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

Reserved on: 27th March, 2019

Decided on: 8th April, 2019

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LPA 411/2018

BHUPENDER SINGH

..... Appellant

Through: Mr. C. Mohan Rao with Mr. Lokesh
K. Sharma & Mr. Anuj Kumar,
Advocates.

versus

**GENERAL MANAGER (HRM) & DISCIPLINARY
AUTHORITY, BANK OF BARODA & ORS.**

..... Respondents

Through: Mr. Pramod Gupta with Ms. Vrinda
Arora & Ms. Archana Pandey,
Advocates for BOB.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I. S. MEHTA

J U D G M E N T

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Dr. S. Muralidhar, J.:

1. This appeal is directed against an order dated 27th April, 2018 passed by the learned Single Judge dismissing the Appellant's writ petition being W.P.(C) No.17579/2006 in which he had challenged, *inter alia*, an order passed by the Disciplinary Authority ('DA') of the Bank of Baroda (Respondent No.1) dated 31st January, 2005 imposing upon him the penalty of dismissal from service and the order dated 10th May, 2005 of the Appellate Authority ('AA'), affirming the dismissal order.

Background facts

2. The Appellant joined the bank on 26th February, 1973 and over the years earned consecutive promotions. On 30th September, 1992, he took over as Senior Branch Manager of the East of Kailash ('EOK') Branch in New Delhi. According to him, at that time the total net profit of the bank as a whole in the year 1992-93 was just Rs.8 crores. The EOK Branch was 16 years old with a business of Rs.14 crores and the profit was Rs. 25 lacs.

3. The Appellant remained in the Branch for two years and according to him during this period the profit of the EOK Branch increased four folds from Rs.25 lacs to Rs.108 lacs.

4. According to the Appellant, when he joined the EOK Branch on 30th September 1992, he realized that the General Ledger ('GL') Heads of the Branch were not balanced since 1985-86. There were huge 'house-keeping arrears' in the branch. The Appellant, while increasing the business and profit of the bank, also undertook the job of completing the house-keeping arrears and balancing the accounts. Around this time, the bank had also commenced the computerization of the operations of the branch. This, according to the Appellant, added to the confusion.

5. According to the Appellant, he was working with a less number of staff during this time. He states that the staff crunch had become so severe that peons were handling clerical jobs and the officers were forced to manage counters and do clerical duties. On 22nd January 1993, the Appellant addressed a letter to the Regional Office pointing out that there was a severe shortage of staff and the regular clerks were not available and that their tasks

were being performed by the officers and peons. The computers received in the Savings Department could not be started due to non-availability of a clerk to run it.

6. According to the Appellant, during this time he received several commendations letters, including the letter dated 6th April, 1993 from the Regional Manager and letter dated 27th July, 1993, the Head of Northern Zone.

7. In August, 1994, the Appellant was transferred from the EOK Branch. Thereafter, he continued to work in the bank for 11 years in various positions. In 1995, he was promoted as Chief Manager. He received a commendation letter on 16th October, 1996 from the Zonal Office.

8. In 1997, an explanation was sought from the Appellant in respect of a clerical mistake in the account of one Mr Naveen Mehta in the EOK Branch during the time when he was a Senior Branch Manager there. The Appellant had offered a written explanation in the form of a statement on 18th September, 1997. The gist of the said statement, on the basis of his recollection, was that when he took down the outstanding SDRs, he found that there was Rs.12.50 lacs in surplus and this was transferred to the GL FDR. Thereafter the FDRs were totalled and again the GL was found in excess by about Rs. 2 lacs. His explanation was as under:

“SB and CA balances were brought to as near as possible with GL balances and then fed in computers. Differences if any were adjusted in Dormant a/cs and differences detected thereafter were also adjusted through dormant a/cs with the hope that when all mistakes are rectified, dormant a/c will automatically

be balanced, till such time dormant a/c was treated as like differences a/cs.”

