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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JUNE, 2024

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO. 1337 OF 2015 (S-DE)

BETWEEN:

SRI. M R NAGARAJAN,
S/O LATE M K RAMSWAMY,
AGED ABOUT 63 YEARS,
FORMERLY WORKING AS BRANCH MANAGER
IN SYNDICATE BANK,
KADAGONDANAHALLI BRANCH,
BANGALORE AND
RESIDING AT NO.336, 7TH CROSS,
10TH MAIN, NGEF LAYOUT,
NRUPATUNGA NAGAR, NAGARABHAVI,
BANGALORE-560 072.
(BENEFIT OF SENIOR CITIZEN IS NOT CLAIMED)

...APPELLANT

(BY SRI. M SUBRAMANYA BHAT .,ADVOCATE)

AND:

1. THE SYNDICATE BANK
A BODY CONSTITUTED UNDER THE
BANKING COMPANIES (ACQUISITION AND
TRANSFER OF UNDERTAKING), ACT 1970,
REPRESENTED BY ITS GENERAL MANAGER (P),
INDUSTRIAL RELATIONS DIVISION,
HEAD OFFICE, MANIPAL-576 104,
UDUPI DISTRICT
2. CANARA BANK,
HEAD OFFICE, NO.112
J.C.ROAD, BENGALURU-02
REPRESENTED BY ITS MANAGING DIRECTOR.





3. THE ASSISTANT GENERAL MANAGER
AND THE DISCIPLINARY AUTHORITY
HUMAN RESOURCES MANAGEMENT SECTION
CANARA BANK, CIRCLE OFFICE
BENGALURU METRO SPENCERS TOWERS
NO.86, M.G.ROAD, BENGALURU.

...RESPONDENTS

(BY SRI. SANTHOSH S NAGARALE.,ADVOCATE)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED
IN THE WRIT PETITION 25440/2009 DATED 24/03/2015.

THIS WRIT APPEAL, COMING ON FOR ORDERS THIS DAY,
KRISHNA S DIXIT.J., DELIVERED THE FOLLOWING:

JUDGMENT

In a Disciplinary Enquiry involving *inter alia* the charge of reckless lending of the Bank funds to the unscrupulous borrowers and of negligently compromising securities for the repayment, the Appellant a Bank Officer was awarded punishment of dismissal from service. His Departmental Appeal against the same having failed, he moved the Writ Court in W.P.No.25440/2009 (S-DE) which came to be dismissed by a learned Judge of this Court vide order dated 24.03.2015. This Appeal is directed against the said order.



2. Learned counsel for the Appellant vehemently argues that: relevant copies of documents, including a copy of the Investigation Report were not furnished to the Appellant despite demand and that has disabled him from taking up effective defence; the Respondent-Bank could not have claimed privilege for denying the documents; Both the Disciplinary Authority and the Appellate Authority failed to see that there was no evidentiary material enough to hold the charges proved; there is a specific finding in the Enquiry Report that almost entire amount of loan has been recovered and the loan accounts have been closed; while awarding punishment, relevant factors such as, spotless long service, earning of promotion & encomia have not been considered and the extreme punishment of dismissal shocks the conscience of any reasonable person. Lastly, he seeks to falter the impugned order of the learned Single Judge on the ground that after hearing on 13.08.2013, he had reserved the matter and pronounced the judgement only 24.03.2015.



3. Learned Panel Counsel appearing for the Respondents makes submission with equal vehemence resisting the Appeal, supporting the reasoning of the learned Single Judge. He contends that the scope of intra-Court Appeal is very limited; findings of guilt recorded by the Disciplinary Authority and accepted by the Appellate Authority cannot be examined by the Writ Court; if there is substantial compliance with the principles of natural justice, no grievance can be made by pointing out some defects. Lastly, what punishment should be awarded to the delinquent employee pertains to the domain of employer and therefore, Courts cannot substitute the punishment awarded by the competent authority, with its own views. So contending he seeks dismissal of the Appeal. He banks upon certain Rulings:

- i) Vijay Kumar Nigam v. State of MP and others(1996) 11 SCC 599
- ii) Syndicate Bank and others v. Venkatesh Gururao Kurati. (2006) 3 SCC 150
- iii) Avinash Sharad Daganokar v. Bank of India Mumbai and another 2017(1) Mh.L.J. 387



- iv) State Bank of India and others v. Bidyut Kumar Mitra and others (2011)2 SCC 316
- v) Sunil Kumar Banerjee v. State of West Bengal (1980) 3 SCC 304
- vi) Union of India and others v. P Gunasekaran (2015) 2 SCC 610
- vii) Union of India and others v. Subrata Nath 2022 SCC Online SC 1617
- viii) Pravin Kumar v. Union of India (2020) 9 SCC 471
- ix) State of Bihar and others v. Phulpari Kumari (2020) 2 SCC 130
- x) State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya (2011) 4 SCC 584

