

***Before Amol Rattan Singh, J.***

**KULDIP SINGH—Petitioner**

*versus*

**BANK OF BARODA—Respondent**

**CWP No.9988 of 2017**

December 04, 2019

***A. Bank of Baroda Officer Employees (Discipline & Appeal) Regulation, 1976/1982—Regl. 5(2) read with Regl. 6—Petitioner dismissed from service and gratuity earned also forfeited—Challenge to such punishment on the ground that similarly situated junior employee let off with lesser penalty of reduction in pay-scale of one year—Discrimination alleged—Forfeiture of gratuity challenged on the ground that there is no quantification of the alleged loss caused by the petitioner in the inquiry held by Bank of Baroda.***

***B. Appeal partly allowed—Matter remanded to Appellate Authority for reconsideration on the issue of discrimination as well as on the ground that a separate detailed order needs to be issued for forfeiture of gratuity.***

*Held that*, the order dated 08.11.2016 (Annexure P-14) also suffers from a legal infirmity. Accordingly, the present writ petition is partly allowed, to the extent that the order dated 08.11.2016 (Annexure P-14) is quashed and the matter is remanded to the Appellate Authority, for reconsideration on the issue of discrimination qua Mr.Mohit Mahajan, as noticed above. Resultantly, the order dated 09.12.2015 (Annexure P-10) in pursuance of which, gratuity of the petitioner has also been forfeited, is also set aside.

(Para 18)

*Further held that*, petitioner shall be at liberty to file reply to the show cause notice dated 08.07.2017 (Annexure A-1), in his defence. The competent authority shall, on the basis of the reply to be filed, pass a separate order, on the issue of forfeiture of gratuity. It would be appropriate if the order on the issue of forfeiture of gratuity is passed after the Appellate Authority decides the matter. Needful be done within a period of 6 months from the receipt of a certified copy of this order.

(Para 19)

D.S. Patwalia, Sr. Advocate  
with Gaurav Rana, Advocate  
*for the petitioner.*

B.B. Bagga, Advocate  
for the respondents

### **G.S. SANDHAWALIA, J oral**

(1) Application, for placing on record Annexures A-1 & A-2, is allowed, in view of the averments made in application, duly supported by affidavit. Said documents are taken on record, subject to just expectations. Office to tag the same at appropriate place.

(2) CM stands disposed of.

(3) Challenge in present writ petition, filed under Articles 226/227 of the Constitution of India, is to order dated 09.12.2015 (Annexure P-10), whereby petitioner was dismissed from service and also to the Appellate order dated 29.10.2016 (Annexure P-13), whereby the said order was upheld. Similarly, order dated 08.11.2016 (Annexure P-14) whereby the gratuity earned by the petitioner has been forfeited, is also subject matter of challenge and accordingly, prayer for issuance of a writ in the nature of certiorari has been made out.

(4) The primary grievance of the petitioner, as put forth by the Senior Counsel, is on two accounts; the first limb of argument is that the punishment imposed upon the petitioner is harsh, keeping in view the fact that he had a long drawn-out career with the bank. He had joined in the year 1977 as a Clerk and was charge-sheeted on 31.03.2014 (Annexure P-4) for the misconduct as a Branch Manager while posted at Phagwara in the year 2011. It is his case that a similarly situated employee, Mr. Mohit Mahajan has been let off with a lesser penalty vide order dated 30.11.2015 (Annexure P-12) whereby reduction by one stage in time pay of scale of one year, with further direction that the officer will not earn increments of pay during the period of such reduction and postponing of future increments of pay, were imposed upon him. Resultantly, violation of Article 14 of the Constitution of India is alleged.

(5) The second limb of the argument is that the gratuity has been forfeited on account of alleged loss of Rs.28.98 crores (approximately). It is submitted that there is no quantification as such. Therefore, keeping in view the provisions of the Payment of Gratuity Act, 1972 (for short '1972 Act'), the order forfeiting gratuity is not based on any firm

finding recorded that there was any loss caused and thus, in the absence of any firm finding, the said order is not sustainable. Reliance has been placed upon the judgment of the Full Bench passed in *UCO Bank and others* versus *Anju Mathur*,<sup>1</sup> in this context.

