



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.: 2758 of 2009

Reserved on : 27.04.2016

Date of Decision: 04.05.2016

Shri P.C. Sharma

.....Petitioner.

Vs.

Chairman-cum-Managing Director,
Bank of India and others.

.....Respondents.

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting? ¹ Yes.

For the petitioner:

Mr. Y.P.S. Dhaulta, Advocate.

For the respondents :

Mr. B.S. Chauhan, Senior Advocate,
with Mr. Munish Thakur, Advocate.

Ajay Mohan Goel, J. :

This writ petition has been filed praying for the following
reliefs:

“(i) That a writ in the nature of certiorari may kindly be issued quashing impugned orders Annexures P-11, P-12, P13, P-14 and P-16 being illegal, arbitrary and unconstitutional.

(ii) That a writ in the nature of mandamus may kindly be issued directing the respondent bank to take back the service of the petitioner with all consequential benefits including arrears and seniority.

Whether the reporters of the local papers may be allowed to see the Judgment? Yes.

(iii) That the respondents may kindly be directed to produce the entire record pertaining to the case.

(iv) That the cost of writ petition may also be granted.”

2. As per the case put forth by the petitioner, he joined the services of the respondent-Bank on 02.01.1995 and in his capacity as such worked to the satisfaction of his superior officers at various places, such as Dharamshala and Sarog etc. While he was serving in District Mandi, Himachal Pradesh, on promotion to the post of Staff Manager he was transferred from Mandi to Goa on 25th January, 2006. In view of his domestic issues, the petitioner requested the competent authority for transfer from Goa Zone to Chandigarh Zone at Manali Branch vide Annexure P-1, dated 27th June, 2006. His request to be transferred to Chandigarh Zone was considered and declined by the respondents vide Annexure P-4, dated 16.12.2006. Thereafter, the petitioner applied for three years' Sabbatical Leave. Annexure P-5, dated 06.03.2007, is a communication addressed by the Zonal Manager, Goa Zone, Personnel Department to the General Manager, Head Officer, Personnel Department, I.R. Division, on the subject “*Request under Bank of India Sabbatical Leave Scheme Staff-Manager-Mr. P.C. Sharma*”. As per this communication, the application of the petitioner requesting for three years' Sabbatical Leave was enclosed therewith and it was mentioned therein that no disciplinary action is initiated/pending or contemplated against the petitioner and three years Sabbatical Leave to the petitioner was recommended. It was further mentioned in this communication that the petitioner has outstanding loan with Bank aggregating to ₹13.06 lacs

and OD against NSC ₹1.00 lac. The petitioner had undertaken to service the loans from his family business income and monthly installments/interest on OD comes to ₹11937/- and the bank proposed to instruct the petitioner to deposit in advance ₹36,000/- being amount equal to installments/interest for three months and that the petitioner is a PF optee and his own contribution to PF account as on 30.09.2006 was ₹1.70 lacs. The petitioner has appended as Annexure P-7, a communication addressed by him to the Zonal Manager, Goa Zone, dated 23.03.2007 on the subject "*Sabbatical Leave Sanctioned by Head Office subject to conditions.*". It was mentioned in this communication that the amount demanded by the Bank was approximately 900000/-, which is a very high amount. To deposit this amount, the petitioner has to collect sufficient funds, which will take reasonable time and accordingly, he requested the Bank to give reasonable opportunity to deposit the amount and 15 days Privileged Leave from 26.03.2007 onwards.

3. According to petitioner, the Sabbatical Leal was sanctioned in his favour and he was also under this bonafide belief that Privileged Leave has also been accorded in his favour by the respondent-Bank.

4. However, to its utter dismay, he received a communication from the respondent-Bank, dated 12.09.2007, Annexure P-9, which was addressed to him C/o P.E. Dogra, Upper Bajaura, District Kullu (Himachal Pradesh), on the subject "*Your unauthorized absence from duty from 26.03.2007.*" It was mentioned in this communication in reference to a memo dated 11.04.2007, vide which as per the Bank, the petitioner had

been advised that his absence was being treated as unauthorized and that he has been un-authorizedly absenting himself from duty w.e.f. 26.03.2007 and despite clear instructions, he has failed to report for duties. The petitioner was instructed that in case he does not report for duty on or before 24.09.2007, the Bank shall initiate appropriate disciplinary proceedings against him.

5. This was followed by memorandum, dated 20th November, 2007, vide which the petitioner was intimated that the Bank had decided to proceed against him under Regulation 6 of the Bank of India Officers' (Discipline & Appeal) Regulations for the acts of misconduct committed by him while working at Banks Goa Zonal Office. Petitioner was directed to submit within seven days from the date of receipt of memorandum, his written statement of defence.

