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

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**LPA 635/2018 & CM 47756/2018**

**BANK OF BARODA**

..... Appellant

Through: Ms Pravena Gautam, Mr Jitesh P.  
Gupta and Mr Pawan Shukla,  
Advocates.

versus

**KAPIL KHATIR & ANR.**

..... Respondents

Through: Mr Shaurya Sahay, Advocate for R-1.  
Mr Gaurang Kanth and Ms Eshita  
Baruah, Advocates.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE SANJEEV NARULA**

**ORDER**

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**29.01.2019**

1. The present appeal is directed against the order dated 22<sup>nd</sup> October, 2018 passed by the learned Single Judge in W.P.(C) No. 7468/2018 filed by the Respondent No.1 herein.

2. The brief facts are that the Respondent No.1 was confirmed in service as by the Appellant bank on 20<sup>th</sup> June, 2014 with effect from 6<sup>th</sup> May, 2014. By an order dated 12<sup>th</sup> October, 2015, while he was working as an Officer in the Ashok Vihar Branch, he was placed under suspension on account of the alleged irregularities committed by him, as well as 20 other officers of the bank in various foreign exchange transactions to the tune of over Rs. 6000 crores.

3. On 25<sup>th</sup> February 2016, Respondent No.1 applied to the Appellant for permission/no objection certificate ('NOC') to enable him to appear in the Staff Selection Commission ('SCC') Exam of 2016.

4. Meanwhile on 5<sup>th</sup> April 2016, the Respondent No.1 was issued a show cause notice ('SCN') dated 5<sup>th</sup> April 2016 for the alleged lapses/irregularities committed by him.

5. On 15<sup>th</sup> April 2016, the Appellant granted the NOC to the Respondent No.1 to appear in the aforesaid exam. However, it was made clear that "it may accede or reject his application for issuance of the NOC based on the adverse matter pending an enquiry against Respondent No.1."

6. While the further proceedings pursuant to the SCN were in progress, Respondent No.1 appeared in SSC exam on 10<sup>th</sup> April 2017 and was declared successful. He was called for verification of documents by the SSC on 6<sup>th</sup> May 2017. On 3<sup>rd</sup> May 2017, Respondent No.1 requested the Appellant to issue the provisional NOC for the purpose limited to the verification of documents. He also furnished on 9<sup>th</sup> June 2017 to the Office of Comptroller and Auditor General ('CAG'), in whose services he was to join pursuant to his selection in the SSC, details about the pending inquiry and the departmental proceedings against him initiated by the Appellant.

7. On 5<sup>th</sup> October 2017, the Appellant withdrew the suspension order without prejudice to the ongoing inquiry against the Respondent No.1 and on the next date i.e. 6<sup>th</sup> October 2017, he was posted to Ahmadabad and

then again to Mehsana region on 9<sup>th</sup> October 2017.

8. On 15<sup>th</sup> January 2018, the Disciplinary Authority ('DA') initiated action against Respondent No.1 by issuing memorandum, the article of charges and statement of allegations. By a letter dated 25<sup>th</sup> January 2018, the Appellant informed the Respondent No.1 that his request of issuance of NOC had been placed before the Competent Authority ('CA'). The CA negated his request on the ground that a vigilance matter was contemplated against him for the alleged irregularities/lapses reported in the foreign exchange transactions at the Ashok Vihar Branch. While the departmental enquiry was in progress, Respondent No. 1 received an offer of appointment dated 17<sup>th</sup> April 2018 from the office of CAG offering provisional appointment to the post of Assistant Audit Officer (Commercial) as a probationer, which he was requested to join by 17<sup>th</sup> May 2018. The Respondent No.1 sought extension of one month for joining the CAG, which was acceded to by a letter dated 21<sup>st</sup> May 2018. He got another extension up to 20<sup>th</sup> July 2018 for joining service with the CAG.

9. When the Respondent No.1 asked the Appellant about the status of his enquiry, he was informed by an e-mail dated 7<sup>th</sup> July, 2018 that the disciplinary proceedings ('DP') were still in progress and the report of the enquiry officer was awaited.

10. It was in those circumstances that Respondent No.1 filed WP(C) 7468/2018 in this Court challenging the non-issuance of the NOC by the Appellant.

11. By the impugned order, the learned Single Judge allowed the writ petition and directed the Appellant to issue the NOC to the Respondent No.1 within two days from the receipt of the order. After noting the submissions of the counsel for the parties, the learned Single Judge gave a direction “in the interest of justice” and “in view of the facts and circumstances of the case” that the NOC should be given by the Appellant to the Respondent No.1. The consequential directions given by the learned Single Judge in paras 6 to 9 read as under:

“6 Though, learned counsels appearing for respondents No. 1 and 2 have opposed the proposal made by learned counsel for the petitioner, however, in the interest of justice, hereby, in view of the facts and circumstances of the case, direct respondent No. 1 to give NOC to the petitioner within a period of two days from the receipt of this order and the respondent No. 2 shall allow, the petitioner to join on the post mentioned above.

7. I hereby make it clear that if the petitioner is punished in the departmental inquiry by the respondent No. 1, the respondent No. 2 shall repatriate the petitioner to the respondent No. 1 to face the punishment imposed by the respondent No. 1.

8. I hereby make it clear that if the respondent No. 1 exonerate the petitioner from the charges, the petitioner shall continue in the service with the respondent No. 2.

9. With the above directions, the present petition and the pending application, if any, are disposed of accordingly.”

12. Having heard learned counsel for the parties, this Court is unable to appreciate how the above directions could have been issued by the learned Single Judge, particularly since the result of the disciplinary enquiry against

Respondent No.1 was still awaited. The direction to the CAG to “repatriate the Petitioner (Respondent No.1 herein) to the Respondent No.1 (Appellant herein), to face the punishment imposed” by the present Appellant could possibly not been given. The further direction that in the event of the Respondent No.1 being exonerated, he would continue in the service of CAG, could also not have been issued as that would be pre-empting the possible outcome of the enquiry proceedings.

13. The only course of action was to give time-bound directions to the Appellant to conclude the enquiry proceedings and require the enquiry report to be submitted for further action thereby taking the disciplinary proceedings to their logical conclusion.

14. Learned counsel for the Respondent No.1 states that the Respondent No. 1 would be satisfied if such direction were to be issued even now by this Court. In response, learned counsel for the Appellant informed the Court that the disciplinary enquiry proceedings have been concluded and the enquiry report is expected very shortly.

15. In the circumstances, the Court directs the Appellant to ensure that the enquiry report is made available to the Respondent No.1 not later than 4 weeks from today. If the occasion so warrants, any further proceedings pursuant to the enquiry report should be concluded within a period of eight weeks thereafter. The question of issuance of the NOC will arise only thereafter; and that question will be addressed at the end of the entire proceedings by the Appellant by sending a communication to Respondent

No.1 in that regard.

16. The impugned order of the learned Single Judge is accordingly set aside and the appeal is disposed of in the above terms. Pending application is disposed of. No costs.

**S. MURALIDHAR, J.**

**SANJEEV NARULA, J.**

**JANUARY 29, 2019**  
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