(6) Mr. Bagga, counsel for the respondent-Bank of the other hand, has submitted that the petitioner was the main person In-charge, being the Branch Manager and Mr. Mohit Mahajan was Junior Management Grade Scale-1 and was functioning, as such, during the period from 14.12.2011 to 31.07.2012. Therefore, the responsibility lay with the petitioner qua the allegations which had been found substantiated in the inquiry proceedings, which led to his dismissal from service. It is further submitted that even as per the dismissal order, the amount have been referred to in the dismissal order to show that the same had been quantified and shown as NPA. Therefore, quantification has been made and the argument raised by Senior Counsel for the petitioner, is not justified , in such circumstances.

(7) After hearing counsel for the parties, this Court is of the opinion that there is merit in the arguments, to the extent that the matter is liable to be remanded for the specified purposed that the Appellate Authority has not dealt with the issue in detail regarding the issue of discrimination. The same was specifically raised in the grounds of appeal, though noticed by the said authority. Similarly, the quantification aspect and forfeiture of gratuity is also a matter which is to be gone into by the competent authority, keeping in view the observations of the Full Bench in the case of *Anju Mathur* (supra). To come to the said conclusion, it is necessary to have a brief look at the background of the case and the controversy which has led to the present litigation.

(8) Aperusal of Annexure P-4, the charge-sheet dated 32.03.2014 would go on to show that the petitioner had been charged under Regulation 5 (2) read with Regulation 6 of the Bank of Baroda Officer Employees (Discipline & Appeal) Regulation, 1976/1982, which read as under:

“1. He was negligent in performance of his duties and did not take all possible steps to ensure and protect the interest of the Bank.

2. He did not discharge his duties with devotion, diligence and

---

<sup>1</sup> 2013(3) SCT 272

took such actions and committed such omissions which showed lack of care, caution or reasonable Judgment and were grossly negligent in nature.

3. He knowingly and willfully violated Bank's rules, established procedures & regulations of the bank.

4. He adopted such steps and took such actions as were prejudicial, detrimental and injurious to the interest of the Bank.

5. He committed serious violation of duties as also breach of trust reposed in him by the bank and misused his position.

6. He did acts unbecoming of a Bank Officer.

7. He did acts which are likely to cause substantial financial loss to the bank."

(9) The disciplinary authority came to the conclusion that there were various advances sanctioned in which there were irregularities. The detail as such of the same shown in the table as under:-

Table of various advances sanctioned during the period:

S.No.	Category of Loans	No. of A/cs	Limit/Amount Sanctioned
1.	Baroda Traders' Loan	29	2410.50
2.	Cash Credit	22	3973.00
3.	Baroda Auto Loan Scheme	09	49.80
4.	Baroda Housing Loan	34	881.00
5.	Bank Guarantee & Other Term Loan	07	3211.00
6.	Baroda Education Loan	03	16.45
	Total	104	10541.75

(10) On the basis of the findings of the injury authority dated 08.08.2015 (Annexure P-7) which were reproduced by the disciplinary authority, it was noticed that the Enquiry Officer had held that Mr. Mohit Mahajan had limited role and Mr. Kuldip Kumar, wrongly mentioned as such, being the petitioner, had tried to shift the responsibility. It was accordingly, held that the petitioner had

sanctioned facilities by accepting incomplete forms, without verification and had not taken cognizance of the CIBIL reports, since reckless financing had been done without ensuring pre-sanction inspection, take over facilities from other banks, without following take over norms etc. The title deeds of 5 accounts were stated to be fake and the genuineness of the title deed had not been looked into. Resultantly, it was held that the act of the petitioner was unbecoming of an officer and due to his above acts, the bank was likely to suffer financial loss of Rs.28.98 crores. In such circumstances, dismissal order was passed, which was to be disqualification of future employment.

