



2025:DHC:522



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 27.01.2025

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W.P.(C) 5295/2015

H.N. WADHWA

.....Petitioner

Through: Mr. Anuj Kapoor and Mr. Shivom Sethi, Advocates.

versus

PUNJAB NATIONAL BANK

.....Respondent

Through: Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Dinesh Sharma, Ms. Likivi Jakhaly and Mr. Kushagra Nilesh Sahay, Advocates.

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. By way of this petition under Article 226 of the Constitution, the petitioner assails an order dated 26.04.2013, by which the Reviewing Authority of the respondent-bank has upheld the penalty of “*removal from service*” imposed upon him. This decision has been taken pursuant to remand in terms of the Division Bench judgment¹ of this Court dated 04.03.2013, by which a judgment² of a learned Single Judge dated 20.12.2006 was upheld.

2. The petitioner was employed by the respondent-bank as a Clerk on

¹ In L.P.A. 191/2007.

² Judgment dated 20.12.2006 in W.P.(C) 3047/1993.



15.11.1972, and was promoted to the Managerial Cadre ((MMG/S-II) on 15.03.1985. At this juncture, he was transferred to the Lucknow Regional Office. The petitioner was sent on deputation for a period of over three months, from 21.08.1985 to 30.11.1985, to the Bhadoi Branch (Uttar Pradesh) and was transferred to Bhadoi from 01.12.1985 to 21.02.1986. He was again transferred to Bhadoi from 26.02.1986 to 08.04.1987.

3. This petition concerns disciplinary proceedings initiated against the petitioner, in respect of 15 TA/DA Bills amounting to Rs. 21,257.20/- submitted by him in respect of his stay at Bhadoi from 27.02.1986 to 27.11.1986. The bills were purportedly issued by “Seth Lodging & Boarding, Gyanpur Road, Bhadoi”. The respondent took the view that the bills submitted by the petitioner were “fake hotel bills”, as there was no hotel of this name and style in Bhadoi.

4. The petitioner was placed under suspension with effect from 02.04.1988, and served with a charge sheet on 07.04.1988. The imputation, as served upon the petitioner, with the charge sheet, was as follows:

“Shri H.N. Wadhwa while functioning as Manager on deputation at Branch Office. Bhadoi (U.P.) fraudulently claimed payment of TA/DA bills from the bank during the period 27.2.1986 to 27.11.1986, by submitting 15 fake hotel bills for Rs.21,257.20, purportedly to have been issued by Seth Lodging & Boarding, Gyanpur Road, Bhadoi, whereas there is no hotel at Bhadoi, under the name & style of Seth Lodging and Board, Gyanpur Road, Bhadoi.”

5. The petitioner submitted a reply to the charge sheet on 08.04.1988.

6. On 24.08.1990, the imputations in respect of the charge were modified by addition of the following paragraph:

“Being fully aware of the fact that Shri B.K. Seth is one of the partners of M/s. Seth Carpets which was granted certain credit facilities by Shri



Wadhwa, Shri Wadhwa by misusing his official status obtained from Shri B.K. Seth, the above mentioned fake hotel bills thereby deriving pecuniary gain for himself from the bank in an irregular manner.”

7. The disciplinary proceedings culminated in an order of the Disciplinary Authority dated 10.06.1991, by which the punishment of “*removal from service*” was imposed upon the petitioner³. The Disciplinary Authority relied upon an inquiry report, which found both the imputations of charge proven.

8. The petitioner’s appeal was rejected by the order of the Appellate Authority dated 19.11.1991⁴, and his request for review was also rejected, by order of the Reviewing Authority dated 25.09.1992⁵.

9. These orders were challenged by the petitioner before this Court in W.P.(C) 3047/1993. The petition was partly allowed by a judgment dated 20.12.2006. The Court found the second imputation against the petitioner to be procedurally unsustainable. In reaching this conclusion, it was noted that the procedure for imposition of major penalties under Regulation 6 of the New Bank of India Officers Employees’ (Discipline & Appeal) Regulations, 1982, was not complied with, as the petitioner was not given an opportunity to file a written statement of defence in respect of the second imputation, and no list of documents or list of witnesses in support thereof, was furnished to him. The Court observed that, while amending the charge “and thereby adding one paragraph with more serious allegations than those contained in the first paragraph”⁶, the respondent did not follow the procedure prescribed in the Regulations.

³ Annexure P-9 to the writ petition.

⁴ Annexure P-10 to the writ petition.

⁵ Annexure P-11 to the writ petition.



The Court found the allegations in the two imputations to be distinct and observed that the second allegation be treated as a new charge altogether.