6. The Article of Charge framed against him was that the petitioner had remained un-authorizedly absent from duties w.e.f. 26.03.2007 till date, in spite of several specific instructions to him advising him to report for duty immediately.

7. As per the petitioner, in response thereto, the petitioner sent a detailed reply. But, in spite of this, preliminary hearing was conducted and the petitioner was proceeded against ex parte. No due and reasonable opportunity was provided to him and everything was done by the Bank with the pre-determined mind to punish the petitioner.

8. Vide Annexure P-12, the inquiry officer submitted the inquiry report, in which he returned the findings that the petitioner had remained un-authorizedly absent from duty w.e.f. 26.03.2007 onwards,

which constitutes misconduct in terms of Regulations 13(1) and 24 of the Bank of India Officer Employees' (Discipline & Appeal) Regulations. This was followed by communication, dated 09.09.2008, Annexure P-13, issued to the petitioner by the disciplinary authority, vide which the disciplinary authority informed the petitioner that it concurred with the findings of the inquiry officer and the petitioner was advised to submit his representation on the findings of the inquiry authority within ten days from the receipt of the communication.

9. Vide Annexure P-14, penalty order dated 18.12.2008, the disciplinary authority imposed the following penalty on the petitioner:

"In view of the above, the undersigned has decided to award Penalty of "Compulsory Retirement" to you. Accordingly, the following order is passed.

ORDER

Major penalty of "Compulsory Retirement" in terms of Clause 4(h) of Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 is awarded to Shri P.C. Sharma for the acts of misconduct as narrated in the articles of Charge, dated 20.11.2007 issued to him and proved in the Departmental Inquiry."

10. Feeling aggrieved, the petitioner filed an appeal against the penalty, copy of which is appended as Annexure P-15 with the writ petition, which was also rejected by the appellate authority vide order, dated 24.06.2009, copy of which is appended with the petition as Annexure P-16.

In these circumstances, the petitioner filed the present writ petition.

11. Before advertent to the merits of the case, I would first deal with the preliminary objection which was taken by Shri B.S. Chauhan, learned Senior Counsel for the respondents with regard to the maintainability of the writ petition.

12. According to Mr. B.S. Chauhan, learned senior counsel for the respondents, the petition is not maintainable as this Court has no jurisdiction to hear the same. As per him, no cause of action has accrued within the territorial jurisdiction of this Court and in this view of the matter, this Court cannot exercise its extraordinary jurisdiction and entertain the present writ petition on merit. The submission of learned Senior Counsel is that at the time when the petitioner absented himself from duties, he was serving at Goa. Disciplinary proceedings were initiated against him by the Chief Manager, Goa Zone, who was his disciplinary authority. It is the said authority which has passed the penalty order, dated 18.12.2008. The appeal has also been addressed by the petitioner to the appellate authority, i.e. Zonal Manager, Goa Zone, who has decided the appeal vide order, dated 24.06.2009 at Goa. Therefore, keeping in view the fact that no cause of action has accrued in Himachal Pradesh, the present petition is not maintainable and is liable to be dismissed for want of jurisdiction. He has placed reliance upon the provisions of Article 226 (1) of the Constitution of India, which reads as under:

“226. Power of High Court to issue certain writs.-

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any

person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”

13. The contention of Mr. B.S. Chauhan, learned Senior Counsel is that the High Court shall have power to issue a writ throughout the territories in relation to which it exercises jurisdiction. As per him, the cause of action in the present case has arisen at Goa. This Court does not exercises territorial jurisdiction over Goa. Therefore, according to him, the present petition *per se* is not maintainable and is liable to be dismissed. In this regard, he has placed reliance upon the judgment of the Hon'ble Supreme Court in **Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others** (1994) 4 Supreme Court Cases 711.

