness Sh. V. K. Jain, who has also not sanctioned all the loans etc., processed by the petitioner yet, the documents

were not proved by its maker during the course of inquiry. After the examination of Sh. V. K. Jain which was objected to by the petitioner, the EO directed the presenting officer to submit a written brief. Since the petitioner was denied defence documents which were in possession of the bank, there was no occasion for him to have submitted a list of defence witnesses. Ultimately without affording the petitioner a reasonable opportunity to have defence documents and then examined defence witnesses, the presenting officer was persuaded to submit the written brief.

5. Learned counsel appearing on behalf of petitioner submits that as per the charges, two kinds of accounts i.e. referred and quoted were mentioned by the petitioner in his defence brief. The Inquiry Officer without taking version of the petitioner in his defence and without recording elaborate reasons as to how the Articles of Charge have been established in so far as Articles of Charge 1 is concerned selectively proved the Charges. But, regarding charge 2, since the files could not be located but later on found did not prove this charge and accordingly, the inquiry report has held that the charge partially proved vide Annexure P-4.

6. Learned counsel submits that the petitioner was asked to submit representation on the charge and the same was submitted by the petitioner

while taking exception to vagueness of the charge against the Rules. The petitioner has also taken the ground that the witnesses who were to prove the documents had not been examined and the inquiry was not conducted in a fair manner. It was also contended that the conclusion of the inquiry officer was based on non-proved exhibits and that all the loans were made in the line of Headquarter Guidelines and were duly reported to the competent authority. But the disciplinary authority mechanically agreed with the findings of the inquiry officer and without recording reasons.

7. It is further submitted that the management exhibits were verified but no witness to prove the documents was examined. The disciplinary authority travelled beyond the scope of the inquiry and imposed major penalty of removal from service upon the petitioner by treating the suspension period as not spent on duty. The disciplinary authority wrongly considered the fact that a financial loss of around ₹2 Crores has resulted to the Bank, whereas, to this regard no specific charge made against the petitioner. The loans were sanctioned to the right persons and are being repaid to the bank in absence of any proof of alleged loss i.e., for non-payment in notice or DRT proceedings being filed. The loan period for repayment is ten years as per the guidelines and this is yet to expire. This disciplinary authority has not

applied for Bipartite Settlement dated 10.04.2002 despite, the petitioner being an employee is entitled for the superannuation benefits. Being aggrieved the petitioner preferred an appeal on 23.07.2013 and the same was dismissed by the appellate authority vide Annexure P-2. The petitioner filed review of the said order and the same was rejected vide order dated 09.06.2015 by maintaining the penalty but without going into its proportionality. Although the points raised by the petitioner in his review have been reproduced but no finding has been recorded on it.

8. Learned counsel further submitted that the petitioner has been punished mainly on the alleged loan of ₹2 crores to the bank, however, no such charge was framed against the petitioner in the inquiry. No material or evidence has been produced or adduced to prove the aforesaid charge. The petitioner has been deprived of a reasonable opportunity to effectively defend this part of charge in violation of the principles of natural justice.

9. It is further smutted that there were two charges against the petitioner, one is partly proved and second is not proved. Therefore, the disciplinary authority and the appellate authority had to impose the penalty on seeing the misdemeanour committed by the petitioner which has not been taken care in the present case. To strengthen his arguments, counsel for the petitioner has

relied upon the case of *S. R. Tiwari vs Union of India and Anr.: (2013) 6 SCC 602* whereby held that it is mandatory for the authority to see the proportionality.

10. Learned counsel further submitted that the document filed before the Presenting Officer have not been proved by any of the witnesses. The same is against the observation of this court made in *W.P.(C) No. 8726/2015 titled as Union of India vs. Shameem Akhtar* whereby held that charges levelled against delinquent official is to be proved in the inquiry before any penalty is imposed. In the absence of any witness and in the absence of any opportunity to cross-examine a witness would be against the canon of natural justice and the same cannot be treated as a mere formality. Thus, the present petition deserves to be allowed.

