$~

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

***Reserved on: 31.01.2019***
***Pronounced on: 20.02.2019***

\+ W.P.(C) 8190/2017

REKHA KAUSHAL ..... Petitioner

Through Mr.Rachit Batra, Adv. with Mr.Nimish Chandra & Mr.Sharad Arya, Advs.

versus

PUNJAB NATIONAL BANK AND ORS ..... Respondents

Through Adv.(appearance not given)

**CORAM:**
**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

## JUDGMENT

1. Vide the present petition, the petitioner seeks direction to set aside order dated 04.11.2016 passed by reviewing authority and petitioner be absolve of all the charges which have been levelled against her vide chargesheet dated 16.12.2013 and supplementary chargesheet dated 09.07.2014. She further seeks direction thereby directing the respondents to promote her to Senior Management Grade Scale-IV, with effect from the date from which her immediate junior has been promoted in the selection process held in the year 2014 in which the petitioner was also interviewed,

along with arrears of pay, after fixation of pay as Chief Manager in Senior Management Grade Scale-IV w.e.f. 2014. She also seeks direction directing the respondents to refund her pay deducted due to punishment vide orders dated 17.09.2015 of the disciplinary authority and further amended by orders dated 04.11.2016 of review authority and direct the respondents to remove petitioner's name from the list of doubtful integrity officers (LODI).

2. The brief facts of the case are that the petitioner joined the respondent bank on 29.07.1986 as clerk-cum-cashier and is presently holding the post of Senior Manager in Middle Management Grade Scale-III w.e.f. 01.09.2010. At the time of filing of the petition, she was posted at Branch Office, Nehru Place, New Delhi, as second person i.e. next to the incumbent incharge of the Senior Management Grade of Scale-IV w.e.f.16.11.2015. The branch office, Moti Bagh, of respondent Bank was under the command of petitioner from October 2010 to 2015. Under her command, the respondent bank branch flourished at record speed and was also awarded as one of the top branches of bank all over. The said branch figured in top 10% overall performing branches of respondent for the first time ever under the command of petitioner in year 2011. The same was duly recognized by respondent vide circular No.MASD/5/2011 dated 16.11.2007. The branch

was recognized and rewarded as number one branch in car loan segment for FY 2011-12 vide RAD circular no.28/2012. Moreover, again for FY 2012-13 branch of petitioner was awarded as number one in same segment.

3. Further case of the petitioner is that in the month of February, 2013, being in-charge of Moti Nagar Branch, the petitioner detected a planned loan fraud played upon upon the bank and accordingly lodged police complaint with the concerned police station and also informed her seniors about the same. Consequently, several persons were arrested and case against them is pending in Saket Court, New Delhi. The efforts of the petitioner were lauded by some of her seniors but orally. However, instead of lauding her efforts, after elapsing of 10 months of incident, the petitioner was served with a chargesheet dated 16.12.2013 of major vigilance enquiry. The petitioner was shocked to receive the chargesheet but replied to same but an enquiry was started. It was unfair on the part of the respondent bank to appoint an officer subordinate to the petitioner as presenting officer in enquiry against the petitioner. On receiving the reply of petitioner and realizing that charges would not be sufficient to victimise and punish her, a supplementary chargesheet dated 09.07.2014 was served upon her during ongoing enquiry much in contravention of regulations of bank. Moreover,

no opportunity to file reply to the same was afforded to the petitioner in violation of regulations governing enquiry and principles of natural justice. Moreover, charges of supplementary chargesheet were made part of the ongoing enquiry. Finally, the petitioner was ordered a penalty of two increments lower for two years in the time scale of pay. The same was challenged in appeal but appeal was dismissed. Thereafter the petitioner preferred a review petition but she was not absolved of charges and only penalty was reduced to one increment lower for one year in the time scale of pay. Moreover, petitioner's name was not removed from list of doubtful integrity officers and hence being aggrieved, the petitioner has filed the present writ petition.

4. Learned counsel appearing on behalf of the petitioner submits that in chargesheet dated 16.12.2013, the Bank charged the petitioner with misconduct that she failed to ensure and protect the interest of the bank and failed to discharge her duties with utmost integrity, honesty, devotion and diligence in terms of regulation (3)(1) read with regulation 24 of PNB Officer Employees (Conduct) Regulations, 1977. This charge of misconduct was specific to two car loans (1. Ramesh Chander Sachdeva, Rohit Sachdeva; 2. Surinder Sharma) sanctioned by the petitioner during the

course of her duty. These car loans were the same cases which the petitioner had detected and reported to police and circle head. However, the petitioner replied to the said charges. In her reply, she explained the factual and practical staff constraints that the branch was facing from October 2012 for next many months. The issue was discussed with seniors for deputing staff but of no avail. The bank appointed Mr.G.L. Manchanda as enquiry officer (Ex.AGM retired) and Mr.R.K. Arora as presenting officer to present the case on behalf of the bank. Mr.R.K. Arora surprisingly refused to become presenting officer and Mr.Umesh Bhardwaj was appointed as presenting officer in the case who has been a junior officer under the petitioner during her posting as Branch Manager, Moti Bagh to whom the petitioner had been scolded up several times due to his inefficient working and thus had a vindictive attitude towards the petitioner. During the pendency of the enquiry proceedings, the enquiry officer and presenting officer realized that the petitioner was raising valid defences and charges may not be sufficient to hold her guilt of misconduct, the bank served a supplementary chargesheet dated 09.07.2014, upon the petitioner with no opportunity to reply to the same in utter disregard to principal of natural justice and made the supplementary chargesheet a subject matter of the previous ongoing enquiry.