14. On the other hand, Mr. Y.P.S. Dhaulta, learned counsel for the petitioner has argued that this Court has jurisdiction to adjudicate upon the matter. According to him, the respondent-Bank also carries out its business within the territory of the State of Himachal Pradesh, over which this Court exercises jurisdiction, qua which no one can have any dispute. There are various Branches of the respondent-Bank in the State of Himachal Pradesh and, in fact, the petitioner has served at various such Branches in the State of Himachal Pradesh before he was transferred from District Mandi, Himachal Pradesh to Goa in the year 2006. Therefore, he contends that in this view of the matter, this Court has jurisdiction to adjudicate the case. Further, Annexures P-9 dated

12.09.2007, P-10 dated 20.11.2007, P-13 dated 09.09.2008, penalty order Annexure P-14 dated 18.12.2008 and appellate order dated 24.06.2009 Annexure P-16, have been addressed by the respondents to the petitioner at his address, i.e. "*Bajoura, District Kullu, Himachal Pradesh*". All these communications have been received by the petitioner at Bajaura in Himachal Pradesh and he has responded to the communications and filed appeal against the impugned order passed by the disciplinary authority from Himachal Pradesh. Therefore, according to him, a part of the cause of action has arisen in the State of Himachal Pradesh and therefore this Court has jurisdiction to adjudicate and decide the present petition on merits. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Nawal Kishore Sharma Vs. Union of India and others** (2014) 9 Supreme Court Cases 329.

15. I find force in the arguments of learned counsel for the petitioner that this Court has jurisdiction to adjudicate upon the writ petition on merit, as part of cause of action has arisen in the State of Himachal Pradesh. It cannot be disputed that the High Court has got power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, Orders or Writs. It is also not in dispute that the respondent-Bank has its branches in the State of Himachal Pradesh, i.e. within the territories in relation to which this Court exercises its jurisdiction. It is also not in dispute that the petitioner has served in the respondent-Bank at various places in the State of Himachal Pradesh and that besides the impugned orders, various

communications have been addressed by the respondent-Bank to the petitioner at his home address in the State of Himachal Pradesh, as the petitioner otherwise also belongs to the State of Himachal Pradesh. The Memorandum of disciplinary proceedings having been initiated against the petitioner was addressed to the petitioner at his home address in the State of Himachal Pradesh. The impugned order passed by the disciplinary authority was also addressed to the petitioner at his home address in the State of Himachal Pradesh. The impugned order passed by the appellate authority on the appeal filed by the petitioner was also addressed to the petitioner at his home address in the State of Himachal Pradesh. These memorandums and orders have been received by the petitioner in the State of Himachal Pradesh.

16. The expression 'cause of action' is defined in Mulla's Code of Civil Procedure as under:

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

Therefore, 'cause of action' is nothing but a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant.

17. In the judgment cited by Mr. B.S. Chauhan, learned Senior Counsel for the respondents, the petitioner Oil and Natural Gas Commission through its consultants Engineers India Limited (EIL) issued an advertisement in the leading newspapers of the country including those in circulation in West Bengal calling for tenders for setting up of a

Kerosene Recovery Processing Unit at Hazira Complex in Gujarat, mentioning therein that the tenders containing offers were to be communicated to EIL at New Delhi. The respondent therein filed a petition before the learned Calcutta High Court praying therein that NICCO, having its registered office in Calcutta, read and became aware of the tender notice printed in the Times of India circulated within the jurisdiction of the Calcutta High Court. The issue with regard to the territorial jurisdiction of the learned Calcutta High Court to adjudicate the same was decided by the Hon'ble Supreme Court in para-6 of the judgment, which reads as under:

"6. It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh' Lord Watson said:

'... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without barking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High

Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.”

18. However, in my considered opinion, this judgment of the Hon'ble Supreme Court is of no assistance to the respondents. Admittedly, in the present case, letters were sent to the petitioner at his native place in Himachal Pradesh, where he was staying and the petitioner also sent his responses, representations and appeal etc. from his home in the State of Himachal Pradesh to the respondents. The communications so made by him including the appeal filed by him against the order passed by the disciplinary authority were replied to by the respondents, which were addressed to him at his home address in District Kullu, Himachal Pradesh rejecting his appeal. It is further evident that when the petitioner came back from Goa, he returned back to his home in District Kullu, Himachal Pradesh and thereafter he made all his claims etc. and filed his representations and responses etc. from his home address and those letters/representations and appeals were

entertained by the respondents and replied and decisions on the same were communicated to him at his home address in District Kullu, Himachal Pradesh. Considering all the facts together, a part or a fraction of cause of action has arisen within the jurisdiction of this Court, where *inter alia* the petitioner has received communication of imposition of major penalty upon him and refusal of his appeal being entertained by way of rejection. The Hon'ble Supreme Court in **Nawal Kishore Sharma Vs. Union of India and others** (2014) 9 Supreme Court Cases 329 has held as under:

"16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.

