



2024:DHC:10116



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

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Date of Decision: 09th December, 2024

+ W.P.(C) 6696/2003

C.J. ARORA

.....Petitioner

Through: Dr. Ashwani Bhardwaj, Advocate.

versus

PUNJAB NATIONAL BANK & ORS.

.....Respondents

Through: Mr. Jasbir Bidhuri, Advocate.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to the Inquiry Report dated 14.12.1995, order of punishment dated 17.08.1996, Appellate order dated 26.07.2002 and order dated 08.04.2003 of the Reviewing Authority, amongst other reliefs.

2. Facts to the extent necessary and as averred by the Petitioner are that Petitioner was working as Manager (MMG/S-II) in New Bank of India upto 07.01.1990 and was governed by New Bank of India Officer Employees (Discipline & Appeal) Regulations, 1982. Basis a complaint received against the Petitioner, a charge-sheet was issued on 20.09.1990 alleging that he sanctioned loans to parties including his sister, who was one of the partners in the account of M/s. Vishal Super Insulators, without proper investigation and collateral securities, thereby jeopardising the interest of the Bank. Petitioner was placed under suspension.

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3. Petitioner replied to the charge-sheet on 21.01.1991. Inquiry Officer ('IO') and Presenting Officer were appointed on 07.02.1991. IO submitted his report on 02.04.1992 to the Disciplinary Authority, who sought certain clarifications from the IO, which were given vide reply dated 08.04.1992. Without supplying copy of the report to the Petitioner and seeking his comments, vide order dated 28.12.1992, the Disciplinary Authority ordered re-inquiry and appointed a new IO, who commenced proceedings and submitted his report on 14.12.1995. In the meantime, New Bank of India amalgamated with Punjab National Bank on 04.09.1993, resulting in change of Disciplinary Authority, large scale transfers of employees including the Defence Assistant, whom the Petitioner wanted to engage.

4. It is averred that the second Inquiry Report was furnished to the Petitioner wherein all charges were held to be proved contrary to the first report wherein some charges were proved, as learnt by the Petitioner. Apprehending an adverse order, Petitioner filed CWP 2459/1996 in this Court, in which notice was issued but hurriedly the Disciplinary Authority passed an order imposing penalty of '*dismissal from service which shall be disqualification for future employment*'. Petitioner filed an appeal on 08.10.1996 which was not decided. On 29.01.2002 the writ petition was disposed of directing the Petitioner to prefer a fresh appeal, which the Petitioner did on 12.02.2002 and the same was rejected on 26.07.2002. Review Petition to the CMD of the Bank suffered the same fate on 17.11.2002.

5. Learned counsel for the Petitioner assails the impugned orders *inter alia* on the ground that after the first Inquiry Report was rendered on 02.04.1992 wherein only some charges proved as learnt by the Petitioner,



since the report was never furnished to him, there was neither any material before the Disciplinary Authority nor any reason or basis to order re-inquiry in respect of the same chargesheet. The arbitrariness in taking the decision is apparent from a plain reading of the order dated 28.12.1992 itself, which is predicated on a mere apprehension and reads as: ‘*Enquiry has been reconstituted afresh in view of the apprehensions raised about the inquiry report in the manner it was prepared*’. It is not discernible who raised the objection to the manner in which the inquiry report was prepared and when and if any, what was the objection. Since the report was not furnished to the Petitioner, he was certainly not the one who had objected. No doubt, Disciplinary Authority has the power to direct *de novo* inquiry or remit the inquiry to be held again from any stage, but there must be some material and a cogent reason to take such a decision. Moreover, the decision was taken without putting the Petitioner to notice and seeking his representation/objections. It is urged that order dated 28.12.1992 is untenable in law and be quashed along with the order imposing the major penalty and in this context, reliance is placed by Dr. Ashwani Bhardwaj on the judgment of the Supreme Court in ***K.R. Deb v. The Collector of Central Excise, Shillong, (1971) 2 SCC 102.***

6. Learned counsel appearing on behalf of the Respondents, on the other hand, argues that there is no legal infirmity in the order dated 28.12.1992, whereby re-inquiry was directed against the Petitioner as the Disciplinary Authority had the power to do so under Regulation 7 of the Punjab National Bank Officer Employees’ (Discipline and Appeal) Regulations, 1977 (‘1977 Regulations’). Reliance is placed on the judgment of the Co-ordinate Bench of this Court in ***Kulamani Biswal v. Union of India, 2022 SCC OnLine Del***



1888, to support the plea that where Rules contemplate that a Disciplinary Authority can remand the matter back to the IO to conduct the inquiry again from any stage if in the wisdom of the Disciplinary Authority certain infirmities have crept in which go to the root of the matter, *de novo* proceedings can be held. Relevant passages from the judgment are as follows:

“34. It is true that such materials could have been produced by the respondent during inquiry. It appears that the CBI did not part with the aforesaid materials to the Disciplinary Authority for being produced in inquiry to maintain confidentiality. Given the limited nature of documents produced in the earlier inquiry, the charges were not proved. The Rules, contemplates a de novo inquiry can be initiated against a delinquent employee for reasons recorded in writing and the reasons now stated by the respondent being germane to the decision to conduct a de novo inquiry, the decision of the respondent cannot be faulted.