Mr. Mohit Mahajan was charged under the following heads:

- “1. He was negligent in performance of his duties and did not take all possible steps to ensure and protect the interest of the Bank.
2. He did not discharge his duties with devotion, diligenc<sup>3</sup> and took such actions and committed such omissions which showed lack of care, caution or reasonable Judgment and were grossly negligent in nature.
3. He knowingly and willfully violated Bank’s rules, established procedures & regulations of the Bank.
4. He adopted such steps and took such actions as were prejudicial, detrimental and injurious to the interest of the Bank.
5. He committed serious violations of duties as also breach of trust reposed in him by the bank and misused his position.
6. He did acts unbecoming of a Bank Officer.
7. He did acts which are likely to cause substantial financial loss to the bank.”

(11) The table of various advances recommended by Mr. Mahajan during the period, as reproduced above, were to the same clients but the amount was less. The said table reads as under:

Table of various advances recommended during the period:

S.No.	Category of Loans	No. of A/cs	Limit/Amount Sanctioned
1.	Baroda Traders’ Loan	16	1292.50
2.	Cash Credit	18	3892.00

3.	Baroda Auto Loan Scheme	05	37.13
4.	Baroda Housing Loan	28	754.00
5.	Bank Guarantee & Other Term Loan	06	320.00
6.	Baroda Education Loan	02	16.00
	Total	74	6311.63

(12) Eventually, as noticed, punishment for reduction in the time-scale of one year only was imposed, on 30.11.2015 (Annexure P-12) with further direction that the officer would not earn increments of pay during the period of such reduction and the same will have the effect of postponing his future increments of pay. In the meantime, show cause notice was also issued to the petitioner during the pendency of the appeal, on 08.07.2017 (Annexure A-1), to forfeit the gratuity on account of the alleged loss. The show cause notice read as under:

“Re: show cause notice in the matter of forfeiture of gratuity to the extent of loss

While you were in employment of the Bank at Town Hall Amritsar Branch, Jalandhar Region, you were alleged to have committed act, willful omission or negligence causing damage or loss or destruction of property belonging to the Bank. Therefore, you were issued with charge sheet dated 31/03/2014 by Disciplinary Authority. A departmental enquiry was conducted against you on the basis of the proved misconduct in the Enquiry report, the Disciplinary Authority vide Order date 09/12/20105 terminated your service by imposing the following punishment on you.

“Dismissal which shall ordinarily be disqualification for future employment.”

Suspension period to be treated as period not spent on duty”

Your act of will omission or negligence has caused a loss of Rs.28.98 Cr. (Approx) to the Bank and the same was proved during the enquiry and the Disciplinary Authority terminated your service on account of your such act, omission or negligence.

In view of the above, we request you to show cause why the amount of loss as above should not be fortified from the gratuity amount payable to you under Section 4(6)(a) of Payment of Gratuity Act, 1972.

Your reply to this show cause notice should be received by us within a period of 10 days from the date of receipt of this notice failing which it would be presumed that you have no reply to offer and the matter will proceed accordingly.”

(13) In reply to the said show cause notice (Annexure A-2), petitioner had submitted that his appeal was pending and that the matter should be kept in abeyance. In the meantime, the appeal was decided on 29.10.2016 (Annexure P-13). The specific grounds raised on the issue of discrimination have been dealt with, as under;

“2. The punishment is having element of severe discrimination:

- a. The punishment imposed is also not in conformity with the practice and policy of the bank. There have been DE against bank’s officers for sanctioning advances to borrowers by even intentional flouting the laid down rules and procedures thereby causing huge losses and in such case too, bank has not given the punishment of “removal from service”. He can quote various examples of such advances of huge amount in tune to several hundred crores in Northern zone, which are sanctioned/disbursed by senior executive sitting in SME/RLF/RO/ZO/big branches, but no action was initiated against them.
- b. A number of accounts, out of the accounts mentioned in charge sheet are sourced, appraised, pre credit approved, sanctioned by the executive of SME with support of their learned and professionally trained team. Legal search, valuations etc of securities got done by those SME from their approved service providers duly empanelled by the bank. These SME officials parked these accounts in our branch. On default, why and how, he has been made scape goat for the acts done by others? Why they are allowed to roam around scot free? How and why they are given promotions where as on the contrary he was suspended 4 years back, charge sheeted

and resulted in dismissal from service. (Annexure of SME sanctions enclosed.)