17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order

on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

18. Apart from that, from the counter affidavit of the respondents and the documents annexed therewith, it reveals that after the writ petition was filed in the Patna High Court, the same was entertained and notices were issued. Pursuant to the said notice, the respondents appeared and participated in the

proceedings in the High Court. It further reveals that after hearing the counsel appearing for both the parties, the High Court passed an interim order on 18.9.2012 directing the authorities of Shipping Corporation of India to pay at least a sum of Rs.2.75 lakhs, which shall be subject to the result of the writ petition. Pursuant to the interim order, the respondent Shipping Corporation of India remitted Rs.2,67,270/- (after deduction of income tax) to the bank account of the appellant. However, when the writ petition was taken up for hearing, the High Court took the view that no cause of action, not even a fraction of cause of action, has arisen within its territorial jurisdiction.

19. Considering the entire facts of the case narrated hereinbefore including the interim order passed by the High Court, in our considered opinion, the writ petition ought not to have been dismissed for want of territorial jurisdiction. As noticed above, at the time when the writ petition was heard for the purpose of grant of interim relief, the respondents instead of raising any objection with regard to territorial jurisdiction opposed the prayer on the ground that the writ petitioner- appellant was offered an amount of Rs.2.75 lakhs, but he refused to accept the same and challenged the order granting severance compensation by filing the writ petition. The impugned order, therefore, cannot be sustained in the peculiar facts and circumstances of this case.

20. In the aforesaid, the appeal is allowed and the impugned order passed by the High Court is set aside and the matter is remitted to the High Court for deciding the writ petition on merits.”

19. In view of the above discussion and the judgment of the Hon'ble Supreme Court (supra), I am of the considered view that there is no force in the preliminary objection raised by Mr. B.S. Chauhan, learned Senior Counsel for the respondent and held that this Court has territorial jurisdiction to hear and decide the present case on merit.

20. Now, I would revert to the merits of the case. Mr. Dhaulta, learned counsel for the petitioner has strenuously argued that the impugned orders are not sustainable in the eyes of law, because neither the inquiry report nor the penalty order is justifiable in law. He has further argued that similarly the order passed by the appellate authority vide which the appeal of the petitioner has been dismissed, is also a cryptic and non-speaking order. No reasoning has been given by the appellate authority while passing the said order. The contention of Mr. Dhaulta is that the inquiry held by the authorities against him per se is bad and illegal, because he has been condemned unheard. According to him, no reasonable opportunity has been given to him to defend himself. The proceedings were started and culminated with a pre-conceived motive of punishing the petitioner. In fact, according to him, even conducting the disciplinary proceedings was just a formality, so that the respondents could demonstrate that the inquiry was held before penalty was imposed upon the petitioner. He has further argued that the respondents were knowing fully well that the petitioner was residing in District Kullu, Himachal Pradesh, which was far off place from Goa. Keeping in view the distance between these two places, it was expected that the inquiry officer shall give him reasonable time to join the proceedings. However,

according to him, it is apparent from the record that very short time was granted to the petitioner on each occasion to join the proceedings and on account of this, he could not join the inquiry proceedings and defend himself properly, which has caused material prejudice to him.

21. He has further submitted that the petitioner did everything which was under his control to join the inquiry proceedings, but could not join the same for the reasons beyond his control. However, none of these aspects of the matter were considered by the inquiry officer, who proceeded to hold the inquiry proceedings in his absence.

22. He further submitted that even the inquiry report, Annexure P-12, is lopsided and the true factual position has not been appreciated by the inquiry officer while submitting the same. He further argued that the petitioner never absented himself from duty un-authorizedly. According to him, the Sabbatical Leave was sanctioned in his favour and he was also under this bonafide belief that Privileged Leave has also been accorded in his favour by the respondent-Bank.

23. According to Mr. Dhaulta, the inquiry officer has not appreciated these aspects of the matter at all and has submitted his inquiry report based upon one sided version of the Bank. He has further argued that the order passed by the disciplinary authority vide which major penalty of compulsory retirement has been imposed upon him, is also totally unsustainable in the eyes of law. According to him, the inquiry, in fact, has been vitiated because the same was not conducted as per the provisions of the relevant Regulation of the Bank, which govern the disciplinary proceedings. He has further argued that the penalty order

is cryptic, non-speaking and there is no independent application of mind by the disciplinary authority while passing the said penalty order.

24. He has further argued that the appellate order, dated 24.06.2009, is also *per se* bad in law, because the appellate authority has also not applied its independent mind while passing the said order. He has further contended that in fact inquiry officer has conducted the entire proceedings with a pre-determined mind to punish the petitioner and similarly, the disciplinary authority and the appellate authority have also passed the impugned orders in a stereotype manner without any independent application of mind and these orders are highly cryptic, vague, non-speaking and not in consonance with the relevant Regulations of the Bank and are thus liable to be quashed and set aside. He has further argued that the manner in which the disciplinary proceedings have been conducted against the petitioner is violative of Article 14 of the Constitution of India and the entire exercise has been undertaken in an arbitrary manner.

