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

Date of decision: 30.04.2025

\+ LPA 235/2025 & CM APPL. 19087/2025

BANK OF BARODA & ORS. .....Appellants

Through: Ms.Praveena Gautam, Mr.Pawan Shukla & Ms.Tissy Annie Thomas, Advs.

versus

RANJEET KUMAR .....Respondent

Through: Mr.Shanker Raju & Mr.Nilansh Gaur, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Judgment dated 31.01.2025 passed by the learned Single Judge of this Court in WP(C) 13645/2009, titled ***Ranjeet Kumar v. Bank of Baroda And Ors.***, by which the learned Single Judge has allowed the Writ Petition filed by the respondent herein with the following direction: -

> *"36. The last question that now arises for consideration is what relief can be granted to the Petitioner at this stage. Ordinarily, this Court may have remanded the matter back to the Bank from the stage where the illegality crept in while issuing the Disagreement Note with a direction to issue a fresh Disagreement Note with a tentative opinion and call for the*

representation of the Petitioner. However, the peculiar facts of this case do not commend this course of action and I am not persuaded to remit the matter back to the DA. The reason to hold so is not far to seek. The penalty imposed on the Petitioner is removal with superannuation benefits and even if the matter is remitted to the DA for a fresh consideration, the penalty cannot be on a higher scale. As this Court has held above that Petitioner cannot be denied the benefits of Gratuity and PF with the existing penalty, no useful purpose will be served in remanding the matter back for a fresh consideration from the stage of the Disagreement Note as the Petitioner only seeks retiral benefits due to him, such as, Gratuity, PF and Leave Encashment and there is no relief for backwages or pension.

37. In light of the above, this writ petition is allowed setting aside the impugned order dated 29.05.2004 passed by the Disciplinary Authority as also order dated 06.06.2007 passed by the Appellate Authority. Petitioner is thus held entitled to notional reinstatement from the date of his removal till he attained age of superannuation on 16.09.2019. This period will be counted only for the purpose of computing Gratuity. Bank is directed to release its share of the PF as also Gratuity to the Petitioner along with Leave Encashment for the period Petitioner served till his removal from service. The dues shall be released within a period of 08 weeks from today."

2. By the above Writ Petition, the respondent had challenged the Order dated 29.05.2004 passed by the Disciplinary Authority, imposing a penalty of removal from service on the respondent. The respondent also challenged the Order dated 06.06.2007 by which the Appellate Authority dismissed the appeal of the respondent against the Order passed by the Disciplinary Authority.

3. We are intentionally not giving in detail the facts on which the said Writ Petition arose, for the reason that the learned Single Judge has found procedural infirmities in the passing of the Impugned Orders and we agree with the said findings.

4. Briefly noted, the learned Single Judge, in the Impugned Judgement, has held that the Disagreement Note dated 24.11.2003, was issued by the General Manager ('GM'), who was not the Disciplinary Authority of the respondent.

5. On this, the learned counsel for the appellant submits that the respondent was earlier an employee of the Bareilly Corporation Bank Limited, which was merged in the appellant's Bank on 03.06.1999. Pursuant to such merger, the respondent was informed by letters dated 15.01.2000 and 20.09.2001 that he would now be governed by the rules as applicable to the employees of the appellant and by the Bank of Baroda Officers Employees (Conduct) Regulations, 1976 and the Bank of Baroda Officer Employees (Discipline & Appeal) Regulations, 1976. She submits that in terms of the said Regulations, the Zonal Head is the Disciplinary Authority for the respondent.

6. She submits that at the time of passing of the Disagreement Note, the GM was heading the Zone, and, therefore, the Disagreement Note was issued by the then GM, being the Disciplinary Authority.

7. She submits that in terms of the Regulations, the Disciplinary Authority can be an officer not below the rank of Deputy General Manager ('DGM'). Therefore, the fact that the ultimate order imposing punishment was passed by the then DGM, would also not vitiate the inquiry proceedings.

8. We, in fact, need not dwell on the issue whether the respondent was governed by the above-mentioned Regulations or not. The learned Single Judge, in the Impugned Order, has primarily allowed the Writ Petition on the ground that the Disagreement Note contained the final findings and, therefore, issuance of the notice thereafter to the respondent or granting him a hearing, would have been an empty formality, especially keeping in view that the eventual order of punishment was passed by an authority lower than the one who issued the Disagreement Note.

9. In this regard, we would first reproduce the relevant extracts from the Disagreement Note as under:-

> *"On careful /critical examination of the various documents on record of enquiry/the arguments/defence put forth by the PO/the CSE, I observe as under:*
>
> *<u>It is proved evidently and sufficiently</u> that the CSE. Mr. Ranjeet Kumar colluded with Mr. Ajay Kumar Gupta and Mr. V. K. Kakkar while making payment of debit cash vouchers (from No. 10) which were not singed by the account holders/recipients. The act of Mr. Ranjeet Kumar having made the payments of form No. 10 which were not having of signatures of the A/c holders and not getting the signatures of the recipients while making cash payments, can be considered as secret understanding with the then officers of the Branch Mr.Ajay Kumar Gupta & Mr.V.K. Kakkar.*
>
> *xxxx*
>
> *The Allegation No.1 (iii) against the CSE, as such does not fail at all and has to be treated as found proved.*
>
> *xxxxxx*

<u>It is proved evidentaly and sufficiently</u> that the officer. Mr. V.K.Kakkar has filled in, posted and passed the withdrawal farms mentioned in Allegation No.2(1) which were having no signatures of the drawer/account holder.

