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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 28.07.2022**Pronounced on: 06.10.2022*+ **LPA 256/2019**

AKASH ARYA

..... Appellant

Through: Mr. Shanker Raju and Mr. Nilansh
Gaur, Advs.

versus

PUNJAB NATIONAL BANK & ORS

..... Respondents

Through: Mr. Rajat Arora, Adv.

CORAM:**HON'BLE MR. JUSTICE NAJMI WAZIRI****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The appellant being dissatisfied with the judgment of the learned Single Judge dated 12.03.2019 in W.P.(C) 2908/2016, has preferred the present intra-court appeal.
2. The facts relevant for deciding the present appeal as culled out from the record are that the appellant joined the respondent no.1-bank as a Management Trainee on 26.02.1990 and rose to the position of Manager. While, he was posted as Manager, PNB Branch Office, Civil Lines, Aligarh, a charge-sheet bearing no. CO:BSR:DAC:AA was issued to him by the Disciplinary Authority under the Regulation 6 of PNB Officer Employees (Discipline and Appeal) Regulations, 1977 ('PNB Regulations, 1977'), for allegedly having committed lapses/irregularities during his posting as Manager, PNB Branch Office, Kasana, District Gautam Budh Nagar. The



charge-sheet enumerated the following two charges:-

“ARTICLE-1

He did not conduct proper pre-sanction appraisal and sanction various loans without recommendations of 2nd officer posted at branch also failed to observe proper post sanction follow up in various borrowal accounts, thereby jeopardizing bank's interest.

ARTICLE-2

He did not follow bank's system and procedure and failed to maintain dual custody over various loan files which were not located during course of Investigation, thereby jeopardizing bank's interest.”...

3. In the statement of imputation of charges, charge-I comprised 43 sub-charges whereas under charge-II there was only one imputation. The charges are essentially of procedural lapses committed by the appellant while sanctioning various agricultural loans.
4. The appellant filed his reply to the charge-sheet denying the allegations levelled against him.
5. The departmental proceedings initiated against the appellant culminated in an adverse report dated 09.10.2012. The Inquiry Officer held that the second charge against the appellant has not been proved. In respect of the first charge, the inquiry officer held that only 36 sub-charges out of 43 charges stood proved against the appellant. Copy of the inquiry report was provided by the Disciplinary Authority to the appellant for making his representation. The appellant made a representation against the inquiry report but the Disciplinary Authority did not favour his representation and he was inflicted with a major penalty of “*Removal from service which shall*



not be a disqualification for future employment” by an order dated 30.05.2013. While imposing the major penalty, the Disciplinary Authority opined as under:

“Keeping in view the enquiry findings and gravity of proven charges the undersigned found that the agricultural loans have been disbursed by him against insufficient land holdings/ nil land area.

Accordingly, in view of the seriousness of large number of lapses/ irregularities in the branch which have resulted in financial loss to the bank reported around Rs. 2 crore due to violation of bank guidelines and practices by the charge sheeted employee; I decide to impose major penalty of “Removal from service which shall not be a disqualification for future employment” in terms of regulation 4(i) of Punjab National Bank Officer Employees’ (Discipline & Appeal) Regulations, 1977 upon Shri Akash Arya.”

6. Against the order of the Disciplinary Authority, the appellant preferred an appeal before the Appellate Authority, specifically pleading as under:

“.... (J) The DA has mentioned about the seriousness of the irregularities. The same is incorrect as all the alleged lapses/irregularities are of procedural nature and not serious one. The same is evident from the facts-

- * There is no case of impersonation.*
- * All the primary/collateral securities are intact.*
- * There is no case of fraud.*
- * All the title deeds are genuine/valid and are held on bank record.*
- * There is no element of malafide on my part.*
- * All the cases were reported to the controllong office without any concealment/misrepresentation.*

The DA has mentioned about the reported loss of 2 crores.



There is no charge to this effect nor there is any document in the enquiry in this regard.

7. The Appellate Authority concluded that the Disciplinary Proceedings were conducted in terms of the provisions of the PNB Regulations, 1977 and the findings of the Inquiry Officer were based on evidence adduced in the inquiry. On the plea of alteration of penalty, the Appellate Authority observed as under:

“I observe that the points raised by Shri Arya in his appeal do not bring on record any fresh facts to warrant a modification of the penalty and there is no merit in the contentions made by him. I, therefore, reject the appeal and confirm the penalty imposed by the Disciplinary Authority.”

8. The Review Petition subsequently submitted against the above orders of the Disciplinary Authority and the Appellate Authority, was also rejected by the Reviewing Authority vide order dated 09.06.2015.

