

2023 LiveLaw (SC) 733

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HRISHIKESH ROY; J., SANJAY KAROL; J.
CIVIL APPEAL NO. 9917 OF 2011; AUGUST 24, 2023
PUNJAB NATIONAL BANK *versus* M.L. KALRA (D) THR. LRS. & ANR.**

Banking Law - Disciplinary action was initiated against the bank manager for sanctioning a loan that later became a Non-Performing Asset (NPA), causing substantial losses to the bank. The Bank Manager defended himself by stating that he was merely following the instructions of his superiors. However, it was found that when he recommended the loan, he failed to properly evaluate the deficiencies in the loan proposal. The Single Bench of the High Court upheld the Bank's disciplinary action against the manager. However, the Division Bench set it aside, holding that the sanctioning of the loan was a collective decision made by the superiors, and no action had been taken against them. Held, the Division Bench should not have interfered with the judgment of the Single Judge who had upheld the Bank's disciplinary action against the manager. Consequently, the appeal has been allowed by setting aside the impugned judgment. (Para 14, 15)

Banking Law - Disciplinary Action - Since no time limit is prescribed by the Bank's Regulations to initiate disciplinary action and noticing that action was initiated soon after the irregular loan came to light, it cannot be said that only because the charge memo was issued six years after the loan was sanctioned, it would vitiate the disciplinary action. (Para 14)

Service Law - Disciplinary Action - Power of judicial review for the Courts in disciplinary action is circumscribed. The Court can only correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and the power exercised is not akin to adjudication of the case on merits as an appellate authority. (Para 9)

For Appellant(s) Mr. Rajesh Kumar Gautam, AOR Mr. Anant Gautam, Adv. Mr. Sumit Sharma, Adv. Ms. Anani Achumi, Adv. Mr. Dinesh Sharma, Adv. Ms. Shivani Sagar, Adv.

For Respondent(s) Mr. Ambhoj Kumar Sinha, AOR Mr. Priyadarshi Kumar, Adv.

ORDER

Heard Mr. Rajesh Kumar Gautam, learned counsel appearing for the appellant. The respondents who are the legal heirs of late M.L. Kalra (the delinquent Bank Manager) are represented by Mr. Ambhoj Kumar Sinha, learned counsel.

2. This appeal is assailing the judgment and order dated 28.11.2008 of the Division Bench of the High Court of Delhi in LPA No. 493 of 2004 by which the judgment passed by the learned Single Judge on 23.02.2004 in Writ Petition No. 154 of 1999 was set aside and relief was granted to the delinquent Bank Manager.

3. At the relevant time, the delinquent was employed as the Deputy General Manager with the New Bank of India. On 04.09.1993, the said Bank was amalgamated with the Punjab National Bank (hereinafter referred to as the 'PNB') and accordingly the service of the delinquent came to be governed by the Punjab National Bank Officer Employees (Conduct) Regulations, 1977 and the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977.

4. While functioning as the Deputy General Manager in the New Bank of India as the Regional Head at Delhi, the loan proposal of M/s. Kashipur Steels (P) Ltd. (borrower) was

recommended by the delinquent Manager in 1987. The loan was sanctioned. Some months later, the loan limit was enhanced for the sister concern of the borrower. However, the borrower defaulted in repayment of the loan. Noticing the impropriety/lapses of the bank officials in granting the loan, a charge-memo was served upon the delinquent on 19.08.1993. The delinquent submitted his reply to the charge memo on 01.11.1993 and within a few days thereafter, the amalgamation of the New Bank of India took place with the Punjab National Bank. The disciplinary action was then proceeded against the delinquent and eventually, on the basis of the adverse conclusion drawn in the inquiry, he was inflicted with the penalty of dismissal from service. The appeal filed by the delinquent was dismissed by the appellate authority on 06.03.1997 and then the Writ Petition No. 154 of 1999 came to be filed before the High Court to challenge the dismissal order.