9. After one year it was found that Rs.1.41 lacs was surplus in GL FDR lying in different accounts and at that time the dormant account in the SB was short by about Rs.1 lac. The Appellant explained that he decided to transfer Rs. 1 lac from the difference a/c in FDR to Dormant a/c in SB and the balance was used for meeting the monthly expenditure of MIP interest. According to the Appellant, he then learnt that the said Rs.1 lac which was transferred to the dormant account was manipulated, credited in the SB account of Mr Naveen Mehta and withdrawn. Specific to the issue concerning the credit of Rs.1 lac to the account of Mr Naveen Mehta, the Appellant stated as under:

“Though I do not remember specifically, it is possible, I might have filled the paying slip, issue cheque book and passed cheque of Mr. Navin Mehta under manipulated circumstance, for a person who must have posed himself as an important and promising customer for the Bank. If I were told that it was a dormant a/c, I must have taken a letter of request from him for reviving the a/c and issued instructions to the dealing officer, which I am told is not available now.”

10. The Appellant pointed out that during this time, he used to even sit in the cash cabins to make and receive payments and for demanding and important customers, he sometimes “used to fill cheques book slips and issue cheque books in my cabin”. According to the Appellant, on 1st January, 1998, Mr Naveen Mehta was called upon by the bank to deposit the sum of Rs.1 lac, which had been wrongly credited in his account. It is an admitted position that the said sum of Rs. 1 lac was since deposited although it is not clear under what circumstances and by whom.

11. In 1999, the bank requested the Appellant to help recover Rs.1 lac that had been deposited in excess in the account of M/s Grace Inc during the time that the Appellant was in the EOK Branch. By this time, the said account had become inoperative and its Proprietor, Mr A.K. Bhutani, was not approachable. The Appellant was able to contact Mr Bhutani, who by then had suffered a heart attack and had closed the business. Mr Bhutani did not agree that there was any mistake in the account of M/s Grace Inc. However, he reluctantly agreed to deposit the amount under protest as he had no strength to fight with the bank. A letter written by Mr Bhutani to this effect, forms part of the record. Resultantly, the excess amount allegedly deposited in both the accounts of Mr Naveen Mehta and M/s Grace Inc, came back to the bank's coffers.

12. The Deputy General Manager of the bank by a letter dated 19th April, 1999, commended the Appellant for his "meticulous working, sense of involvement and team spirit at the branch". It is stated that in 2000, the EoK Branch transferred Rs.71,679.43 found excess in its Current Account portfolio to its Head Office.

13. In 2001, the Appellant was posted as Chief Manager in charge of Sensitive Accounts and TT transactions of the entire bank at its Head Office in Baroda. On 9th January, 2002, the AGM, Mumbai wrote to the Appellant stating how the Chairman and Managing Director had appreciated his work.

Charges against the Appellant

14. On 12th September, 2003, more than ten years after he had joined the EOK Branch, disciplinary proceedings were initiated against the Appellant

on eight charges, all of them pertaining to alleged violations of rules and guidelines and abusing his position as Manager of the bank. The allegations were divided into four cases. Cases 1 to 3 pertained to the alleged ‘siphoning off’ Rs.1 lac through the account of Mr Naveen Mehta and Case 4 pertained to the siphoning off of Rs. 1 lac through the account of M/s Grace Inc in collusion with three account holders. There were many smaller allegations, which could be summarized as under:

- (i) That the Appellant opened a ‘difference account’ with a credit balance of Rs. 1,36,868.43 on 30th September, 1992 in violations of the rules and violations of the guidelines.
- (ii) The Appellant passed vouchers, which had over-writings on the dates.
- (iii) The balance upgradation programme was used without any basis, in an unauthorized and unfair manner by the Appellant “abusing his position as Senior Branch Manager”.
- (iv) A sum of Rs. 1 lac was fraudulently siphoned off from the FDRs in the ‘difference account’ maintained with the branch through the SB Account No. 5116 in the name of Mr Naveen Mehta, which was till then a Dormant account, but was subsequently activated by the Appellant. Mr Mehta denied depositing any amount in his aforementioned SB account for reviving the account.
- (v) As regards the current account of M/s Grace Inc, it was inflated by Rs. 1 lac under the balance upgradation programme on 21st / 22nd June, 1993. Thereafter on 2nd July, 1993, Rs. 1 lac was transferred from that account to the current account of M/s Jukie (India) Pvt. Ltd (‘JIPL’). On 12th August, 1993, from JIPL’s account Rs.50,000/- was transferred to the account of M/s SS Padam & Co. (‘Padam’). The