9. Being aggrieved by the orders of the above departmental authorities, the appellant approached the High Court in WP(C) No. 2908 of 2016 which has been dismissed by the impugned judgment dated 12.03.2019. The reasons which prevailed with the Ld. Single Judge in upholding the finding of guilt as well as the quantum of punishment awarded by the Disciplinary Authority was summed up as under:

“.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.”

10. The said order of the Ld. Single Judge is assailed in the present appeal.

11. On 10.11.2021, the learned counsel appearing for the appellant had limited the challenge in appeal to two grounds recorded in the order, in the following terms:

“1. Mr Shanker Raju, who appears on behalf of the appellant, says that, the present appeal, which is directed against the learned single judge’s order dated 12.03.2019, is pivoted on two grounds:-

1.1. First, that the learned single judge failed to address the issue raised by the appellant, that the disciplinary authority had ordered his removal from service on the ground that, the appellant had caused a loss of Rs. 2



crores to the bank, by not following the procedure for grant of loans;

1.2. Second, because the first issue was not addressed, the interrelated issue that the punishment of removal from service accorded to the appellant was disproportionate, was also not adverted to by the learned single judge.”

12. *Vide* order dated 10.11.2021, this court also noted the submission made by the learned counsel for the respondent-bank concerning the total outstanding amount due against the loan accounts which were the subject matter of the charge-sheet. As it was not borne out from the record as to the extent of damages/loss suffered by the respondent-bank on account of procedural lapses committed by the appellant, an affidavit was sought to be filed by the learned counsel for the respondent-bank in respect of the financial loss. It may be apt to refer to the relevant part of the order, which reads as under:

“2. Mr Rajat Arora, who appears on behalf of the respondent/bank, has, broadly, taken us through the enquiry report.

2.1. Based on the enquiry report, Mr Arora has submitted that, charge-I levelled against the appellant concerned 43 loan accounts.

2.1. It is Mr Arora’s submission that, against each loan account, there was an outstanding amount, and if one were to add up the outstanding amount, the figure would come to (approximately) Rs. 1.94 crores.

2.2. Therefore, according to Mr Arora, the observation made by the disciplinary authority that, a loss of (approximately) Rs. 2 crores was caused by the appellant, was not out of place, having regard to the scope of charge-I.



3. *At this stage, prima facie, we are of the view that, although outstanding amounts are indicated in the enquiry report, however, what is not known is—whether these loans [which are referred to therein] became bad, and therefore, the bank suffered damages/loss on account of the amounts not being paid by the borrower.*

4. *Mr Arora says that, he will file an additional-affidavit, placing on record the information concerning the loan amounts, which were the subject matter of charge-I.*

4.1. *The aforementioned affidavit will be filed by Mr Arora, within three weeks from today.*

4.2. *A copy of the additional-affidavit will be furnished to Mr Raju.”*

13. Pursuant to the above, a short affidavit dated 7th December 2021 was filed by the respondent-bank stating, *inter alia*, that the amount outstanding to the bank in respect of the charge-sheet is approximately Rs.1,23,000,99/- and that some of the accounts in which the charges were levelled against the appellant have been closed after being classified as NPA. The relevant part of the affidavit of the respondent-bank's affidavit reads as under:-

“V. That the deponent states that the Charge No.1 in respect of the charge sheet dated 05.03.2012 which was issued to the Appellant had various sub-charges/sub-parts. That as per the Chart annexed alongwith this affidavit the amount outstanding/loss to the Bank in respect of the charge sheet is approximately Rs.1,23,000,00/-. That some of the accounts in which the charges were levelled against the Appellant has been closed after being classified as Non Performing Asset (NPA) and the loss which was written off in the books of the Bank (as per RBI Guidelines).”

14. Elaborating on his contention confined to the limited controversy, Mr. Shanker Raju, the learned counsel for the appellant submitted that the



extreme penalty of removal has been imposed on the appellant only on the basis of alleged financial loss of Rs.2 crores caused to the bank, an allegation which was never made part of the charge and the same has not been proved during the inquiry. The learned counsel would submit that the allegations are regarding irregularity in sanctioning loans on account of error/mistake or negligence. The learned counsel further submitted that the alleged loss of Rs.2 crores is imaginary and the same, as admitted by the respondent-bank in its affidavit, has come down to Rs. 1.23 crores. Most of the accounts concerning which irregularities have been alleged have either been waived or converted into NPAs for which appropriate proceedings have been initiated for recovery. It was also contended by the learned counsel for the appellant that the Appellate Authority and the Reviewing Authority have not considered the mitigating circumstances despite the same having been pleaded in the appeal as well as in the review petition.