10. The Court rejected the respondent's arguments that this contention has been raised belatedly, noting that the petitioner had repeatedly asked for a copy of the report of the Central Bureau of Investigation ["CBI"] upon which the allegation was purportedly based. On the question of the CBI report, the Court noticed that CBI had not filed a chargesheet against the petitioner and exonerated the petitioner, but that the second part of the disciplinary chargesheet was based on the report of CBI, which ought to have been furnished to the petitioner.

11. The operative portion of the judgment of the learned Single Judge reads as follows:

*"12. This prejudice has to be coupled with the prejudice caused by the failure of the Disciplinary Authority to provide an opportunity to file a written statement before the commencement of inquiry. In my opinion, **these failures are serious and have vitiated the inquiry to the extent of the second part of the charge-sheet.***

*13. The question now is what should be the relief to be given to the petitioner. So far as the first part of the charge is concerned, the same has also been held to have been proved by the Inquiry Officer by his report dated 23.3.1991. There is no allegation of failure of justice or prejudice or of noncompliance of any rules, statutory or of natural justice, in respect of his part of the Inquiry Officer's report. Therefore, the Disciplinary Authority would be entitled to inflict some punishment on the petitioner. **However, since the more serious part of the charge now fails in view of the above discussion, the earlier order of punishment cannot hold good. The order of punishment in this case has been passed keeping in view the entire charge. Since the more serious part of the charge is gone, a rethinking in the matter of punishment is also called for.***

*14. The matter, therefore, has to be remanded to the Disciplinary Authority **for the purpose of imposing a penalty commensurate with the charge proved. Here the Disciplinary Authority will have to keep in mind the defence raised by the petitioner that he did stay in the***

⁶Supra (note 2), paragraph 6.



private guest house of M/s. Seth Carpets and paid Mr. B.K. Seth the charges equivalent to his entitlement. Mr. B.K. Seth issued the receipts although under the name of 'Seth Lodging and Boarding' which was, in fact, non-existent. The extent of the misconduct of the petitioner has to be viewed accordingly and the punishment has to be commensurate therewith. The petitioner, in the meantime, has reached the age of superannuation.

15. In view of the above, the petition succeeds in part, The impugned order of punishment dated 10.6.1991 is set aside and the order of the Appellate Authority dated 19.11.1991 is hereby quashed. The Disciplinary Authority will now pass a fresh order of punishment within two months hereof. The petitioner will be entitled to his pay and allowances and other benefits treating the order of punishment to be non est except to the extent the petitioner is deprived of these benefits on account of the punishment order which may be imposed by the Disciplinary Authority.”⁷

12. The respondent-bank carried the matter to the Division Bench in LPA 191/2007, and the petitioner herein also filed cross-objections, with regard to the first imputation of charge having been upheld.

13. The Division Bench⁸ upheld the view of the learned Single Judge that the inquiry on the second imputation was vitiated due to procedural delay and, therefore, dismissed the Bank's appeal. On the cross-objections filed by the petitioner herein, the Court also upheld the view taken by the learned Single Judge, that the first imputation of charge did not warrant interference. While dismissing both the appeal and the cross-objection, the Division Bench, however, remitted the matter to the Reviewing Authority “to take a fresh decision with respect to the penalty to be awarded to the respondent in respect of the first charge which is the only charge established against the respondent”.⁹

⁷ Emphasis supplied.

⁸ Judgment dated 04.03.2013 in LPA 191/2007.

⁹ Paragraph 9 of the Division Bench judgment. [It may be noted that the petitioner herein was the respondent before the Division Bench].



14. The petitioner sought review of the order, to the extent that the remand had been directed to the Reviewing Authority, rather than the Disciplinary Authority. However, his review petition was dismissed by the order of the Division Bench dated 05.07.2013¹⁰.

15. The petitioner also challenged the orders of the Division Bench before the Supreme Court¹¹, but the Special Leave Petition was dismissed, both on delay and merits, by order dated 25.08.2014.

16. During the pendency of the appeal before this Court, the petitioner attained the age of superannuation on 31.10.2008.

