

Items- 05-03-2024
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**MAT 352 of 2023
CAN 1 of 2023**

**Mridul Kumar Mitra
Versus
The State Bank of India & Ors.**

With

**FMA 236 of 2023
The State Bank of India & Ors.
Vs.**

Mridul Kumar Mitra

Mr. Kallol Basu, Adv.
Mr. Bratin Kumar Dey, Adv.
...for the appellant in MAT 352/2023
for the respondent in FMA 236/2023
Mr. S.R. Sinha, Adv.
Mr. S. Pal Choudhuri, Adv.
...for appellant in FMA 236/2023
for the respondent in MAT 252/2023

1. We have heard the learned Counsel for the parties. Both the parties are aggrieved by the order passed by the learned Single Judge passed on 25th November, 2022 in a writ petition in which Sri Mridul Kumar Mitra, the writ petitioner, has challenged the order passed by the appellant authority on 26th October, 2018, the final order of the disciplinary authority dated 27th April, 2011, the enquiry report and the charge-sheet.
2. The learned Single Judge on consideration of materials on record and the various decisions cited, had observed that the writ petitioner had failed to satisfy the Court that the authority conducted the proceeding against the petitioner in violation of the principles of natural justice or the statutory rules. Hence, the conclusions and the findings arrived at by

the authorities were not interfered with. The learned Single Judge did not find any infirmity in the decision making process. The findings of the appellate authority in refusing to interfere with the order of the disciplinary authority that the charges against the petitioner has been substantiated, has not been interfered with in the impugned judgment.

3. While deliberating on the question of proportionity of the punishment, the learned Judge has taken note of the submission made on behalf of the writ petitioner that one Anjan Kumar Nag who was a special assistant of the SBI of the same Branch was also charged with the same offence but was awarded lesser punishment than the petitioner and in this regard, the writ petitioner had relied upon a copy of the penalty order and the appellate order passed in the case of Mr. Nag, who according to the writ petitioner, stands on the same footing and, therefore, the petitioner contended that he is entitled to equal treatment as that of Anjan Kumar Nag.
4. The learned Single Judge accepted the said submission and on the strength of the decisions of the Hon'ble Supreme Court in the case of *Director General of Police and Others vs. G. Dasayan* reported in *1998 (2) SCC 407* and *Rajendra Yadav vs. State of M.P. and Others* reported in *2013 (3) SCC 73* that when a person charged with identical allegations was inflicted with lesser punishment, the petitioner cannot be discriminated against by awarding a higher punishment for similar allegations and directed reconsideration of the matter by the appellate authority notwithstanding an objection taken by the respondent bank that Anjan Kumar Nag, the writ

petitioner, does not stand on the same footing.

5. The learned Single Judge has, in our view, rightly addressed the issue and observed that the appellate authority would be more competent to decide on the quantum of punishment instead of the court substituting its own conclusion on penalty and impose some other penalty keeping parity with Mr. Nag on the facts of the case.
6. The learned Counsel appearing on behalf of the petitioner, on instruction, submits that the petitioner shall abide by the direction passed by the learned Single Judge and has only prayed for extension of time in order to enable him to make representation.
7. Mr. S.R. Sinha, learned Counsel for the respondents has submitted that the bank has filed a cross objection in which it has been urged that the case of Mr. Nag and the present petitioner are not standing on the same footing and this should have been considered by the learned Single Judge on the basis of affidavit-in-opposition filed in the said proceeding.
8. It is further submitted that the imposition of punishment is disproportionate has not been raised in the inquiry proceeding and the disciplinary proceeding. The learned Counsel for the writ petitioner, however, submits that the writ petitioner has referred the case of Anjan Kumar Nag in the representation along with other issues on the merits of the order passed by the disciplinary authority but the same was not considered by the appellate authority.
9. We are in agreement with the learned Single Judge that in the

event a person with similar misconduct has received lesser punishment, then on a parity of reasoning the imposition of punishment to the writ petitioner is disproportionate. However, this aspect of the matter needs to be revisited and re-considered by the appellate authority as penalty of dismissal has been passed by the appellate authority, which is akin to a civil death.

10. Be that as it may, we feel that the liberty granted to the petitioner to submit a representation along with documents in support thereof before the appellate authority does not require interference. However, by reason of pending of the appeal, time is required to be extended suitably.

11. Accordingly, the time to submit the representation along with document in support of a lesser punishment before the appellate authority shall be filed within a period of two weeks from this date with the prayer for reconsideration of the penalty imposed on the ground of parity and if such representation is submitted within the aforesaid time limit, the appellate authority shall reconsider whether the punishment imposed is disproportionate to the offence alleged in the light of the observation made by the learned Single Judge in the order dated 25th November, 2022 and pass a reasoned order after giving opportunity of hearing to the writ petitioner and communicate such order within a week thereafter.

12. The entire exercise shall be completed as expeditiously as possible preferably within a period of six weeks from the date of receipt of such representation.

13. With the above observation and directions, the appeal and the application are disposed of. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)