4. Having heard the learned counsel for the parties and having perused the voluminous Appeal papers, we are inclined to grant a limited indulgence as under and for the following reasons:

a) The disciplinary proceedings were initiated way back in the year 2007 and the delinquent employee came to be dismissed from service vide order dated 07.11.2008. His Appeal against the same was negatived at the Departmental level on 31.03.2009. Now we are in 2024



and undeniably the Appellant employee otherwise would have demitted office on attaining the age of superannuation. That being the position, the question of setting aside termination from service for facilitating his reinstatement even remotely would not arise. True it is that that the learned Single Judge had heard the matter on 13.08.2013 and pronounced the judgement only on 24.03.2015. It has been the settled position of law vide ***ANIL RAI vs. STATE OF BIHAR (2001) 7 SCC 318***, that *no judgment can remain reserved for pronouncement beyond a period of six months*; of course, even that period is now reduced to three months. However, at this length of time, no purpose would be served by setting aside the impugned order and thereby relegating the Appellant to the Bench of a Single Judge. Therefore, we have taken up the matter for consideration by ourselves, there being no Objection to this course at the Bar.



b) As already mentioned above, this is an intra – Court Appeal and therefore, it has conventional limitations vide a Seven Judge Bench decision in ***THAMMANNA vs. RENUKA, (2009) SCC OnLine KAR 123.*** Added, the findings of guilt recorded by the Disciplinary Authority after sharing Enquiry Report with the delinquent official cannot be examined by this Court, more particularly when the same have been confirmed in the Departmental Appeal filed by him as rightly contended by the Panel Counsel appearing for the Respondent – Bank. To that extent, the views of the learned Single Judge merit acceptance.

c) If findings of guilt are immune from attack, what remains to be considered by us is only the aspect of punishment. It has long been settled that the punishment should commensurate with the gravity of guilt and that while awarding punishment, the service jurisprudence warrants that the factors like the long & spotless service rendered by the delinquent, the number & nature of promotions earned by him till initiation of disciplinary



proceedings, the encomia awarded to him, the shortness of the period remaining for superannuation etc., are relevant while handing the punishment, vide **STATE OF MEGHALAYA vs. MECKEN SINGH N. MARAK (2008) 7 SCC 580**, wherein the Apex Court observed about the requirement of invocation of rule of proportionality by taking into account all factors holistically whilst awarding penalty. This aspect has been lost sight off by the Disciplinary Authority, by the Appellate Authority and by the learned Single Judge, as rightly argued by learned counsel appearing for the Appellant.

d) The Appellant gained entry to service on 10.03.1979 as a Clerk; he earned first promotion as an Officer in Junior Management Grade Scale-I on 11.08.1996 & second promotion as Manager in Middle Management Grade Scale-II on 01.04.1997. He was conferred the award of Star Performer. He was also given a Certificate for best performance in recovery of outstanding loans of Rs.400 crore. He had then a short



stint of service for superannuation, as on the date of dismissal i.e., 07.11.2008. Most of the outstanding loans having been repaid, the loan accounts are closed. We hasten to add that, learned Panel Counsel is right in pointing out that absence of loss to the Bank *per se* would not result into a clean chit. However, the relevant factors we have mentioned herein have not been adverted to while handing the punishment. No purpose would be served by sending the matter back to the Disciplinary Authority at this stage, years having rolled in the legal battle. The extreme punishment of dismissal needs to be trimmed down but not short of removal from service. In our considered view, a punishment by way of compulsory retirement would do justice to all the quarters. While forming this opinion as to the reduction of punishment, we are not oblivious to the law that ordinarily awarding of punishment to a delinquent employee pertains to the domain of employer/Disciplinary Authority.



e) There is yet another reason as to why the punishment needs to be interfered with, as already observed above: The charges against the employee were grave; admittedly, he was not furnished copies of all documents, although several of them were given to him. The Bank refused to furnish the documents claiming "privilege". In matters like this, what privilege could have been claimed, remains a mystery wrapped in enigma. It is not that the "security of State" or the like was involved and therefore, kind of the norm enacted in Section of 128 of the Indian Evidence Act, 1972 was invokable. An employer more particularly Article 12 Entity like the Bank cannot deny "charge documents" just by invoking privilege. As of necessity, he has to share copies of the documents on which he wants to prove the charge. At least those documents could have been produced before the learned Single Judge with a note "For your eyes only". Even that has not happened in this case. When we repeatedly asked the Panel Counsel as to what circumstances gave privilege, he could not offer any



plausible explanation. We need not reiterate the sanctity of the principles of natural justice. Law & Literature are replete with instances where punitive actions are invalidated for the violation of these principles, inasmuch as, without the relevant documents, the delinquent employee ordinarily will not be in a position to structure his defence effectively. We are of the considered view that the demonstrable lacunae in the disciplinary proceedings can also be a relevant factor while deciding the claim for reduction of punishment awarded to an employee. A view in variance would run the risk of being branded unjust & unfair.

In the above circumstances, this Appeal succeeds in part; the impugned order of the learned Single Judge is set at naught; the Appellant's W.P.No.25440/2009 is partly favoured, the order of punishment of dismissal stands modified to the one of compulsory retirement from service, and all consequences thereof would follow.

Whatever financial benefits accruing to the appellant-employee on account of compulsory retirement shall be released to him after deducting what is due from him. Compliance within three months and delay if brooked



would carry interest at the rate of 2% per mensem and the same may after payment be recovered from the erring officials.

Costs made easy.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Bsv
List No.: 1 SI No.: 5