17. The present petition arises out of an order of the Reviewing Authority dated 26.04.2013, passed on remand. The Reviewing Authority has upheld the earlier order of removal with the following observations:

*“4. I have examined the points raised by Shri Wadhwa in his review petition along with entire records of the case. I observed that it was established in the departmental enquiry that there was no hotel in the name of Seth Lodging and Boarding at Bhadoi. **The petitioner had claimed TA bills for the period 27.2.1986 to 27.11.1986, submitted with 15 bills purportedly issued by the said hotel, which was non-existent.** Despite being given sufficient opportunities to defend his case, the petitioner/defence could not produce any documentary evidence or any witness to prove that such a hotel/Guest House existed at Bhadoi. **Raising points in respect of conduct of enquiry at a later stage is not relevant.** It stands proved that the petitioner claimed the TA bills of Rs. 21,257.20 on the basis of fake hotel bills and **he has not been able to bring forth any fact/point in his review petition to mitigate the gravity of the charge.***

*5. I observe that the points raised by Shri Wadhwa in his review petition **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 review petition and confirm the penalty imposed by the Disciplinary Authority and upheld by the Appellate Authority.”¹²*

¹⁰ In RP 265/2013.

¹¹ SLP (C) CC Nos. 12925-12926/2014.

¹² Emphasis supplied.



18. I have heard Mr. Anuj Kapoor, learned counsel for the petitioner, and Mr. Rajesh Kumar Gautam, learned counsel for the respondent.

19. The legal position with regard to the charges on merits has been conclusively decided in the first round of proceedings - the first imputation of charge stands proved, and the second imputation stands rejected. The challenge in this writ petition thus pertains to the quantum of punishment imposed by the respondent. While considering such a challenge, the Court ordinarily exercises significant deference to the Disciplinary Authority. The charges having been established, it is for the authority to decide the quantum of punishment to be imposed. However, this principle is subject to an important qualification, that the punishment must be in proportion to the charges proved. The threshold for interference by the Court is nonetheless a high one – only when the Court finds a punishment to shock the conscience, is interference warranted¹³. The question is whether the present case reaches that high threshold.

20. Upon a consideration of all the facts noted above and, most importantly, the judgments rendered by this Court in the first round of challenge, which have been upheld by the Supreme Court, I have come to the conclusion that the petitioner's request for interference in the present case, is merited. My reasons are as follows:

- a) The imputations of charge, upon which the disciplinary proceedings were originally conducted and the penalty of removal imposed upon the petitioner, were two-fold. The first charge related to the submission of “fake hotel bills” for his stay at

¹³ Reference may be made, *inter alia*, to *Union of India & Ors. v. Managobinda Samantaray*, 2022 SCC OnLine SC 284.



Bhadoi, whereas there was no hotel at Bhadoi under the name and style of “Seth Lodging and Boarding”. The inquiry report, accepted in the original order of the Disciplinary Authority, disbelieved the petitioner’s contention that no licensed hotel was available at Bhadoi, and that he was, therefore, staying at an unregistered guest house for which he had paid the claimed amount. An affidavit of Mr. B.K. Seth, the owner of the guest house, was disregarded on the ground that he was not produced for cross-examination. The inquiry officer noted that the Bank permitted a claim for TA/DA to be made only in respect of a regular licensed hotel. This charge – that the petitioner had submitted TA/DA bills in respect of a guest house, whereas the rules only permitted him to claim for a licensed hotel - has been upheld in the first round of litigation.

- b) As against this, the charge which has been held to be vitiated is that the purported guest house was owned by a person to whom the respondent-Bank had advanced credit facilities. The second imputation of charge has been described in the judgment of the learned Single Judge as the “*more serious charge*”, and the fact that the said charge was deleted, is what led the Court to remand the matter for a fresh consideration on the quantum of punishment.
- c) Indeed, a close reading of paragraph 13 of the judgment of the learned Single Judge, extracted above, records the conclusion that the “*earlier order of punishment cannot hold good*”, after deletion of the second imputation of charge.



- d) The judgment of the Single Judge¹⁴ required the authority on remand, to keep in mind the petitioner's defence that he did stay in the private guest house and paid charges equivalent to his entitlement, for which receipts were duly issued by the owner. This aspect has not been considered in the impugned order dated 26.04.2013.
- e) The fact that only one imputation of charge stands proved, instead of the two that were originally considered, has been noticed in the impugned order, but has also not been alluded to in the reasoning of the authority. The impugned order, in fact, proceeds on the reasoning that the petitioner has not been able to bring forth any new points, or any factors which mitigate the gravity of the charge. Such observations entirely miss the crucial aspect which necessitated the remand, i.e., that one of the two imputations was unsustainable.

21. For the aforesaid reasons, I am of the view that the order of the Reviewing Authority dated 26.04.2013 is inconsistent with the orders of this Court dated 20.12.2006 and 04.03.2013, and imposes a punishment wholly disproportionate to the proven charge.

22. Two judgments- *Union of India & Ors. v. Ex. Constable Ram Karan*¹⁵, and *Lucknow Kshetriya Gramin Bank (Now Allahabad, U.P. Gramin Bank) & Anr. v. Rajendra Singh*¹⁶, have been cited by Mr. Gautam, in support of his submission that the Court ought not to interfere if the quantum of punishment is justified by the charges which have been

¹⁴ Supra (Note 2) paragraph 14.