5. Learned counsel submitted that there is no provision in PNB Officer Employees (Conduct) Regulations, 1977 to serve a supplementary chargesheet in an ongoing inquiry. The regulations are very clear and state that whether it is proposed to hold an enquiry, the disciplinary authority shall frame definite and distinct charges on the basis of allegations against the officer.

6. Learned counsel further states that being aggrieved by the order dated 17.09.2015, the petitioner appealed before the Appellate Authority and the same was dismissed vide order dated 29.01.2016. In the meanwhile, the final order dated 29.12.2015 was pronounced by disciplinary authority on second chargesheet dated 07.09.2015 and a penalty of one increment lower in the time scale of pay for one year was ordered. However, the petitioner challenged the said order and same was modified by the appellate authority to censure only. Being aggrieved by the order of the disciplinary authority dated 17.09.2015 and appellate authority order dated 29.01.2016, the petitioner preferred a review petition to the Chairman and CEO of the bank but the said two orders were not set aside and only penalty was reduced to one increment down in the time scale of pay for one year in place of two

years as originally ordered. In addition, the petitioner has also been placed under list of doubtful integrity officers which means that she would not be entitled to hold any sensitive and responsible post in the bank.

7. Learned counsel for the petitioner further submits that as per clause 2.1.3 of the Staff Accountability Policy (Inspection & Audit Division Circular No.24/2013 dated 29.10.2013, no accountability shall be examined once irregularity is timely rectified. If it is subsequently found that the irregularities pointed out in the IR were got closed/dropped with submission of incorrect confirmation without actual rectification, such cases will be treated seriously and will warrant staff accountability.

8. In the present case, the petitioner herself pointed out the irregularities and ambiguities, therefore, she could not be held liable for such charges framed against the petitioner.

9. On the other hand, learned counsel appearing on behalf of the respondents submits that the allegations contained in the supplementary chargesheet related to many other car loans (other than the car loans in respect of which chargesheet dated 16.12.2013 was served) and the various other loan accounts sanctioned by the petitioner without adhering to eligibility criteria and failing to ensure proper scrutiny of past conduct of

account of borrower/guarantors. The departmental enquiry was conducted in terms of PNB Officer's Employee (Conduct) Regulation, 1977. After completion of the departmental enquiry, the enquiry officer submitted report dated 28.05.2015 wherein he found the allegations made in the chargesheet dated 16.12.2013 and supplementary chargesheet dated 09.07.2014 as proved. Copy of the enquiry report was made available to the petitioner and the petitioner made her submissions on 29.07.2015 to the findings of Enquiry Officer. The Disciplinary Authority by order dated 17.09.2015 imposed major punishment of reduction by two stages in the time scale of pay for a period of 02 years with further direction that she will not earn increment of pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of her pay. The Appellate Authority has rejected the appeal of the petitioner vide order dated 29.01.2016. However, the Reviewing Authority vide order dated 04.11.2016 modified the punishment to "*reduction by one lower stage in the time scale of pay for a period of 01 year with further direction that she will earn increment of pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of her pay*". Thus, the petition deserves to be dismissed.

10. I have heard learned counsel for the parties.

11. The law has been settled by the Hon'ble Supreme Court that the delinquent office cannot seek re-appreciation of oral and documentary evidence led during the course of departmental enquiry. In case of ***State Bank of India vs. Ram Lal Bhaskar & Anr.: (2011) 10 SCC 249*** held that in a proceeding under Article 226 of the Constitution, the High Court cannot sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence. The High Court shall not re-appreciate the evidence and come to a different and independent finding on the evidence.

12. In case of ***State of U.P. & Anr. vs. Manmohan Nath Sinha & Anr.: (2009) 8 SCC 310*** whereby it is held that the Court does not sit in judgment on merits of the decision. It is not open to the High Court to re-appreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusion.

13. As argued by the counsel for the respondents that the petitioner had not made any allegation of personal enmity or malafide against any official during the course of departmental enquiry. However, she has made

allegation in the petition for the first time against the presenting officer. However, the said presenting officer has not been arrayed as a party to the petition by name. Therefore, according to the well settled law, such allegations are only liable to be ignored.

14. It is not in dispute that the petitioner participated in the departmental enquiry and there is no violation of principles of natural justice. If the petitioner was aggrieved by the second chargesheet, she would have taken the shelter of the court at that very point of time. Since she accepted and participated in the departmental proceedings at this stage the petitioner cannot take the objection that the supplementary chargesheet was filed without due process of law. Moreover, the charges against the petitioner have been proved, accordingly, the disciplinary authority has passed the order which was confirmed by the appeal, however, the revisional authority reduced the punishment as mentioned above. This court cannot re-appreciate the evidence led during the departmental enquiry. Moreover, during enquiry there was no malafide against any of the officers and not pointed out any of the procedural lapses before filing the present petition.

15. Admittedly, after the charges which have been finally concluded, there is no other fresh misconduct on the part of the petitioner, therefore, I

find no justification to continue the name of the petitioner under the list of doubtful integrity officers. Accordingly, I hereby set aside the impugned order to that extent. Accordingly, the respondents are directed to delete the name of the petitioner from the list of doubtful integrity officers within two weeks from the receipt of this order. After removal the entry in the doubtful integrity, if the petitioner is otherwise eligible to be considered for further promotion, there shall be no embargo for that.

16. I hereby made it clear that if after serving the punishment awarded to the petitioner, the petitioner is entitled for further promotion, the respondents shall not take the shelter of the earlier punishment if the petitioner is otherwise eligible.

17. In view of the above, the petition is partly allowed.

**(SURESH KUMAR KAIT)**
**JUDGE**

**FEBRUARY 20, 2019**
**ab**