35. The plea of Mr. Ghose is that, such a de novo inquiry cannot be initiated. I am not in agreement with the said submission. The Rule 26(1) contemplates when an inquiry report is submitted, the Disciplinary Authority can remand the matter back to the Inquiry Officer for him to conduct the inquiry from a particular stage or if in the wisdom of the Disciplinary Authority that certain infirmities which occurred goes to the root of the hold de novo proceedings. In this case, certain relevant materials/documents were not produced in the earlier inquiry proceedings. Now the CBI has decided to produce/give the same to the Disciplinary Authority. The de novo inquiry is justified. The charges against the petitioner are very serious in nature. It is obligatory on the part of the Disciplinary Authority to inquire into the charges based on all the materials/evidence now made available by the CBI and which may have a bearing on the outcome of the inquiry.

36. Hence, the inquiry report submitted by the Inquiry Officer was considered but not accepted by the Disciplinary Authority, which decided to hold a de novo proceedings. In other words, the Inquiry Report has not been acted upon by the Disciplinary Authority.

37. Insofar as the judgment relied by Mr. Ghose in the case of Managing Director, ECIL (supra) is concerned, the Supreme Court has only held that the Disciplinary Authority has to give a copy of the inquiry report submitted by the Inquiry Officer before taking a decision on the findings of the Inquiry Officer on the charges framed against the delinquent officer. It is not such a case. The Disciplinary Authority has not accepted the inquiry report submitted by the Inquiry Officer in this case, hence, the same is not



required to be given to the petitioner.

38. Similarly, insofar as the judgment in Punjab National Bank (supra) is concerned, the same is on the proposition that if the Disciplinary Authority disagrees with the findings of the Inquiry Officer, principles of nature justice requires that an opportunity should be given to the delinquent employee to make a representation on the conclusion of the Disciplinary Authority in the disagreement note on the findings in the report of the Inquiry Officer.

39. In the case in hand as stated above, the Disciplinary Authority has not accepted the Inquiry Report submitted by the Inquiry Officer. Rather, the Disciplinary Authority has decided to hold a de novo proceedings. Hence, the judgment has no applicability.

40. Similarly, reliance has been placed by Mr. Ghose on the judgment of the Supreme Court in the case of Union of India (supra) is concerned, the Court held, if the respondent had been exonerated, on a charge, a second inquiry would not be maintainable. There is no dispute on the said proposition of law. The facts of the said case clearly demonstrate that the charge sheet was issued to the delinquent employee which has been inquired into by a Competent Authority in a regular inquiry which culminated in his exoneration, hence, the Supreme Court has held that second inquiry on that very charge is not maintainable.

41. But in the case in hand, the Disciplinary Authority has not acted on the Inquiry Report submitted by earlier Inquiry Officer Rather, it has taken a decision to hold a de novo proceeding, hence the said judgment is clearly distinguishable.

42. Mr. Ghose has also relied upon the judgment of the Supreme Court in the case of Dev Prakash Tewari (supra), to hold that if the authority is not vested with any power of continuing the disciplinary proceedings after retirement then the inquiry lapses and the employee is entitled to all the retiral benefits. Suffice to state, I have already reproduced the relevant provisions of Rule 32.1 of CDA Rules, which clearly contemplates that inquiry can be held after the employee has attained the age of superannuation, inasmuch as the proceedings initiated earlier, i.e., before the date of retirement shall be deemed to be proceedings against an employee as if he is still in service.

43. In fact, the petitioner cannot urge this point for the simple reason that the petitioner had participated in the earlier inquiry proceedings which were held after December 08, 2018, without any demur and protest. He allowed the Inquiry Officer to submit his report. Hence, the petitioner having participated in the inquiry proceedings accepted the position under the Rules and that the Authority has power to continue with the disciplinary proceedings even after superannuation, the petitioner, now, cannot contend otherwise. This plea is rejected.”



7. Learned counsel also pleads that the Petitioner had participated in the *de novo* inquiry without raising any protest or demur and once the inquiry culminated into a dismissal order, he cannot turn around and question the holding of the inquiry and any such defence will be barred by doctrine of estoppel.

8. Heard learned counsels for the parties on the limited aspect whether the *de novo* inquiry could have been initiated pursuant to the order of the Disciplinary Authority dated 28.12.1992.

9. Facts are not disputed to the extent that the first inquiry proceedings culminated into an inquiry report dated 02.04.1992. While the inquiry report is not on record and it is a pleaded case of the Petitioner that the report was never furnished to him, it is asserted that Petitioner had learnt that the IO had held only some of the charges to be proved. It is equally undisputed that after the IO rendered the report and the same was forwarded to the Disciplinary Authority for decision, an order was passed on 28.12.1992 directing re-inquiry into the same chargesheet dated 20.09.1990. It is this order which is questioned by the Petitioner as being vague, unreasoned, arbitrary and wholly unsustainable in law.