25. On the other hand, learned Senior Counsel representing the respondents has strenuously argued that there is no infirmity either in the disciplinary proceedings which were conducted by the Bank or in the orders passed by the disciplinary authority and the appellate authority, respectively. According to him, the inquiry officer has also proceeded in the case strictly as per the Regulations and there is no infirmity in the procedure adopted by the inquiry officer. In order to demonstrate this, Mr. Chauhan submitted that Annexure P-11, which is appended with the writ petition is self speaking that due opportunity was granted to the

petitioner to associate himself with the disciplinary proceedings. He has drawn my attention to the said Annexure, a perusal of which will demonstrate that it is recorded in the proceedings of this hearing, dated 28.05.2008, that the petitioner was not present in the inquiry despite many opportunities having been granted to him. Relevant extract of this proceeding is quoted hereinbelow:

“I.A. to P.O.: I am admitting the above documents as Management documents by giving them exhibit numbers ME-1 to ME-6. I would also like to place on record the e-mail message dated 24.05.2008 sent by Shri Sharma to the Zonal Manager with a copy to me and the reply dated 27.05.2008 sent by the Zonal Manager to him and give them Exhibit Nos. I-1 and I-2. Further with a view to give Shri Sharma a final opportunity to appear in the regular hearing and in the interest of natural justice, I am fixing 12th June, 2008 as the date for regular hearing of the inquiry. With this I am adjourning today's proceedings with the directions that both the P.O. and the C.S.O. should be present on 12th June, 2008 at 10:30 a.m. at the same venue for regular hearing on the inquiry. The P.O. should bring his witnesses and the CSO is also advised to submit the list of documents and witnesses in his defence. The Regular hearing will be held, thereafter, on a regular basis and no adjournment will be given under any circumstances for whatsoever reason.

A copy of this proceedings is sent to Shri Sharma by Regd. Post AD and also by e-mail. No separate notice will therefore, be issued for regular hearing which please note.

With this, the preliminary hearing is concluded and adjourned for regular hearing.”

26. On the basis of this Annexure, Mr. Chauhan, learned Senior Counsel has stressed that it is evidently clear that many opportunities

were granted to the petitioner to join the disciplinary proceedings, but he intentionally did not join the same. He has further argued that even otherwise, the conduct of the petitioner is self speaking that he was not interested in continuing with the services of the respondent-Bank. Mr. Chauhan has argued that the petitioner un-authorizedly went on leave without any Sabbatical Leave or Privileged Leave having been sanctioned in his favour. According to him, vide Annexure P-5, dated 06.03.2007, the case of the petitioner for Sabbatical Leave was only recommended subject to fulfillment of certain conditions, which were never fulfilled by the petitioner. He further stated that simply because the petitioner had applied for Privileged Leave, this does not mean that the same stood automatically granted to him. According to him, the petitioner being a responsible officer of the Bank, understood the implications of said leave not expressly having been granted in his favour, but despite this, he opted to absent himself un-authorizedly from the duties of the Bank. Before initiating disciplinary inquiry, he was instructed by the respondent-Bank to join his duties. This is apparent from intimation, dated 12.09.2007, Annexure P-9. However, the instructions of the Bank issued to the petitioner to rejoin his duties were not adheared to by him. Therefore, according to Mr. B.S. Chauhan, the Bank had no option except to initiate disciplinary proceedings against the petitioner.

27. He has further argued that the inquiry report clearly demonstrate the following. 15th April, 2008 was the date fixed for preliminary hearing at Goa Zonal Office Branch of the Bank, but the petitioner did not attend the said hearing and vide his e-mail, dated

12.04.2008, requested for postponement of his hearing. His request was considered and fresh date was fixed for preliminary hearing on 28.05.2008. This was intimated to the petitioner vide letter, dated 26.04.2008 and e-mail of the same date. Thereafter also, the petitioner failed to appear before the inquiry officer on 28.05.2008 and again sent an e-mail expressing his inability to come on the alleged ground that he was cut off by snow and that being tourist season, railway booking was not available. However, the preliminary hearing was held on 28.05.2008 and the petitioner was given last chance to appear before the inquiry authority on 12.06.2008 for regular hearing. But, the petitioner did not present himself on 12.06.2008 also and instead sent an e-mail on 11.06.2008, stating his inability to attend citing non-availability of train booking. It is in these circumstances that the inquiry was thereafter held against ex parte on 12.06.2008. According to Mr. Chauhan all these facts clearly demonstrate that the petitioner willfully did not associate himself with the departmental proceedings despite reasonable opportunities having been granted to him in this regard.