<u>It is further established and proved</u> (as per CSE'S admission in his own written brief-page & serial No.15. para 2) that the above payments were received by Mr.V.K.Kakkar, and the CSE did not get the signature of Mr.Kakkar on the withdrawal forms as a token of receiving the payments.

From all these above findings it is evident that there was an element of conspiracy and secret understanding between the CSE and Mr.V.K.Kakkar in their act of withdrawing money from accounts without the mandate of the account holder.

The act of CSE in this matter can in no way be considered being in good faith but it reflects that he discharging his duties with utmost integrity and honesty.

As such matter of I cannot agree with IA in his finding 10 the Allegation No.2(iii) against the CSE which does not fail and has to be treated as found proved.

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I, therefore, do not agree with the findings of the inquiring Authority in respect of the following allegations and charge and find these do not fail against the CSE, Mr. Ranjeet Kumar."

(Emphasis supplied)

10. From the above quotations it would be evident that the final findings have been given by the DGM leaving nothing further to be determined on receiving a response from the respondent.

11. The learned counsel for the appellant submits that the Disagreement Note, in fact, records reasons and findings for the disagreement in terms of Regulation 7(2) of the Bank of Baroda Officer Employees (Discipline & Appeal) Regulations, 1976. However, we are unable to accept the above submission.

12. Regulation 7(2) is quoted herein below:

> *"7(2). The Disciplinary Authority, shall if it disagrees with the findings of the Inquiring Authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."*

13. A *pari materia* provision came up for consideration before the Supreme Court in ***Punjab National Bank & Ors. v. Kunj Behari Misra***, (1998) 7 SCC 84, wherein the Supreme Court held that principles of natural justice have to be read into the above provision. Therefore, whenever the Disciplinary Authority disagrees with the Inquiry Authority on any Article of Charge, then before it records its own finding on such Charge, it must record '*its tentative reasons for such disagreement*' and give to the delinquent officer an opportunity to represent '*before it records its findings*'. We quote from the Judgment as under:

> *"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority*

> *on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."*

14. The above Judgment was followed by the Supreme Court with approval in ***Yoginath D. Bagde v. State of Maharashtra & Anr.***, (1999) 7 SCC 739, which held as under:

> "29. *We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not*

suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with.

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31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry

shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.

32. Applying the above principles to the facts of this case, it would be noticed that in the instant case the District Judge (enquiry officer) had recorded the findings that the charges were not proved. These findings were submitted to the Disciplinary Committee which disagreed with those findings and issued a notice to the appellant requiring him to show cause why he should not be dismissed from service. It is true that along with the show-cause notice, the reasons on the basis of which the Disciplinary Committee had disagreed with the findings of the District Judge were communicated to the appellant but the Disciplinary Committee instead of forming a tentative opinion had come to a final conclusion that the charges against the appellant were established...

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34. Along with the show-cause notice, a copy of the findings recorded by the enquiry officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant

were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee.

35. Since the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to the findings on the two charges framed against him, the principles of natural justice, as laid down by a three-Judge Bench of this Court in Punjab National Bank v. Kunj Behari Misra [(1998) 7 SCC 84 : 1998 SCC (L&S) 1783 : AIR 1998 SC 2713] referred to above, were violated.

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37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank [(1998) 7 SCC 84 : 1998 SCC (L&S) 1783 : AIR 1998 SC 2713] in which it had been categorically provided, following earlier decisions, that if the disciplinary authority does not agree with the findings of the enquiry officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the disciplinary authority that the findings already recorded by

> *the enquiry officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case*."

15. In addition to the above, in the present case, though it is correct that thereafter the then Disciplinary Authority, that is, the GM, called upon the respondent to file his response to the Disagreement Note, the eventual order was passed by the DGM, that is, an authority below the officer who had passed the Disagreement Note. In view of the above conclusion already having been drawn by the GM, the subsequent proceeding would, therefore, be rendered farcical and would not inspire any confidence even though the DGM was the then Disciplinary Authority. The learned Single Judge, therefore, rightly observed as under:-

> *"26. ...While it is true that an authority higher than a DA can exercise disciplinary power but in the present case, there is a serious fall out of the Disagreement Note being issued by the GM. It needs no reiteration that once the GM disagreed with the IO, the DGM who passed the penalty order naturally felt bound by the view of his superior, which is not difficult to believe or perceive and therefore, the exercise of the DA applying its mind independently to the inquiry proceedings and the inquiry report as also the defence of the Petitioner, became an illusionary and futile exercise. In fact a plain reading of the penalty order fortifies the stand of the Petitioner that the DGM was completely influenced by the observations of the GM in the Disagreement Note and he has at several places referred to the findings in the Note and expressed his agreement with them. This completely vitiates the penalty order."*

16. We find no reason to disagree with the above finds of the learned Single Judge.

17. Accordingly, the present appeal, along with the pending application, is dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 30, 2025/*rv*/*ik*

Click here to check corrigendum, if any