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

\+ W.P.(C) 2594/2025 & CM APPL. 12377/2025

SUSHIL KUMAR JAIN@ S. K. JAIN, ...Petitioner

Through: Mr. Naresh Chandra Gupta, Advocate.

versus

PUNJAB NATIONAL BANK, AND ANR .....Respondents

Through: Mr. Rajat Arora, Mr. Niraj Kumar, Mr. Sourabh Mahla and Mr. Om Prakash, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **03.03.2025**

CM APPL. 12378/2025 *(for exemption)*

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 2594/2025 & CM APPL. 12377/2025 *(for stay of the chargesheet)*

1. This petition, under Article 226 of the Constitution, is principally directed against a chargesheet dated 15.01.2025, issued to the petitioner by the respondent - Punjab National Bank ["the Bank"], from whose services he retired on 31.07.2009.

2. This is the second round of litigation arising out of the proceedings against the petitioner. The proceedings commenced with a chargesheet dated 11.04.2009, which was followed by two supplementary chargesheets, dated 29.06.2009 and 23.07.2009. These chargesheets were all issued prior to the petitioner's superannuation. The petitioner was awarded the punishment of 'removal from service' by an order of the

Disciplinary Authority dated 22.09.2011, which was upheld in appeal by an order dated 30.04.2012. The details of the charges need not concern us in this writ petition; suffice it to note that the principal charge against the petitioner, was that he had sanctioned/enhanced credit facilities in various borrower accounts, without following proper pre-sanction or post-sanction procedures.

3. The petitioner challenged the chargesheets, as well as the orders of the Disciplinary Authority and the Appellate Authority, by way of W.P(C) 4011/2012. The writ petition was decided by the learned Single Judge *vide* judgment dated 29.08.2024. The learned Single Judge held that the proceedings were vitiated by the respondents' failure to furnish a list of witnesses and failure to prove the disputed documents referred to in the chargesheet by way of oral evidence.

4. Having come to these conclusions, the learned Single Judge then addressed the question of whether a *de-novo* inquiry should be permitted. The concluding observations of the learned Single Judge are as follows:

> *"20. The question that now arises is what relief can be granted to the Petitioner at this stage considering that the inquiry proceedings have been held to be unsustainable for want of list of witnesses. In the judgments aforementioned, wherever the Courts have interfered with the disciplinary proceedings, only on ground of there being no list of witnesses, Courts have granted liberty to the employers to initiate de-novo inquiry from the stage of issuance of charge sheet. Mr. Raju has strenuously relied on the judgment of the Supreme Court in Ram Pal Singh Bisen (supra), to argue that in the said case, the Supreme Court held that since the Petitioner had superannuated and the question of his reinstatement did not arise and it was only a case of some monetary benefit, it would not be proper to direct a fresh inquiry. This judgment, in my view, does not aid the Petitioner inasmuch as in the said case, apart from there being no list of witnesses, the Supreme Court had found other serious infirmities in the conduct of the inquiry, one of them being that the Charged Officer was not allowed to cross-examine one of the material witnesses i.e. the complainant.*

21. In view of the above, the writ petition is allowed, quashing and setting aside impugned Memorandums dated 11.04.2009, 29.06.2009 and 23.07.2009 as well as order dated 22.09.2011, whereby the Disciplinary Authority imposed the penalty of 'removal from service which shall not be a disqualification for future employment', and order and 30.04.2012, whereby the appeal against the penalty order was dismissed. ***It is, however, left open to the Respondents to take recourse to de-novo inquiry, if so advised, in accordance with law, from the stage of issuance of charge sheet, with a caveat that if the Respondents are unable to comply with the legal requirement of leading oral evidence to prove the documents relied upon and witnesses are not available, they should not re-open the issue, considering that the charge sheet was issued in 2009 and Petitioner has already suffered prolonged litigation since the year 2012. In case Respondents decide not to follow the path of a de-novo inquiry, they will disburse all retiral/terminal benefits due and payable to the Petitioner as a consequence of the penalty order being quashed and set aside, within 3 months from today****."*[1]

5. The judgment was challenged before the Division Bench by the Bank. The Division Bench, by its judgment dated 11.12.2024 in LPA 1198/2024, held that a list of witnesses is not a necessary adjunct in every case to a memorandum of charges, and that an authority may choose not to adduce the evidence of any witness. It, therefore, accepted the submission of the Bank that a chargesheet, even if it is not accompanied by a list of witnesses, cannot be invalidated merely for that reason. The Division Bench, however, agreed with the learned Single Judge that, in the absence of evidence led by any witness to support the documents which were disputed by the petitioner, the charges had wrongly been held to be proved. On facts, both the learned Single Judge and the Division Bench found that the petitioner had denied and disputed the documents relied upon by the Bank. The Division Bench ultimately upheld the judgment of the learned Single Judge.

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[1] Emphasis supplied.

6. In purported exercise of the liberty granted, the Bank has issued a Memorandum of Charges dated 15.01.2025 to the petitioner. The said Memorandum is accompanied by a list of documents and a list of witnesses.