28. He has further argued that there is no infirmity in the inquiry report submitted by the inquiry officer, because his report is based on the documentary evidence produced in the inquiry as well as oral evidence of management witnesses recorded in the course of inquiry. He has further argued that the penalty order passed by the disciplinary authority is neither cryptic nor is a non-speaking order. The disciplinary authority after perusing the entire material placed before it and after due application of mind passed the order of imposition of major penalty of

compulsory retirement upon the petitioner with immediate effect. He has further argued that incidentally a perusal of the appeal filed by the petitioner will demonstrate that there is no challenge to the findings of the disciplinary authority on merit in the appeal. Despite this, as per him, the appellate authority has cared to go into all the contentions of the matter and after due application of mind, has come to the conclusion by way of a reasoned order that there is no merit in the appeal filed by the petitioner and the imposition of major penalty of compulsory retirement was not bad. Therefore, he contended that the petition, even otherwise on merit, is liable to be dismissed.

29. After hearing both the learned counsel for the parties and after going through the record of the case, I am of the considered view that there is sufficient force in the arguments of Mr. Chauhan, learned Senior Counsel for the respondents. In the present case, it is writ large that the petitioner absented himself from duty un-authorizedly w.e.f. 26.03.2007. The petitioner has not placed any document on record from where this Court could gather that either Sabbatical Leave was sanctioned in his favour or he was given any Privileged Leave.

30. Before the initiation of disciplinary proceedings, the Bank had instructed the petitioner by issuing intimation to him to re-join his duties, however, the petitioner failed to join his duties. It is only thereafter that the respondent-Bank issued memorandum, dated 20th November, 2007, vide which Article of charge was served upon him.

31. The respondent-Bank has framed Bank Officer Employees' (Discipline & Appeal) Regulations, 1977, copy of which has been made available to the Court during the course of arguments by Mr. Dhaulta, learned counsel for the petitioner. Regulation 4 defines the minor and major penalties. As per regulation 4(f), compulsory retirement is a major penalty. Regulation 6 provides that no order imposing any of the major penalties shall be made except an inquiry is held in accordance with this regulation. Regulation 6 reads as under:

"6. PROCEDURE FOR IMPOSING MAJOR PENALTIES :

1) No order imposing any of the major penalties specified in clauses (f), (g), (h), (i) and (j) of regulation 4 shall be made except after an enquiry is held in accordance with this regulation.

2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an officer employee, it may itself enquire into, or appoint any other Public servant (herein after referred to as the inquiring authority) to enquire into the truth thereof.

Explanation : *When the Disciplinary Authority itself holds the inquiry any reference in sub regulation (8) to sub regulation (21) to the inquiring authority shall be construed as a reference to Disciplinary Authority.*

3) Where it is proposed to hold an inquiry, the Disciplinary authority shall frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a statement of the allegations, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be

granted by the said Authority, a written statement of his defense.

4) On receipt of the written statement of the officer employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or if it considers it necessary so to do appoint under Sub-regulation (2) an inquiring Authority for the purpose.

Provided that it may not be necessary to hold an inquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record its finding on each such charge.

5) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority;

i) a copy of the article of charges and statements of imputations of misconduct or misbehavior;

ii) a copy of the written statement of defense if any, submitted by the officer employee;

iii) a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;

iv) a copy of statement of the witnesses, if any;

v) evidence proving the delivery of the articles of charge under sub-regulation (3);

vi) a copy of the order appointing the 'presenting officer' in terms of sub-regulation (6).

6) Where the Disciplinary Authority itself enquires or appoints an inquiring authority for holding an inquiry, it may by an order, appoint a public servant to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

7) The officer employee may take the assistance of any other office employee but not engage a legal practitioner for the purpose, unless the presenting officer, appointed by the

Disciplinary Authority is a legal practitioner or the Disciplinary Authority, having regard to the circumstances.

Note : The officer employee shall not take the assistance of any other officer employee who has pending disciplinary cases on hand in which he has to give assistance.

8) a) The Inquiring Authority shall by notice in writing specify the day on which the officer employee shall appear in person before the inquiring authority.

b) On the date fixed by the Inquiring Authority, the officer employee shall appear before the inquiring Authority at the time place and date specified in the notice.

c) The Inquiring authority shall ask the officer employee whether he pleads guilty or has any defense to make and if he pleads guilty to any of the articles of charges, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the officer employee concerned thereon.

d) The Inquiring Authority shall return a finding of guilt in respect of those articles of charges to which the officer employee concerned pleads guilty.