10. Learned counsel for the Respondent is right in his submission that if the rules pertaining to disciplinary proceedings enable the Disciplinary Authority to direct re-inquiry, the power can be exercised and to this extent, reliance is correctly placed on the judgment in *Kulamani Biswal (supra)*. In the present case, the disciplinary proceedings are regulated by 1977 Regulations. Regulation 7(1) provides that the Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the IO for fresh or further inquiry and report and



the IO shall thereupon proceed to conduct a further inquiry in accordance with Regulation 6. Regulation 7(2) further provides that if the Disciplinary Authority disagrees with the findings of the IO on any article of charge, it shall record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. It is therefore clear that under Regulation 7(1), the Disciplinary Authority has the power to remit the case to the IO for fresh or further inquiry. However, this power cannot be exercised arbitrarily, predicating the decision on mere apprehensions. In other words, the decision directing the IO to hold a *de novo* inquiry or re-inquiry from any stage, must be for justifiable reasons based on material and factors germane to the decision itself, as in the case of ***Kulamani Biswal (supra)***, where the Court examined the decision and the decision making process and found that there was sufficient evidence on record in the nature of WhatsApp messages, oral statements of various witnesses including officials of NTPC and independent trap witnesses as well as documents such as extract of visitor registers, gate passes, recovery-cum-seizure memos, which were with the CBI during the course of the inquiry and could not be produced in the first inquiry as CBI did not part with the material and thus the decision directing *de novo* inquiry was justified, as this evidence would have a bearing on the culpability of the charged officer.

11. In contrast to the aforesaid decision, in the present case, while Regulation 7(1) of 1977 Regulations does enable the Disciplinary Authority to remand the matter back to the IO, but the power has been exercised more in violation of the provision than in consonance thereof. A plain reading of the order dated 28.12.1992 shows that it is based on a mere apprehension



that the report was not prepared in a proper manner and reads as: '*Enquiry has been reconstituted afresh in view of the apprehensions raised about the inquiry report in the manner it was prepared*'. Learned counsel for the Petitioner rightly contends that no reason is discernible from the order as to why the report was not proper and/or what were the infirmities in the making of the report, if any, and/or who had pointed out any defects/errors, since the report was never furnished to the Petitioner. Directing a *de novo* inquiry is a serious matter as it subjects the charged officer to an inquiry for the second time and the prejudice becomes pronounced if the earlier report is in his favour, fully or partially and therefore the decision must be taken with circumspection and only if there is cogent and glaring material before the Disciplinary Authority, which is germane to the charges and may have a significant bearing on the outcome of the findings and can certainly cannot be based on mere apprehensions or whims and fancies of the Disciplinary Authority, as has happened in the present case. By no stretch of imagination order dated 28.12.1992 can be sustained in law so as to validate the second inquiry leading to the extreme penalty of dismissal from service.

12. In my view, this illegality goes to the root of the matter and is sufficient to vitiate the entire inquiry proceedings including the consequential punishment and in this view, I am fortified by the judgment of the Supreme Court in ***K.R. Deb (supra)***, which is based on similar fact situation. In the said case, an inquiry report was submitted on 03.07.1961 holding the charges as not proved. The Disciplinary Authority directed the IO to examine a few witnesses on the ground that the report was sketchy and the IO had failed to appreciate the importance of evidence of one of the



Prosecution Witnesses. A second report was rendered holding that the conduct of the employee was not above board. Yet again, the Collector ordered a *de novo* inquiry and appointed another IO, who rendered a report holding that the charges were proved. The Supreme Court set aside the inquiry proceedings and held that no doubt, the rule in question provided for one inquiry but it was possible that the Disciplinary Authority may ask the IO to record further evidence if there was no proper inquiry because some serious defect had crept in and some important witnesses were not available or were not examined but the rules cannot contemplate the action taken by the Collector.

13. Having held that the second inquiry proceeding stands vitiated on account of the illegal and arbitrary order dated 28.12.1992 directing re-inquiry, ordinarily this Court would have directed the Respondents to proceed with the first inquiry report dated 02.04.1992 and take a decision thereon. However, counsel for the Bank has during the course of hearing handed over written instructions received via e-mail dated 03.12.2024 from the Bank stating that the first inquiry report pertains to the year 1992 and was rendered prior to the merger of the Banks and is not available. In this view of the matter as also considering the fact that the chargesheet is of the year 1990 and the penalty order goes back to 1996, the only option is to quash the penalty order and the inquiry proceedings.

14. Accordingly, this writ petition is partially allowed and the impugned charge sheet along with inquiry report dated 14.12.1995, punishment order dated 17.08.1996 and appellate order dated 26.07.2002 as well as review order dated 08.04.2003 are hereby quashed and set aside and Petitioner is held entitled to notional re-instatement from the date of the penalty order till



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30.04.2011, the date on which he would have superannuated but for dismissal from service. Pay and allowances of the Petitioner will be worked out for the period of notional re-instatement for the purpose of retiral benefits and on this basis, he will be paid his pension from 30.04.2011. Arrears of pension will be worked out by the Respondents and released to the Petitioner within 03 months from today.

15. Writ petition is disposed of in the abovesaid terms.

JYOTI SINGH, J

DECEMBER 9, 2024

B.S. Rohella