cheque and credit slip for these transactions was passed by the Appellant singly without initials of any other official. The next day i.e. 13th August, 1993, Rs.50,000/- was withdrawn from Padam's account along with Rs.1,50,040 from their 'demand loan account'. For issuing a demand draft ('DD') favouring Rial Sons at Ludhiana. The loose cheques, vouchers, etc. were signed by the Appellant singly.

- (vi) A demand loan for Rs.2 lacs was sanctioned by the Appellant to Padam, where a margin of 25% was stipulated. This margin had been arranged by the Appellant for Padam by transfer of said sum of Rs.50,000/- from the account of JIPL which in turn received credit of Rs.1 lac by transfer from the account of M/s Grace Inc.

Inquiry Officer's Report

15. The findings of the Inquiry Officer's inquiry report dated 2nd August, 2004 could be summarized as under:

- (i) The opening of the difference account was in violation of the rules/guidelines of the bank.
- (ii) Since no law of limitation applied, and since the Charged Officer ('CSO') had admitted to opening it in his statement dated 18th September, 1997, the management had a right to take cognizance on such misconduct "even after lapse of many years".
- (iii) The credit vouchers aggregating Rs. 41,492.43 were passed by the Appellant singly on 16th February, 1994 without initials of any other officer against the debit of Rs.1,41,492.43 in the FDR difference account. This allegation, therefore, stood proved.

- (iv) The allegation of the Appellant having passed vouchers on which there were over-writings of the dates also stood proved.
- (v) The transfer of outstanding balance for the GL FDR difference account for making the monthly expenditure of MIP interest is in violation of the bank's norms. The defence argument that the mistakes in passing these vouchers did not make any difference in the transaction and did not affect the situation in any way "makes a sad reflection on the sincerity and alertness of CSO". The crediting of Rs.72,440.43 on 16th February, 1994 being the excess amount provided on the FDR exposed the bank to various risks. The plea that there was no other alternative but to credit the leftover balance to the P/L "also exhibits lack of sincerity and lack of probity on the part of the CSO".
- (vi) In order to give semblance of compensatory mistake, the credit voucher for a Banker's Cheque of Rs.24,175/- in the dormant SB account in the name of Mr Naveen Mehta was inflated by Rs 1 lac.
- (vii) The allegation that the banker's cheque dated 11th January, 1994 in favour of Mr Naveen Mehta for Rs.24,175/- as paid by crediting the crediting the proceeds to SB account of Mr Naveen Mehta and the credit voucher was posted as Rs.1,24,175/- thus causing a credit balance of Rs. 1 lac as against the bonafide balance of Rs.37,375/- was proved. The banker's cheque and the corresponding credit voucher were both passed by the Appellant and that too was proved.
- (viii) Likewise the allegation concerning the excess of Rs.1 lac being credited to the account of M/s Grace Inc was also held to be proved.

16. Acting on the inquiry report, the DA passed an order on 31st January/7th February, 2005 inflicting the punishment of “dismissal from bank service which is ordinarily a disqualification for future employment”.

17. The appeal against the said order was dismissed by the AA on 10th May, 2005 holding that the inquiry was fair and proper and that the Appellant’s actions were premeditated and carried out by taking advantage of the teething problems faced by the Bank at the time of switching over from a manual to computerized way of working in such a way that it remained undetected for, long. It was observed that the Appellant’s actions “definitely cast a shadow on his integrity, honesty and devotion to duty.”