**My observations:-**

2a & 2b. The allegations leveled in the account are as per his role a penalty was awarded according to the allegations/charges proved against him in the Inquiry Proceedings. There has been no discrimination. The penalty has been imposed after giving due opportunity to the Appellant to defend himself during the course of Inquiry Proceedings.

**The ground of the appeal is not valid.**

**Appeal:-**

- c. For a large number of accounts sanctioned at branch level on the basis of a learned credit officer attached to the branch, who was also a qualified Chartered Accountant. For all those accounts, for the similar nature of charge sheet with the similar nature of allegations served to the officer Mr. Mohit Mahajan (a qualified CA too). The said officer was also suspended along with him. It is highly strange and hard to believe that the said officer was restored to the job where as he was subject to such a harsh and severe punishment of dismissal from the job. How this discrimination will be seen by the apex courts and minorities commission of India? This analysis should have been done by DA.

**My observations:-**

c. The allegations/charges leveled are as per his role and penalty was awarded according to the allegations/charges proved against him in the inquiry. Since, it was a composite case, action against the other officers involved has been taken and penalties awarded looking to the gravity of lapses on their part.

**The ground of the appeal is not valid.**

**Appeal:-**

- d. He has obtained the copy of the order served to Mohit Mahajan to restore his job with minor punishment of loss of one increment just for namesake and eyewash.



This was done by DA despite the fact that a large number of allegations against him were proved by IA. 6 out of 7 charges against him were proved as under:

- He was negligent in performance of his duties.
- He did not discharge his duties with devotion and took such actions and committed such omissions which showed lack of care and concern and were grossly negligent in nature.
- He knowingly and willfully violated Bank's rules established procedure.
- He adopted such steps and took such actions as were prudicial, detrimental and injurious to the interest of the Bank.
- He committed serious violation of duties as also breach of trust reposed in him by the Bank and misused his position.
- He did acts which are likely to cause substantial financial loss to the Bank.

In some accounts, in the same nature of allegations, one officer who was suspended earlier is restored by DA despite the fact that a large number of allegations and majority of charges are proved against him by DA and he is restored in the job. He refers to page 33 and 34 of the DA order of Mohit Mahajan. According to this 77 allegations and 60 common irregularities are proved by DA himself against Mohit Mahajan. But while awarding the order, he has mentioned at page no 36 of the same report that 38 allegations and 19 irregularities are proved. He fails to understand the reasons or compulsions of DA behind such a faulty and contradictory order of DA. Here the role of Vigilance department and DA needs a thorough interrogation and investigation so that the facts and reasons can be exposed. He also requests the Appellate Authority to take strict action against vigilance department for their such alleged and exposed involvement in passing of such faulty order

and concealing the facts from BCC. And on the contrary such discrimination is shown to him and a severe judgment of dismissal is passed against him. What can be the justifications for this discrimination and contradictions by DA? He has no objection if anyone is given the relaxation, but under law of parity he requests and demands that the same kind of treatment be awarded to his as per demand of Justice.

- e. In clear words, he has been awarded the severe punishment for the acts done by others as stated at point no b, c & d. It is thus evident that to save the others, he and his family are made scapegoat and our old age is spoiled to save the lives of others.

**My observations:-**

d & e. The reasons/circumstances are mentioned in the respective orders. The Appellant is trying to justify his appeal by reiterating that the penalty on the other officer is less than the penalty awarded upon him. As such the Appellant is confirming the allegations and charges against the junior officer, who was reporting to him and who acted as per Bank's guidelines, the lapses and the resultant losses could have been minimized. So the penalty was awarded as per the gravity of lapses.

**The ground of the appeal is not valid.”**

(14) A perusal of the above reasoning would go on to show that the Appellate Authority, while dealing with the punishment, as awarded to Mr. Mohit Mahajan, whereby reduction by one stage in time pay of scale of one year, is that action had been taken against the other officer involved. Penalty had been awarded looking at the gravity of lapses on their part and that since the said person was a junior officer, who was reporting to the petitioner and was acting to his directions and therefore, penalty had been awarded, as per the gravity and lapses on his part.