9) If the officer employee does not plead guilty, the inquiring Authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the inquiring Authority.

10) The Inquiring Authority while adjourning the case as in sub-regulation (9), shall also record an order that the officer employee may for the purpose of preparing his defence

i) complete inspection of the documents as in the list furnished to him immediately and in any case not exceeding 5 days from the date of such order if he had not done so earlier as provided for in the proviso to sub-regulation (3);

ii) Submit a list of documents and witnesses that he wants for the inquiry;

iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring Authority may allow for the discovery or production of the documents referred to in item (ii).

NOTE : The relevancy of the documents and the examination of the witnesses referred to in item (ii) shall be given by the officer employee concerned.

11) The inquiring Authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents, on such date as may be specified.

12) On receipt of the requisition under sub-regulation (11), the authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the inquiring Authority on the date, place and time specified in the requisition; Provided that custody or possession of the inquiring Authority on the date, place and time specified in the requisition;

13) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of 148charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses produced by the presenting officer shall be examined by the Presenting Officer and may be cross-examined by or on behalf of the officer employee. The Presenting Officer shall be entitled to re-examine his witnesses on any points on which they have been cross examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put Such questions to the witnesses as it thinks fit.

14) Before the close of the case, in support of the charges, the Inquiring Authority may, in its discretion, allow the Presenting

Officer to produce evidence not included in the charge sheet or may itself call for officer employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned. The Inquiring Authority may also allow the officer employee to produce new evidence, if it is of the opinion that the production of such evidence, is necessary in the interests of justice.

15) When the case in support of the charges is closed, the officer employee may be required to state his defense, orally or in writing, as he may prefer. If the defense is made orally it shall be recorded and the officer employee shall be required to sign the record. In either case a copy of the statement of defense shall be given to the Presenting Officer, If any, appointed.

16) The evidence on behalf of the officer employee shall then be produced. The officer employee may examine himself in his own behalf, if he so prefers. The witnesses produced by the officer employee shall then be examined by the officer employee and may be cross-examined by the Presenting officer. The officer employee shall be entitled to re-examine any of his witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the Inquiring Authority.

17) The Inquiring Authority may, after the officer employee closed his evidence, and shall, if the officer employee has not got himself examined generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.

18) The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any appointed, and the officer employee, or permit them to file written briefs of their respective cases within 15 days of the

date of completion of the production of evidence, if they so desire.

19) if the officer employee does not submit the written statement of defence referred to in subregulation (3) on or before the date specified for the purpose or does not appear in person, or through the assisting office or otherwise fails or refuses to comply with any of the provisions of these regulations, the inquiring authority may hold the inquiry expiate.

20) Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another

Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by itself;

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

21) (i) On the conclusion of the inquiry, the inquiring Authority shall prepare a report which shall contain the following:

- a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehavior
- b) a gist of the defence of the officer employee in respect of each article of charge ;
- c) an assessment of the evidence in respect of each article of charge ;
- d) the findings on each article of charge and the reasons therefore.

Explanation If, in the opinion of the Inquiring Authority, the proceedings of the inquiry establish any articles of charge different from the original article of charge, it may record its findings on such article of charges ;

Provided that the findings on such article of charge shall not be recorded unless the officer employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

ii. The inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include

- a. The report of the inquiry prepared by it under clause (i) ;*
- b. The written statement of defence, if any, submitted by the officer employee referred to in sub-regulation (15);*
- c. The oral and documentary evidence produced in the course of the inquiry ;*
- d. Written briefs referred to in sub-regulation (18), if any ; and*
- e. The orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.*

32. Regulation 7 provides as under:

“7. Action of the inquiry report :

1. The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be record by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry

according to the provisions of Regulation 6 as far as may be.

2. The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article 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.

3. If the Disciplinary Authority, having regard to its findings on al or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.

4. If the Disciplinary Authority having regard to its findings on al or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.

33. Regulation 8 contemplates the procedure for imposing minor penalties, which reads as under:

“8. Procedure for imposing minor penalties :

1. Where it is proposed to impose any of the minor penalties specified in clauses (a) to (e) of 150Regulation 4, the officer employee concerned shall be informed in writing of the imputations of lapses against him and given an opportunity to submit his written statement of defense within a specified period not exceeding 15 days or such extended period as may be granted by the Disciplinary Authority and the defenses statement, if any, submitted by the officer employee shall be taken into consideration by the Disciplinary Authority before passing orders.