Proceedings before the Single Judge

18. The Appellant filed W.P. (C) No.17579/2006 in this Court, which came to be admitted and placed in the regular category of matters of 2006. When the learned Single Judge heard the writ petition on 24th November, 2016, the following order was passed:

“It is trite that Appellant is guilty of major penalty proceedings, however, it is not that in every major penalty proceedings only dismissal from service should be ordered. The Appellant could always have been given a strict but lesser punishment of compulsory retirement or in addition to compulsory retirement non-grant of any increase in the pay scale after 1992. Learned counsel for the Appellant states that without prejudice to the rights of the Appellant in this writ petition, the Appellant would, if a lesser penalty from dismissal of services is imposed upon him, then the Appellant in order to finish litigation would prefer to accept that. Counsel for respondent no. 1 also states

that without prejudice to the rights of respondent no. 1/Bank in the present proceedings, respondent no. 1 as a special case can consider the plea of the Appellant for imposition of lesser penalty than dismissal from services as done by the impugned orders. Let the competent authority of respondent no. 1 consider the issue of punishment imposed upon the Appellant, inter alia as per what is stated in the present order, and an appropriate decision be taken by the competent authority within a period of three months from today".

19. However, the Respondent declined to modify the punishment awarded to the Appellant. It is stated that the arguments in the writ petition were thereafter concluded on 8th May, 2017, when the judgment was reserved.

20. By the impugned judgment dated 27th April, 2018, the learned Single Judge, while dismissing the writ petition, came to the following conclusions:

(i) On a preponderance of probability the charge against the Appellant as regards Case No.4, namely, excess credit of Rs. 1 lac in the current account of M/s Grace Inc stood proved.

(ii) This was not a case of no evidence. As noted by the DA, the Appellant could not produce any evidence to substantiate his claim that there was implied consent of the Regional Office to his opening the difference account to transfer un-reconciled entries in various G/L Heads on a particular cut-off date.

(iii) There is a limited scope of interference by the Court into the findings of a departmental inquiry. Reference was made to the decisions in *R.S. Saini v State of Punjab (1999) 8 SCC 90* and

Lalit Popli v Canara Bank (2003) 3 SCC 583.

21. This Court has heard the submissions of Mr C. Mohan Rao, learned counsel appearing for the Appellant and Mr. Pramod Gupta, learned counsel appearing for the Respondent.

Delay in initiating inquiry

22. The first point to be considered is whether the delay in initiating the disciplinary proceedings against the Appellant with regard to the alleged misconduct which took place between 30th September, 1992 and August, 1994, had caused any prejudice to the Appellant. According to the learned Single Judge, the Appellant did not plead any ignorance about the transactions “or plead any prejudice having been caused to him because of the delay”. He answered the charges framed against him vide memorandum dated September 12, 2003 on merits.

23. Even before the IO, there was no plea of the delay in commencing the inquiry. Further, in the appeal submitted to the AA, “except stating that it is a 12 years old matter he does not plead how the delay has caused prejudice to him”. In fact, the response of Mr Naveen Mehta was received in 1998, and the Audit Committee note was of 28th February, 2000. Therefore, according to the learned Single Judge, it is not a case of “no explanation for the delay”. According to the learned Single Judge “the delay is not abnormal”.

24. The learned Single Judge also accepted the plea of Mr Gupta, learned

counsel appearing for the Respondent, “the charges were multi-layered transactions and despite extensive inquiries the Bank was able to unearth few of the transactions and it was time consuming process is justified / appealing. His submission that it is not the case of the petitioner that his memory has impaired because of delay is also appealing”.

25. According to the learned Single Judge “It is also not the case of the petitioner that the delay has resulted in the non availability of the evidence including witnesses because of which he cannot defend himself effectively. The proceedings were held; the witnesses were produced from both the sides which resulted in the Inquiry Officer submitting his report”.

26. Referring to the decision in *Anant R. Kulkarni v. Y.P. Education Society (2013) 6 SCC 515*, the learned Single Judge held that “the charges framed and proved against the Petitioner are of very serious nature, amounting to loss of confidence” and, therefore, it could not be said that any prejudice had been caused to the Appellant.