¹⁵ (2022) 1 SCC 373, paragraphs 26, 29.



proved, even if certain charges which were upheld by the Disciplinary Authority, are ultimately rejected by the Court. Even accepting this proposition, the Court must still ensure that the punishment imposed is in proportion to the surviving charge. This is the essential point on which I have arrived at a conclusion against the respondent.

23. Further, on a proper consideration, the view taken in the judgments cited by Mr. Gautam, in fact fortifies my conclusion. In the first round of litigation, the Disciplinary Authority had taken a view based on two proven imputations. The Court upheld one, and rejected one. If the penalty imposed was justified on the basis of the proven charge, it was open to the Court at that stage to uphold the penalty, without recourse to an order of remand. This is the clear ratio of both the judgments cited. However, in the facts of the present case, the Court did not adopt that course, but instead remanded the matter for a fresh consideration, with observations which clearly indicate that the punishment imposed was disproportionate to the surviving charge.

24. The question that now arises is whether the Court ought to remand the matter again for a fresh consideration, or to pass a consequential order. In general, the appropriate order is one of remand, based on a reluctance of the writ Court to substitute its view for that of the decision-making authority. However, this is not an absolute bar on jurisdiction. In *B.C. Chaturvedi v. Union of India*¹⁷, the Supreme Court held as follows:

“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

¹⁶ (2013) 12 SCC 372, paragraphs 16-18.

¹⁷ (1995) 6 SCC 749, paragraph 18.



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.**¹⁸

In *Delhi Police, through Commissioner of Police and Ors. v. Sat Narayan Kaushik*,¹⁹ this course of action adopted by the High Court, has been upheld by the Supreme Court, as follows:

“15. Coming to the first two submissions of the learned counsel for the appellant, we are of the view that the High Court, in exercise of its writ jurisdiction, has power to interfere with the quantum of punishment imposed by the appointing authority in an appropriate case provided the High Court has taken into consideration the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, seriousness, whether proved and, if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left, etc. In other words, it is necessary for the High Court to take these factors into consideration before interfering in the quantum of the punishment.

16. **In this case, we find that the learned Judges of the High Court did apply their mind to some of the factors for coming to a conclusion that this is an appropriate case where interference in the quantum of punishment is called for and accordingly converted the punishment of dismissal into punishment of compulsory retirement.**

17. In our view, the finding on this issue appears to be just and proper and does not call for any interference in our appellate jurisdiction. We accordingly reject the first and second submissions.”²⁰

¹⁸ Emphasis supplied.

¹⁹ (2016) 6 SCC 303.

²⁰ Emphasis supplied.



25. Having regard to these judgments, I am of the view that the present case falls within the exceptional category where the Court ought to substitute the punishment, which it finds to have been illegally imposed, rather than remand the matter to the respondent again. The foremost factor, in this regard, is that the disciplinary proceedings relate to events of 1985, i.e., almost four decades ago. The proceedings commenced in 1988, and have been pending at one stage or the other for 37 years. The petitioner is now approximately 74 years of age. The option of remand has also been exercised once, but the respondents have persisted in their original order of punishment.

26. The Regulations of the respondent enumerate the following major penalties:

“(f) Save as provided for in (e) above reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;

(g) Reduction to a lower grade or post;

(h) Compulsory retirement;

(i) Removal from service which shall not be a disqualification for future employment;

(j) Dismissal which shall ordinarily be a disqualification for future employment.”

27. The facts of this case have already been considered in the earlier round of litigation, where this Court has come to the conclusion that the punishment imposed upon the petitioner cannot be sustained solely on the basis of the first imputation of charge. As noted above, the Court has recorded the finding that the second imputation was “*more serious*”, and specifically noted that the punishment to be imposed must consider the



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fact that the petitioner did stay in the guest house and paid the claimed charges to Mr. B.K. Seth. It was directed that the extent of the misconduct must be viewed accordingly while imposing a commensurate punishment. Having regard to these findings in the judgment of the learned Single Judge, which has been upheld by the Division Bench and Special Leave to Appeal declined by the Supreme Court, I consider it appropriate to impose a punishment upon the petitioner at the level immediately below “removal from service”, as imposed by the respondent. The punishment is, therefore, substituted with an order of compulsory retirement.

28. The respondent is directed to compute the entitlements of the petitioner on this basis and to remit the same to him within a period of three months.

29. The writ petition is disposed of.

PRATEEK JALAN, J

JANUARY 27, 2025

MR/Jishnu/