2. Where, however, the Disciplinary Authority is satisfied that an enquiry is necessary, it shall follow the procedure for imposing a major penalty as laid down in regulation 6.

3. The record of the proceedings in such cases shall include -
i) a copy of the statement of imputation of lapses furnished to the officer employee;

ii) the defense statement, if any, of the officer employee; and
 iii) the orders of the Disciplinary Authority together with the reasons therefore.

34. Regulation 9 provides as under:

“9. COMMUNICATION OF ORDERS.

Orders made by the Disciplinary Authority under Regulation 7 or Regulation 8 shall be communicated to the officer employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.”

35. Learned counsel for the petitioner has not been able to point out any infirmity in the inquiry proceedings which were undertaken by the inquiry officer vis-à-vis regulation 6 of the Bank Officer Employees’ (Discipline & Appeal) Regulations, 1977. His only contention is that the proceedings are vitiated because the petitioner has not been heard by the inquiry officer. However, in my considered view, there is no merit in this contention, because ample opportunities were granted to the petitioner to participate in the disciplinary proceedings, however, he did not do so. His conduct also does not inspire any confidence because when he was called upon to participate in the inquiry in the month of May, his excuse was that he cannot join the proceedings as he was cut off by snow and that being tourist season, railway booking was not available. Whereas, this Court can take judicial notice of the fact that in the month of May, Bajoura in District Kullu is never cut off from the rest of country on account of snow. Further, in my considered view, the procedure prescribed in the abovementioned Regulations for imposition of major penalty has been duly followed by the authorities concerned. After the

inquiry report was submitted to the disciplinary authority, he made the same available to the petitioner and called upon the petitioner to submit his response to the same. It is only thereafter that the disciplinary authority has passed the order of imposition of major penalty upon the petitioner. The order passed by the disciplinary authority is neither cryptic nor the same can be said to be un-reasonable or non-speaking. The disciplinary authority has mentioned the reasons as to why he has come to the conclusion that major penalty of compulsory retirement is to be imposed upon the petitioner.

36. Even otherwise, this Court while exercising its power of judicial review has to satisfy its conscious as to whether the procedure which has been followed by the authorities while imposing the penalty on the delinquent officer/official, is sustainable in law or not. In my considered view, there is no infirmity in the procedure which has been followed either by the inquiry officer or by the disciplinary authority. Therefore, neither the report of the inquiry officer is bad in law nor the order passed by the disciplinary authority can be said to be arbitrary, unjust, non-speaking or unreasonable. The appellate authority has also passed a reasoned order while rejecting the appeal of the petitioner. While passing the appellate order, the appellate authority has applied its mind and has passed a speaking order taking into consideration all the facts and circumstances of the case. This Court does not find any infirmity with the order which has been passed by the appellate authority. Therefore, in my considered view, the disciplinary proceedings have been conducted in consonance with the provisions of the concerned

regulations of the respondent-Bank and I do not find any infirmity either with the procedure followed by the inquiry officer or with the orders passed by the disciplinary authority and appellate authority, respectively.

37. Mr. Y.P.S. Dhaulta, learned counsel for the petitioner has lastly argued that the penalty of compulsory retirement imposed upon the petitioner is otherwise harsh. I am afraid that it is not for this Court to decide that as to what penalty has to be imposed upon an officer/official or the Court ordinarily does not interfere with the punishment which has been imposed until and unless the order of punishment seems to be passed on extraneous reasons. In the present case, no such circumstance exists, which may warrant any interference in the penalty which has been imposed by the authorities concerned.

38. It is settled law that the courts will not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. The courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse.

39. The Hon'ble Supreme Court in **State Bank of Bikaner and Jaipur** Vs. **Nemi Chand Nalwaya** (2011) 4 Supreme Court Cases 584 has held that the test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the

material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations.

40. In the present case, it is amply clear that principles of natural justice were adhered to, but the petitioner chose not to participate in the disciplinary proceedings. Learned counsel for the petitioner has not been able to demonstrate that statutory regulations were violated or that the order passed by the disciplinary authority or the appellate authority is either arbitrary or capricious or is the result of malafide or is based on extraneous considerations. The conclusions arrived at by the disciplinary authority and the appellate authority are borne out from the material on record and, therefore, there is no reason to interfere with the findings arrived at by the said authorities, by this Court.

41. Therefore, I find no merit in the writ petition and the same is dismissed. No order as to costs.

(Ajay Mohan Goel)
Judge

May 04, 2016
(bhupender)