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

\+ **LPA 17/2016 & C.M. No. 822/2016**

R G PAREEK ..... Appellant

Through: Mr. D.K. Garg, Advocate with Mr. Abhishek Garg and Mr. Dhananjay Garg, Advocates.

versus

DENA BANK & ORS ..... Respondents

Through: Mr. Anuj Aggarwal, Advocate for Respondent No.1.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

O R D E R

% **14.01.2019**

1. This is an appeal directed against the judgment dated 30th September, 2015 passed by learned Single Judge dismissing the Writ Petition (Civil) No. 3228/2004 filed by the present Appellant.

2. The said writ petition was filed way back in 2004 praying that the article of charges served on the Appellant on 23rd December, 2003 proposing to hold a disciplinary inquiry against him was illegal and unconstitutional.

3. The main contention was that an earlier charge sheet had been served on the Appellant on 17/25 August, 2000 and during the pendency of those proceedings, a further memorandum of supplementary charges was served on the Appellant.

4. The background facts are that the Appellant joined the Respondent-Bank as a clerk on 1st April, 1965. At the time when a show-cause notice (SCN) was issued to him on 21st March, 2000, he was already a Senior Manager.

5. After considering the Appellant's reply to the SCN dated 2nd May, 2000, a charge sheet was served upon on 17/25 August, 2000 by the Bank *inter alia* alleging that in four separate instances, he had sanctioned facilities/limits to certain account holders without following the prescribed norms.

6. It may be noted that despite his reply to the charge sheet submitted on 26th September, 2000, no disciplinary proceedings as such commenced against the Appellant. Nearly two years later, on 3rd September, 2002, the Bank issued to the Appellant the addendum to the SCN given earlier and the Appellant replied to it on 24th September, 2002. This was followed by a letter dated 22nd November, 2002 from the Bank to the Appellant stating that it was invoking Regulation 20.03 (iii) of Dena Bank (Officers') Service Regulation, 1979 whereby he would cease to be in service of the bank on the date of superannuation "but the disciplinary proceedings in the matter of aforesaid show cause notice/addendum will continue as if you were in the service until the proceedings are concluded and final orders are passed in respect thereof". In other words, notwithstanding his superannuation on 30th

November 2002, the Appellant would be treated as being in service for the purpose of the disciplinary proceedings.

7. Even thereafter, the formal disciplinary proceedings did not commence. One year after his retirement, on 23rd December 2003, the Appellant was served with a fresh charge sheet in supersession of the earlier one. It was in the above circumstances that the Appellant filed Writ Petition (Civil) No. 3228/2004 in this Court.

8. The learned Single Judge, while directing notice to be issued in the writ petition by order dated 17th March 2004, directed that the disciplinary proceedings against the Appellant arising out of the impugned memorandum dated 23rd December, 2003 shall remain stayed. It was, however, clarified that the disciplinary proceedings initiated pursuant to the earlier charge sheet dated 17/25 August, 2000 would continue.

9. In the impugned judgment, the learned Single Judge held that it was not feasible or advisable to undertake the comparative study of the two charge sheets to find out whether the revised charge sheet was issued on the material that was available at the time of the first charge sheet. According to the learned Single Judge, the question whether the additional charges could have laid in the revised charge sheet would have to remain "for the present, unaddressed". While reserving the contention of the Appellant as to the permissibility of additional charges to be included in the revised charge-sheet dated 23rd December, 2003. The Court dismissed the petition vide impugned judgment dated 30th September, 2015 *inter alia* in the following

terms:

> "18. In view of above, the writ petition is dismissed, though reserving the contention of the petitioner as to the permissibility of additional charges to be included in the revised charge-sheet dated 23.12.2003 to be raised at appropriate stage before an appropriate forum, should he be found guilty of such additional charges. The interim stay stands vacated."

10. When the present appeal was first heard by the Division Bench of this Court on 11th January, 2016, the following order was passed:-

> "1. Learned counsel for the appellant draws our attention to the charge memorandum dated August 17/25, 2000 as also December 23, 2003. Learned counsel points out that in the charge memorandum served upon the appellant when he was in service the gravamen of the charge related only to M/s.Chanda Exports and Rohit Packaging Industries. In the second charge memorandum apart from elaborating concerning the gravamen of the charge concerning Chanda Exports and Rohit Packaging charges concerning M/s.Stone Art, M/s.B.B.Exports and M/s.A Sunoj Vision were included. Arguments advanced is that under the garb of a supplementary charge-sheet fresh charges have been introduced. Counsel urges that in view of the Regulations of the Bank which do not contemplate initiation of, a disciplinary proceeding post-superannuation the decision by the learned Single Judge is not as per law.
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> 2. Issue notice to the respondents returnable for February 25, 2016.
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> 3. Till the present order is vacated or modified disciplinary proceedings concerning impugned charge memorandum dated December 23, 2003 shall remain stayed. It is however clarified that disciplinary proceedings may continue concerning the charge memorandum dated August 17/25, 2000."

11. It is therefore plain that during the pendency of the writ petition as well as the present appeal, there was no restraint on the Bank from proceeding with the inquiry against the Appellant as far as the first charge sheet was concerned. The restraint, if any, was only on the Bank proceedings in respect of the amended/supplementary charge sheet dated 23rd December, 2003.

12. When the appeal was heard today, Mr. Garg, learned counsel appearing for the Appellant informed the Court that till date there has been no progress whatsoever in the disciplinary proceedings. Mr. Anuj Aggarwal, learned counsel appearing for the Bank then sought a short passover to enable him to take instructions.

13. When the matter was called out again, Mr. Aggarwal, informed the Court that till date there had been no proceedings held even with respect to the original charge sheet dated 17/25 August, 2000.

14. As already noticed, the Appellant retired way back on 30th November, 2002. For over 16 years since then, no proceedings have been held even pursuant to the original charge sheet dated 17/25 August, 2000. In other words, for over 18 years now, the Bank has not considered it necessary to commence and conclude the disciplinary proceedings. Allowing the Bank to do so at this stage, would amount to a sheer harassment and such action by the Respondent-Bank, on the face of it, would be unreasonable and arbitrary. The Appellant is today 78 years old and it would be inhumane to subject

him to disciplinary proceedings at this stage.

15. Consequently, the Court quashes both the original memorandum of charges dated 17/25 August, 2000 as well as the supplementary charges by the memorandum dated 23rd December, 2003 served by the Respondent-bank on the Appellant. The impugned order of the learned Single Judge is hereby set aside.

16. The appeal is accordingly allowed and the application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 14, 2019

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