11. On the other hand, learned counsel for the respondent bank submitted that charge-I against the petitioner was on 43 accounts, however, proved on 4 accounts and not proved on remaining accounts. It is further submitted that during preliminary hearing, the petitioner did not accept the charges levelled against him, accordingly, further proceedings were conducted by the Inquiry Officer. The petitioner preferred to take assistance of Sh. D. S. Solanki, Sr. Manager to defend his case in the inquiry on 20.06.2012 and

requested that his consent letter would be submitted on record before the next date of inquiry or presented on the next date of inquiry. Accordingly, on 07.07.2012 petitioner neither brought his DR nor presented his consent letter and assured that on the next date of inquiry his defence representative would be present in the proceedings. Subsequently, on 21.07.2012, the petitioner requested to change his defence in place of Sh. D. S. Solanki. Accordingly, permission was given by the Inquiry Officer to engage Sh. A. K. Singh, Sr. Manager as his DR. Consent letter was obtained and placed on record. Presenting Officer submitted documentary evidences marked as ME-1 to ME-159 in support of charges levelled against the petitioner during the course of inquiry. All these documents were made available to the petitioner and verification from original was allowed to the petitioner and he confirmed on 09.08.2012 for having done the verification from the originals at branch. The petitioner was advised to submit a list of documents which were required to defend his case. He did not send any list in the given time and sought further time telephonically. The inquiry officer had received one generalised list without any relevancy to the charge on 28.08.2012 which was declined by him vide his letter dated 28.08.2012 on the ground there was no specific mention of any particular of the accounts and specific

documents required in those accounts. Thus, advised vide his letter dated 28.08.2012 to bring specific list of documents relevant to the alleged charges for his defence on 05.09.2012 and submit the same during the course of inquiry proceeding. But the petitioner failed to submit any specific list for defence documents and stated that he had not prepared any list other than already submitted which is as per the chargesheet. The presenting officer called two witnesses: 1) Sh. M. L. Sharma (Sr. Auditor) and 2) Sh. V. K. Jain (officer). However, the witness of Sh. M. L. Sharma was disallowed by the Inquiry Officer acceding to the objections raised by the defence. Proper opportunity was given to the defence to cross examine the other witness. Thus, the inquiry was conducted in fair, impartial and transparent manner as per bank's norms as well as observing principles of natural justice. After completion of inquiry, both the parties were given opportunity to give their written brief so that they may again present any leftover point/logic to support their case. Accordingly, PO had submitted his written brief to the inquiry officer on 14.09.2012 and the petitioner's written brief was received on 04.10.2012. The Inquiry officer submitted his report dated 09.10.2012 holding the imputation of charge I-4, 19, 28, 30, 31, 35, 40 and charge-II as not proved and other charges as proved.

12. Learned counsel for the respondent further submitted that since the matter has been considered by the respective departmental authorities, namely the inquiry officer, disciplinary authority, appellate authority and reviewing authority of the bank. The departmental authorities are the best judge in respect of the departmental matters and the courts/tribunals should not exercise its power under Article 226 of the Constitution of India. To strengthen his arguments, counsel for the respondent has relied upon the case of ***Apparel Export Promotion Council vs. A. K. Chopra : AIR 1999 SC 625*** whereby the Supreme Court has observed as under:

“The High Court appears to have overlooked the settled position that in departmental proceedings, the Disciplinary Authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power / and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court, in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that findings were wholly perverse and / or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an Appellate Authority, over factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for

that of the departmental authorities. Even in so far as imposition of penalty or punishment or penalty is concerned, unless punishment or penalty imposed by the Disciplinary or the Departmental Appeal it shocks the conscience of the High Court, it should not normally substitute its own opinion or and impose some other punishment or penalty.”

13. I have heard learned counsel for the parties.

14. In case of ***Debotosh Pal Choudhary vs. Pubjab National Bank & Ors: AIR 2002 SC 3276***, it is observed by the Hon’ble Supreme Court that fulfilment of some of the requirements of Regulation 6(5) of the Regulations is purely procedural in character. Unless in a given situation, the aggrieved party can make out a case of prejudice or injustice, mere infraction of this regulation will not vitiate the entire inquiry.