15. Further, the learned counsel for the appellant has contended that the appellant has rendered 24 years of unblemished service. But for the penalty of removal, the appellant would have been entitled to pension. Thus, according to the learned counsel, the penalty of removal was harsh. In the circumstances, the learned counsel sought for conversion of the penalty of removal to compulsory retirement.

16. The learned counsel has referred to the decision in ***Union of India & Ors. Vs. P. Balasubrahmanayam, (2021) 5 SCC 662***, to submit that since there is no charge of corruption or bribery or embezzlement, the extreme penalty of removal is disproportionate to the proven charges.

17. Refuting the appellant's contentions, Mr. Rajat Arora, the learned counsel for the respondent-bank, contended that the appellant was posted as



Branch Manager at Branch Office at Kasna, District- Bulandshashar for a short duration of 16 months and during this period there are a large number of irregularities in various accounts, in the nature of – (i) loan disbursal without loan applications; (ii) no signature of the borrower on the loan application; (iii) non-identification of the borrower; (iv) non-affixation of the photograph of the borrower, etc. He submits that the lapses on the part of the appellant are grave and serious in nature and are not limited to just one or two accounts.

18. The learned counsel for the respondent-bank also submitted that the High Court while exercising its jurisdiction under Article 226 would not sit as an Appellate Authority and substitute its views and modify the punishment. He urged that the departmental authorities are the best to decide what punishment is to be imposed upon the delinquent officer. The courts can interfere with the quantum of punishment only where the punishment awarded is found to be shockingly or strikingly disproportionate to the gravity of the misconduct or is arbitrary. In support of this contention, he placed reliance on the two decisions of the Supreme Court in – (i) *Union of India vs P. Gunasekaran* (2015) 2 SCC 610 and; (ii) *Om Kumar vs Union of India* 2001 SCC (L&S) 1039.

19. Inviting our attention to the affidavit and the chart annexed thereto, filed by the respondent-bank/R-1 in terms of this court's order dated 10.11.2021, he says that the estimated losses to the bank were to the tune of approximately Rs.1.23 crores. Arguing further, the learned counsel has contended that even assuming that there is no loss to the bank in respect of the advances made by the appellant, acting beyond one's discretionary power is in itself misconduct and therefore, the punishment imposed upon



the appellant is commensurate with the gravity of charges levelled and proved. The reliance in this regard was placed on the decision of the Supreme Court in *Disciplinary Authority cum Regional Manager vs. Nikunja Bihari Patnaik*, (1996) 9 SCC 69.

20. The contours of the jurisdiction under Article 226 of the Constitution of India to interfere with the punishment awarded by the Disciplinary Authority are far too well settled to require articulation or reiteration. We need not multiply the references to the decisions cited by the learned counsel for the respondent-bank on the point. It would suffice to refer to the dicta in *B.C. Chaturvedi vs. Union of India and Others* (1995) 6 SCC 749, which after traversing through its earlier decisions, observed as under:-

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof”.

21. There is no challenge to the order of the Disciplinary Authority insofar as the finding of misconduct is concerned. The grievance of the appellant is only qua the quantum of punishment. Therefore, the only



limited question posed in the present appeal is whether the punishment of “*removal from service which shall not be a disqualification for future employment*” is disproportionate to the charges proved against the appellant, warranting inference by this Court.

22. But given the narrow scope of judicial review on the issue of quantum of punishment and the settled position that the discretion to impose punishment vests with the Disciplinary Authority, we for now, refrain from entering into the question of disproportionality of punishment since we have decided to remit the matter to the Disciplinary Authority *albeit* for a different reason as discussed here below, we leave it to the Disciplinary Authority to take a fresh decision on the quantum of punishment to be awarded.