5. The Writ Court in the judgment (dated 23.02.2004) noted that the charges against the delinquent were proved and upheld the disciplinary action with the observation that the misconduct of the delinquent led to sanctioning of loan causing huge loss to the Bank. The learned Judge noted that it was the delinquent who forwarded the loan sanction recommendation. It was for his action that the Bank was made to suffer a huge loss with the loan becoming a Non-Performing Asset (NPA).

6. The adverse decision of the learned Single Judge was then challenged by the delinquent and under the impugned judgment (dated 28.11.2008), the LPA was allowed. The Division Bench observed that the delinquent was not the only Bank official involved in sanctioning the loan, and although it was a collective decision taken by the higher-ups, no action was taken against the Board Members. The six years' delay in initiating the Departmental Proceedings was also found to be a factor pointing towards the laxity of the disciplinary authority. The augmentation of the loan facility to the borrower even after the delinquent was transferred from the concerned office was another factor which was considered by the Division Bench to say that the delinquent was singled out for disciplinary action. Thus, relief was granted in the LPA.

7. Assailing the view taken by the Division Bench in the impugned judgment dated 28.11.2008, Mr. Rajesh Kumar Gautam, the learned counsel would firstly submit that only limited judicial review in disciplinary action is permissible and, in this case, the Division Bench should not have interfered with the disciplinary action as the same was preceded by a regular inquiry in accord with the principles of natural justice, where the misconduct of the delinquent was found to have been established. The Bank's lawyer then points out that a factual error was committed by the Division Bench in observing that no action was taken against the members of the Bank's Board of Directors who too were involved in sanctioning the concerned loan. The learned counsel in the context submits that requisite disciplinary action was not only taken against other bank officials but also against Mr. Suneja, the CMD and Mr. J. Sethi, the Executive Director of the Bank. According to Mr. Gautam, the disciplinary action was initiated without undue delay as soon as the lapses came to light. The learned counsel refers to the Punjab National Bank Officer Employees (Conduct) Regulations, 1977 and the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977 to point out that no time limit is stipulated in the said Regulations. In any case, here the disciplinary action was initiated soon after the loan became an NPA and the misconduct of the bank officials came to light.

8. Per contra, Mr. Ambhoj Kumar Sinha, learned counsel for the respondents would firstly submit that the delinquent was singled out and made a scapegoat for the concerned loan being declared as an NPA. The counsel would then submit that the delinquent was made to suffer double jeopardy by way of first ordering his premature retirement and secondly ordering his dismissal from service. It is further submitted that the delay in

initiating disciplinary action should enure to the benefit of the delinquent and against the employer.

9. Before proceeding any further, we may benefit by adverting to the ratio in **Deputy General Manager (Appellate Authority) & Ors. v. Ajai Kumar Srivastava**¹ where a three-Judges Bench of this Court held that power of judicial review for the Courts in disciplinary action is circumscribed. The Court can only correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and the power exercised is not akin to adjudication of the case on merits as an appellate authority. The following was pertinently observed by the Bench:

“24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion...”

10. The precarious circumstances that prevailed at the time when decision was taken to amalgamate the New Bank of India with the Punjab National Bank were highlighted in **New Bank of India Employees' Union & Anr. v. Union of India & Ors.**² where this Court noted the following:

“3. Under the provisions of the Acquisition Act of 1980, 14 banks in the country were nationalised including the transferee-Bank. The New Bank of India Limited was a private bank which was taken over by the Central Government under the provisions of the Acquisition Act of 1980 on 15-4-1980. The said New Bank of India incurred financial losses to such an extent and its financial position was so unsatisfactory that its capital and deposits completely stood eroded and the Bank declared a loss of Rs 11.52 crores in the year 1991-92. The Reserve Bank of India which is the monitoring authority and advisor to the Government of India, on consideration of the financial position of the New Bank of India suggested that it would subserve public interest if the said New Bank of India is merged with another stronger Nationalised Bank. The Government of India finally decided to exercise the powers under Section 9 of the Acquisition Act and in consultation with the Reserve Bank of India decided to amalgamate the transferor-Bank with the transferee-Bank and for the aforesaid purpose brought into existence a scheme dated 4-9-1993 called the New Bank of India (Amalgamation and Transfer of Undertaking) Scheme, 1993 (hereinafter called “the Amalgamation Scheme”).”