27. Mr Rao relied upon the decisions in *State of Madhya Pradesh v. Bani Singh AIR 1990 SC 1308*; *M.L Tahilani v. D.D.A. (2002) VI AD (Del) 9*; *Anil Rajpal v. Delhi Development Authority 124 (2005) DLT 368*; *P.V. Mahadevan v. MD T.N. Housing Board (2005) 6 SCC 636* and *Management of Centaur Hotel v. P.S. Mohan Nair 2013 (1) LLN 135 (Del)* to urge that the delay in initiation of departmental proceedings would result in prejudice and would vitiate the proceedings.

28. In the present case, the prejudice to the Appellant on account of the

delay in initiating the disciplinary proceedings is apparent even from the initial written response of the Appellant submitted in the form of a statement dated 18th September, 1997. He states therein *inter alia* as under:

“regarding house keeping a few things I vaguely remember (as the matter is 4-5 years old and I have been to three branches thereafter) are as follows”

29. In a branch where the business has increased four-fold, the number of transactions on a daily basis must have been a large number; slips and vouchers requiring the signatures of the Appellant must have been numerous. To expect the Appellant to remember precisely what transpired even after a gap of 3 to 4 years would be difficult. In the present case what was perhaps missed by the learned Single Judge is that after the Appellant moved from the EOK Branch, the Appellant had no control over the documents and records of the EOK Branch, which formed the basis for instituting the disciplinary proceedings. The Appellant was, therefore, not in control of the documents and he had no access to the documents used to bring the charges against him. The large gap of nearly ten years in instituting the disciplinary proceedings meant that the Appellant could also not summon any of the witnesses who may have been available in the Regional Office in order to show that he had an implied consent for opening the difference account. The delay therefore precluded the Appellant from accessing and producing documents which were entirely in the control of the bank and also producing witnesses who by then had retired, resigned or were no longer in service.

30. An additional factor that demonstrates the prejudice to the Appellant is

the observation of the IO at various stages of the inquiry report that the Appellant had failed to substantiate his case by leading evidence or producing any kind of document in his support. This was as a direct result of the delay in initiating the disciplinary proceedings. This, therefore, demonstrated the prejudice caused to the Appellant on account of the delay.

31. As rightly pointed out by Mr Rao, learned counsel appearing for the Appellant, the decisions in *R.S. Saini v. State of Punjab* (*supra*) and *Lalit Popli v. Canara Bank* (*supra*) were on the broad proposition that while exercising the writ jurisdiction under Article 226 of the Constitution, the High Court does not act as an Appellate Authority. These were the cases pertaining to the sufficiency of evidence whereas the attack in the present case by the Appellant to the inquiry report of the IO is on the basis of the perversity and conclusion based on mere suspicion and not on proof. Consequently, the said two decisions do not answer the issue regarding prejudice being caused to the Appellant on account of the delay. In his reply to the charge-sheet, the Appellant had stated “though I do not remember specifically...” and elsewhere stated “this document is of the date 16.02.1994. More than 11 years have passed. Who knows when and by whom that remark was made...”

32. It would, therefore, not be correct that the Appellant did not plead prejudice caused to him on account of the delay. The Appellant left the EOK branch in 1994. There was an internal inquiry between 1995 to 1997. The Appellant gave his explanation on 18th September, 1997 itself. The demand against Mr Mehta was made on 1st January, 1998. The question as to why

the departmental proceedings should commence five years thereafter is not explained by the Respondent.

33. On the other hand, in Government of *A.P. v. Appala Swamy* (2007) 14 SCC 49, the delay in concluding the departmental proceedings was said to vitiate the entire inquiry. While the decisions in *Haryana Financial Corporation v. Kailash Chand Ahuja* (2008) 9 SCC 31; *Union of India v. Bishamber Das Dogra* (2009) 13 SCC 102 and *Union of India v. Alok Kumar* (2010) 5 SCC 349 require prejudice not only to be pleaded but proved, in the present case, the Appellant did raise the plea of the prejudice caused on account of the delay.

34. The facts speak for themselves. It is plain that on account of the inordinate delay in commencing the disciplinary proceedings, the Appellant was not in a position throughout to produce documents (which were not in his control) or witnesses (who were no longer in service) in his defence. This Court, therefore, is unable to agree with the learned Single Judge that in the present case no prejudice is caused to the Appellant on account of the delay in commencement of the disciplinary proceedings.