(15) The said charges have been reproduced above qua both, the petitioner and Mr. Mahajan, which are similar in nature. The Appellate Authority had not considered whether the findings of the Enquiry Officer were justified and that punishment which was imposed on a similarly situated employee, though a junior who had been let-off

comparatively with a lesser punishment. This aspect was within the domain of the Appellate Authority and should have been dealt with in a reasoned manner. It is settled principle that Appellate Authority, especially in departmental proceedings, is the last authority to deal with the factual aspect after going into the matter in more detail. Thus, in the absence of any reasoned order, this Court is of the opinion that the first argument of counsel for the petitioner is justified that the matter should be remanded to the Appellate Authority, for fresh decision on this aspect alone.

(16) Regarding the second aspect, as to the forfeiture of gratuity also, the show cause notice, as reproduced above, would go on to show that the loss was presumed. Eventually, vide the punishment order dated 08.11.2016 (Annexure P-14) also, the competent authority did not record any categorical finding that there was any actual loss caused and has held as under:

“5. Therefore keeping in view your letter dated 05.04.2016 and all the facts and circumstances in the matter, it is observed that there is no merit in your contentions and therefore it is decided to forfeit gratuity to the extent of loss i.e. 28.98 crore (approx.) under Section 4(6)(a).”

(17) In similar circumstances, in Anju Mathur (supra) case, the Full Bench has remanded the matter to the competent authority where a loss Rs. 4 crores was also alleged but not substantiated by giving any particulars thereof. Rather, it was noticed that whether the bank had suffered the quantum of loss or not which was to be recovered could be recovered by a suit for recovery concerning those accounts. Therefore, whether the actual loss or damage was suffered or not, was not discernible. It was, accordingly, held that in view of the provisions of Section 4(6) of the 1972 Act, finding of fact has to be recorded for forfeiture of the damage so caused due to the willful omission or negligence. Relevant part of the judgment read as under:

“22. After considering these arguments, we find that argument of the learned counsel for the respondent has to prevail. We have gone through charge-sheet as well as enquiry report. No doubt, in the charge-sheet as many as 24 accounts are mentioned where the respondent had given loans or other financial accommodation either beyond her powers or without obtaining proper securities. That would show that certain accounts were overdrawn. Even the operation of these accounts was not satisfactory. However, whether the appellant-Bank ultimately suffered loss and what was

the actual loss is not reflected. No doubt, the irregularities committed by the respondent may have exposed the Bank to such losses. However, that is entirely different from loss having been actually suffered by the bank. Even if some accounts became bad and the Bank had to file suits for recovery concerning those accounts against the defaulting parties, that would not automatically lead to the conclusion that the loss/damage has been suffered. It is possible that Bank is able to recover full money in those proceedings. Whether that happened in fact or not and whether loss is actually suffered or not is not discernible from either the charge-sheet or the enquiry report.

23. It is for this reason that it was incumbent upon the appellant-Bank to mention specifically about the actual loss having been suffered, if it suffered, in the show cause notice itself with particulars of that loss in order to enable the respondent to meet the same. That has not been done even in the final order. Though the figure of Rs. 4 crores is given, in the final order, even that is not substantiated by giving particulars thereof. We are, therefore, of the opinion that the show cause notice or the final order passed, forfeiting the gratuity, do not meet the legal requirements and have to be set aside.”

(18) Thus, in view of the above, the order dated 08.11.2016 (Annexure P-14) also suffers from a legal infirmity. Accordingly, the present writ petition is partly allowed, to the extent that the order dated 08.11.2016 (Annexure P-14) is quashed and the matter is remanded to the Appellate Authority, for reconsideration on the issue of discrimination qua Mr. Mohit Mahajan, as noticed above. Resultantly, the order dated 09.12.2015 (Annexure P-10) in pursuance of which, gratuity of the petitioner has also been forfeited, is also set aside.

(19) Petitioner shall be at liberty to file reply to the show cause notice dated 08.07.2017 (Annexure A-1), in his defence. The competent authority shall, on the basis of the reply to be filed, pass a separate order, on the issue of forfeiture of gratuity. It would be appropriate if the order on the issue of forfeiture of gratuity is passed after the Appellate Authority decides the matter. Needful be done within a period of 6 months from the receipt of a certified copy of this order.

---

*Inder Pal Singh Doabia*