23. We are adopting this course as we find a considerable force in the contention of the learned counsel for the appellant that the Disciplinary Authority has taken into account the aspect of financial loss suffered to the tune of Rs. 2 crores by the respondent-bank though there was neither a charge framed in respect of any alleged loss caused to the respondent-bank nor is there evidence to sustain the allegation/finding of such financial loss. Even the enquiry report does not make mention of any such loss. It appears that the alleged quantum of loss suffered by the bank has been a major reason for the decision of the Disciplinary Authority for imposition of the punishment of removal from service. The Appellate Authority has not considered this aspect despite the appellant’s specific averments in this regard, in his appeal. The impugned order has also erroneously recorded that “*it is established during the inquiry that the petitioner has caused ₹2 crores loss to the bank.*”



24. The respondent-bank in its affidavit has admitted that the loss has come down to Rs.1,23,000,99/-. This figure of loss is not final as the recovery proceedings in many of the loan accounts declared as NPA might be underway. A perusal of the tabular chart attached to the short affidavit dated 7th December 2021 makes it evident that most of the accounts against which the amount is stated to be outstanding are of “active status”. This being the position, the amount of alleged outstanding/loss to the bank may be eventually recovered. During the course of the arguments, it was not disputed by the learned counsel for the respondent-bank that in many of these accounts the security is available with the bank, the value of which would be sufficient to cover the outstanding dues.

25. However, fact remains that the aspect of loss suffered by the bank was an extraneous consideration as the appellant was never confronted with any charge involving the aspect of loss caused to the respondent-bank. Undoubtedly, the appellant has been deprived of an opportunity to defend himself to that extent.

26. At this stage it may be apposite to refer to the decision of the Supreme Court in *Union of India vs. P. Gunasekaran* (2015) 2 SCC 610, which traversed through the precedents related to the scope of interference in the disciplinary proceedings and enunciated guiding principles. The exposition by the Supreme Court could be usefully reproduced as under:-

“...In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of



the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.”....*

27. In *U.P. State Agro Industrial Corpn. Ltd. vs. Padam Chand Jain*, 1995 Supp (2) SCC 655, a three judge Bench of the Supreme Court considering the fact that the decision of the Disciplinary Authority was influenced by some extraneous material, set aside the decision of the Disciplinary Authority and remitted the matter to the Disciplinary Authority to decide the matter afresh, after excluding the extraneous material from its consideration. It held, *inter alia*, as under:-

“....6. The other reason given by the High Court for quashing the order of termination of service passed by the



Managing Director does appear to be correct even though the direction given thereafter cannot be sustained. The High Court rightly took the view that the decision of the Managing Director was vitiated on account of the fact that it was influenced by some extraneous material in the form of adverse comments of another Accounts Officer. Having correctly taken that view, the direction appropriate in the circumstances was to require the disciplinary authority to decide the matter afresh only on the basis of the relevant material excluding from consideration the extraneous material in the form of adverse comments of the other Accounts Officer. In our opinion, this is the appropriate direction to be given in the present case.

7. Consequently, the appeal is partly allowed. The impugned judgment of the High Court is set aside and so also the order dated April 21, 1986 passed by the Managing Director of the appellant-Corporation by which the services of the respondent were terminated. The Managing Director of the Corporation should now decide the matter afresh with advertence to the above observations taking into account the decision of this Court in B. Karunakar. In the circumstances of the case, we also direct that the Managing Director of the Corporation should decide the matter as early as possible and preferably by January 31, 1994.”....

28. Clearly, the decision of the Disciplinary Authority to impose a major penalty of removal from service, has been influenced by extraneous material in the form of a loss of Rs.2 crores allegedly suffered by the respondent-bank. The Disciplinary Authority has thus, erred by relying on such extraneous material, which ought not to have been taken into account while deciding the nature of penalty to be imposed on the appellant, especially when the appellant did not get any opportunity, whatsoever, to put forth his defence in respect of the same.

29. In the circumstances, the order of the Disciplinary Authority to the



extent it imposes the punishment of “*Removal from service which shall not be a disqualification for future employment*”, is not sustainable and the same is accordingly set aside. Consequently, the order of the Appellate Authority, Reviewing Authority and also the impugned judgment of the learned Single Judge, are also set aside. The matter is remitted to the Disciplinary Authority with a direction to pass a fresh order of punishment, excluding from consideration the aforesaid aspect of financial loss of Rs. 2 crores allegedly suffered by the respondent-bank. It will, of course, be open to the Bank to consider the actual loss, as may be.

30. As the matter has been remitted not on the ground of disproportionality of punishment, the decisions cited on that aspect need not be discussed as they pale into insignificance.

31. However, we trust that while passing a fresh order of punishment, the mitigating circumstances as articulated by the learned counsel for the appellant before us as well as pleaded in the appeal before the Appellate Authority shall be given the due weightage they deserve. As the major penalty of removal was imposed on the appellant about 9 years back, we direct the Disciplinary Authority to pass the order at the earliest, preferably within a period of three months.

32. The appeal is partly allowed, in the above terms.

VIKAS MAHAJAN, J

NAJMI WAZIRI, J

OCTOBER 06, 2022/MK/dss