7. Two issues have been canvassed before this Court by Mr. Naresh Chandra Gupta, learned counsel for the petitioner. The first relates to the validity of the issuance of a fresh chargesheet, rather than holding a *de-novo* inquiry on the old chargesheets. The second relates to the petitioner's entitlement to provisional pension or other retiral benefits until the inquiry is completed, and a fresh order is passed by the Disciplinary Authority.

8. On the first of these issues, the order of the learned Single Judge dated 29.08.2024, sustained by the Division Bench, permitted the Bank to initiate a *de-novo* inquiry in accordance with law "*from the stage of issuance of chargesheet*". The contention of Mr. Rajat Arora, learned counsel for the Bank, is that a new chargesheet was prepared to consolidate the allegations contained in the original chargesheet and supplementary chargesheets, and the list of documents and the list of witnesses have been added, in view of the judgment in the first round of litigation. Mr. Arora, however, submits that the Bank can proceed on the basis of the original chargesheet and the supplementary chargesheets, read with the list of witnesses and documents in the chargesheet dated 15.01.2025.

9. Mr. Gupta is not in a position to confirm, one way or the other, as to whether the chargesheet dated 15.01.2025 contains any new allegations against the petitioner. However, the submission of Mr. Arora recorded

above, puts this controversy to rest. As far as the fresh inquiry is concerned, therefore, the contention of the petitioner that no new chargesheet could be issued, is resolved by directing the respondents to conduct a *de-novo* inquiry on the chargesheets dated 11.04.2009, 29.06.2009, and 23.07.2009. The petitioner had already filed replies to the said chargesheets.

10. The orders in the first round of litigation clearly contemplated a fresh inquiry to be held, despite the learned Single Judge having come to the conclusion that the original chargesheet was vitiated by the lack of a list of witnesses. In order to give effect to this direction, it is made clear that the inquiry will be conducted on the basis of list of documents and list of witnesses, which have been served upon the petitioner, alongwith the chargesheet dated 15.01.2025. The inquiry will be conducted on the basis of the original chargesheets, read with the list of documents and witnesses mentioned above, in terms of the replies filed by the petitioner to those chargesheets.

11. It may be noted that the petitioner had initiated a contempt petition against the Bank [CONT.CAS(C) 1956/2024], in which this Court has passed a direction that the inquiry would be concluded within a period of six weeks from the date of the order, i.e., 29.01.2025, provided the petitioner herein also cooperates in the process. Learned counsel for the parties assure the Court that they will make an attempt to conclude the inquiry proceedings as expeditiously as possible, within the time granted by the Court.

12. This brings us to the second issue, regarding the benefits which can be granted to the petitioner in the interim. It is the contention of Mr.

Gupta that, from the date of the petitioner's retirement, i.e., 31.07.2009, until the first order of the Disciplinary Authority dated 22.09.2011, the petitioner was being paid provisional pension under Regulation 46 of the Punjab National Bank (Employees') Pension Regulations, 1995. The said Regulation reads as follows:

"***46. <u>Provisional Pension</u>***:-

"(1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned in less than the provisional pension or the pension is reduced or withheld etc., either permanently or for a specified period.

(2) In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable."

13. Mr. Arora, however, draws my attention to Regulation 20 (3)(iii) of the Punjab National Bank (Officers') Service Regulations, 1979, which provides that an officer will not receive any pay and/or allowance after the date of superannuation, and will not be entitled to retirement benefits until the completion of the proceedings, in the event disciplinary proceedings are initiated during the time he was in service and continued thereafter. The order of the learned Single Judge dated 29.08.2024 also directed that the retiral/terminal benefits due to the petitioner were to be paid within a given time frame, in case the respondents decided not to follow the path of a *de-novo* inquiry.

14. The position that now emerges is that the respondents have

initiated *de-novo* proceedings, which will be governed by the terms of this order. For the period during which the proceedings are in progress and until any order is passed by the Disciplinary Authority, I am of the view that it would be in the interest of justice for the petitioner to draw provisional pension, in the manner he was drawing prior to the disciplinary order dated 22.09.2011, which has been set aside.

15. Mr. Gupta submits that all arrears of provisional pension, from the date of the said disciplinary order until today, must also be paid. However, I am of the view that, until the date of the order of the learned Single Judge, the original disciplinary order held the field, and the order of the learned Single Judge makes payment of retiral benefits subject to further inquiry. However, the petitioner's contention is accepted for the period after the order of the learned Single Judge, i.e., from 30.08.2024.

16. The respondent is directed to compute the petitioner's provisional pension for the period from 30.08.2024 onwards, on the same basis as was being paid to him prior to 22.09.2011. The arrears from 30.08.2024, be released within a period of four weeks from today. The Bank will also continue to pay provisional pension at the said rate, until the conclusion of *de-novo* proceedings. The said payments will be subject to the governing Regulations, if any, with regard to adjustment of provisional pension after the conclusion of the proceedings.

17. The writ petition, alongwith the pending application, is disposed of with these directions.

PRATEEK JALAN, J

MARCH 3, 2025/SS/JM/