Proof of charges

35. As far as the proof of charges against the Appellant is concerned, one stark fact which appeared to have missed the attention of the DA, AA and also the learned Single Judge is that there was absolutely no pecuniary loss to the bank and no gain to the Appellant on account of the Case Nos. 1 to 4. Also, as rightly pointed out by Mr Rao, as far as Case Nos. 1 to 3 are

concerned, while the bank has been able to demonstrate that the vouchers and cheque books are perhaps drawn up and passed by the Appellant himself, the actual manipulation of the figure in the SB account of Mr Naveen Mehta by Rs. 1 Lac is not shown to be done by the Appellant himself. In other words, there is no handwriting expert to examine whether the actual addition of sum of Rs. 1 lac was caused by the Appellant. More importantly, the cheque by which Rs. 1 lac was drawn was not shown to have been in the handwriting or signatures of the Appellant. There is also no material to show that the Appellant benefited in any manner, directly or indirectly, by the excess of Rs.1 lac being credited into the account of Mr Mehta. Lastly the said excess amount has admittedly been collected by the bank.

36. Even as regards the Case No.4 concerning M/s Grace Inc., there is nothing to show that the Appellant personally gained by the excess amount of Rs.1 lac in that account. Here again, on account of the Appellant's efforts, the proprietor of M/s Grace Inc., who had ceased to be in business, returned the sum of Rs. 1 lac, although under protest. Even in this transaction therefore there was no pecuniary loss to the bank and there was no pecuniary gain to anyone whatsoever.

37. A crucial aspect of this case is whether the Appellant did benefit in any manner by the above transactions. The answer has to be a definitive 'no'. It is not even the case of the bank, and is also not proved in the inquiry proceedings, that the Appellant anywhere, directly or indirectly, benefitted monetarily or otherwise from the above transactions. The crucial element of

lack of integrity of the Appellant has not been proved in the present case.

38. Even as regards the case of M/s Grace Inc, the money came back without there being any loss to the bank or even gain to the Appellant. There was no causal link between any of those customers and the Appellant. In other words, the crucial element that even *prima facie* demonstrates that the Appellant himself has ‘siphoned off’, the facility of siphoning off of the said sum of Rs.1 lac which was credited in excess to the above two accounts is missing in the present case.

39. As rightly pointed out by Mr Rao, the case could not even said to have been proved on ‘preponderance of probabilities’. The IO appears to have placed an unreasonable burden on the Appellant to ‘prove’ his innocence when he was not able to access the documents in control of the bank and where those who might have been able to depose had long left the service of the bank. The conclusion of the IO in this regard about ‘lack of probity’, ‘lack of sincerity’ are conjectures and surmises and do not constitute proof of charge of misconduct against the Appellant. In other words, the bank was unable to prove that the Appellant siphoned off the aforementioned sum or in any manner gained, monetarily or otherwise, from the above transactions, which was the subject matter of the inquiry.

40. This Court, therefore, is satisfied that the findings returned by the IO in the inquiry report are perverse and do not in any manner satisfy the requirement of law as regards the proof of charges in the disciplinary inquiry, even on a lesser standard of ‘preponderance of probabilities’. In that view of the matter, the findings returned by the IO in the inquiry report are

hereby set aside.

Conclusion

41. Consequently, the impugned orders of the DA dated 31st January 2005, the AA dated 10th May 2005 as well as the learned Single Judge dated 27th April 2018 are hereby set aside.

42. With the setting aside of the dismissal order against the Appellant, he will now be treated as having continued in service till the age of his superannuation. The arrears of pay will be paid to him by the bank together with simple interest @ 6% per annum on the said sum from the date of his dismissal to the date of his superannuation. Further, his pension, if any, will be fixed and all the retirement benefits will be released to the Appellant, not later than eight weeks from today. The Respondent Bank will also pay cost of Rs.20,000/- to the Appellant within a period of eight weeks from today.

43. The appeal is allowed in the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 08, 2019

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