15. The documents which were official documents pertaining to loan transactions were proved and it was not necessary that the maker of the document had to be examined to prove the document. Once the documents are part of the records and pertains to loan transactions, the same can be proved by witness of the bank to prove the authenticity and veracity of the documents. It is not necessary that for each documents it is only the maker to prove about the veracity of the documents. The departmental agencies are not governed by strictly as per the Evidence Act.

16. The petitioner being an officer cadre employee is governed under provision of the PNB Officers' Employee (Discipline and Appeal) Regulations, 1977. The petitioner had also vide order dated 05.04.2016 given up his claim with regard to the vires of the regulations. Bipartite settlement would not apply in the case of the petitioner. The Pension Regulations are statutory in nature and pension is paid to the officers as well as workmen employees in terms of Pension Regulations 1995. The inquiry conducted against the workmen is in terms of Bipartite Settlement, whereas, in respect of an officer employee it is in terms of the Officers Employees (Discipline & Appeal) Regulations. The charges levelled against the petitioner were grave and serious in nature and it was in pursuant to the charge sheet, a departmental inquiry was constituted and punishment of removal from service was awarded to him.

17. It is pertinent to mention that during the inquiry proceedings the petitioner was advised to submit a list of documents required to defend his case. The petitioner did not send any list in the given time and sought further time telephonically. The Inquiry Officer received one generalised list on 28.08.2012 without any relevancy to the charge which was declined by him vide letter dated 28.08.2012 stating there was no specific mention of any

particulars of the documents. Moreover, he was advised vide letter dated 28.08.2012 to bring specific list of documents relevant to the alleged charges for his defence on 05.09.2012 and submit the same during the course of inquiry proceedings. But the petitioner failed to submit any specific list for defence documents and stated that he had not prepared any list other than already submitted. Accordingly, the Inquiry Officer observed that as per the list available on record, it specify the details of the account and name of the documents, however, the list submitted by the petitioner neither specify the details of accounts and the specific document of the said account.

18. Moreover, the inquiry officer has duly considered the objection raised by the defence during the inquiry proceedings held on 05.09.2012 and closed the evidence of Sh. M. L. Sharma while recording that MW-1 is not a relevant witness in the absence of investigation report. Thus, claim of the petitioner has failed as the inquiry officer had duly considered his objection during the inquiry proceedings and gave his findings on the basis of oral as well as documentary evidences led before him.

19. It is pertinent to mention that there is no Regulation 10 (b) in the PNB Officers' Employee (Discipline and Appeal) Regulations, 1977. The procedure for imposition of penalty has been prescribed under Regulation

6(b) of the said Regulations. As discussed above all the relevant documents had been supplied to the petitioner and no prejudice has been caused to him. Moreover, there is no violation of Regulation 6(16) as alleged. Ample opportunity was provided to the petitioner to submit the documents, he intends to produce in his defence but he did not produce list of specific documents for which he himself is responsible. Neither the petitioner produced the defence exhibits nor defence evidence despite opportunity was given by the inquiry officer. The charge-I against the petitioner is that he sanctioned Term Loan/KCC to the borrower, without conducting proper pre-sanction appraisal. In various cases there is no loan application, but blank and incomplete application. He also sanctioned Term Loan Tractor/KCC to the borrowers without conducting proper pre-sanction appraisal. In many cases there is no photo of borrower. He also did not conduct proper pre sanction appraisal while sanctioning credit facilities. Recklessly, in accounts there is no photo ID/not verified from original. He sanctioned Term Loan Tractor and KCC to borrowers without obtaining Khatuani and not verified from original as per bank's guidelines due to which it is established during the inquiry that the petitioner has caused ₹2 crores loss to the bank.

20. In view of the above facts and circumstances, I find no merit in the present petition and the same is, accordingly dismissed with no order as to cost.

(SURESH KUMAR KAIT)
JUDGE

MARCH 12, 2019
@mit/ab