The above would show the near collapse condition under which the New Bank of India came to be amalgamated, with the Punjab National Bank.

11. As earlier noted, the disciplinary action was taken at a time when the amalgamation process was under way and at that very stage, the Board of Directors of the Punjab National Bank resolved to revise the superannuation age of the employees of the erstwhile New Bank of India, in line with the employees of the Punjab National Bank. In order to avoid inconvenience to the affected employees, three months' notice was given by the Punjab National Bank to intimate that those who reached the age of 58 years, will superannuate and will cease to be in the service. The delinquent who was facing the disciplinary proceeding was also considered for superannuation in line with the policy of the Punjab National Bank and therefore, it was not a case of disciplinary action taken against the delinquent. He came to be considered as a superannuated employee on reaching the age of 58 years, in line with the new policy. Therefore, the contention of double jeopardy urged by the learned counsel for the delinquent cannot be accepted.

12. Insofar as the argument of the delinquent being made a scapegoat without any action being taken against others who too were involved in the sanctioning of the loan is

¹ (2021) 2 SCC 612

² (1996) 8 SCC 407

concerned, as earlier noted, the Executive Director and the CMD of the Bank were also removed. Materials on record suggest that disciplinary action as may be appropriate for individual employees was also taken by the Bank. Since necessary action was taken against several employees involved in the loan sanctioning process, it would not be correct to say that the delinquent was made the scapegoat and targeted for selective disciplinary action.

13. It would now be appropriate to note the timeline on the lapses and the action which followed. The concerned loan was sanctioned sometime in 1987 and disciplinary action against the delinquent was initiated in August 1993. On this, it must be observed that the loan did not immediately become NPA and only when the Bank's interest to the tune of Rs.393.75 lakhs stood exposed and the outstanding amount became doubtful of recovery, necessary inquiries were made on the possible involvement of the bank officials in granting the loans and thereafter disciplinary action was initiated against several employees. The initiated action was within reasonable time and it cannot be considered to be a much-delayed disciplinary action. In any event, no time limit is prescribed under the Punjab National Bank Officer Employees (Conduct) Regulations, 1977 and the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977. The Bank had proceeded and penalized other employees i.e., one J.K. Nagpal - Senior Manager, S.K. Ahuja - Senior Manager, K. Poornam - D.G.M. and S.K. Abrol G.M., as was also noted by the Division Bench at Page 24 in the impugned order. Besides, as earlier noted action was also taken against members of the Board of Directors of the Bank. This indicates that the Bank took disciplinary action against all errant individuals. When the aforesaid factors are taken into account, it has to be said that the Division Bench fell into an error in declaring that the delinquent was selectively targeted for disciplinary action.

14. Moreover, since no time limit is prescribed by the Bank's Regulations to initiate disciplinary action and noticing that action was initiated soon after the irregular loan came to light, it cannot be said that only because the charge memo was issued six years after the loan was sanctioned, it would vitiate the disciplinary action.

15. In this matter, the delinquent nowhere challenges the findings in the inquiry conducted in the disciplinary proceedings. In fact, the delinquent while appealing to the Board of Directors of the Bank pleaded that he should not be penalized merely because he forwarded a loan proposal to the Head Office under the instructions of Mr. J. Sethi, the Executive Director and Mr. Suneja, the CMD who had the supreme authority in the matter. This would show that the charges are not seriously disputed. However, the only contention raised is that he did it on instructions of the Executive Director and the CMD who had the ultimate authority to sanction loan. On this, it cannot be overlooked that the delinquent as Bank's Deputy General Manager had recommended the loan. The deficiencies in the loan proposals were not appropriately evaluated at the time of recommendation and this was the ground on which his lapses were found to have been proved, by the Inquiry Officer.

16. The Division Bench in the aforesaid circumstances should not have interfered with the judgment of the learned Single Judge who upheld the Bank's disciplinary action against the delinquent. In consequence, the appeal stands allowed by setting aside the impugned judgment dated 28.11.2008 by leaving the parties to bear their respective costs.

17. Pending application(s), if any, shall stand closed.