

JAGDISH LAL GAMBHIR

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v.

PUNJAB NATIONAL BANK & ORS.

(Civil Appeal No. 6975 of 2009)

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OCTOBER 6, 2015

**[MADAN B. LOKUR AND R.K. AGRAWAL, JJ.]**

*Service Law – Dismissal – Transfer of official (Assistant General Manager) of one Bank to another Bank, on amalgamation of the two Banks – The transferred official was placed as a Scale III officer in the transferee Bank – Initiation of departmental proceedings against the official by the transferee Bank – Charge-sheet issued by the Assistant General Manager of the transferee Bank – Subsequently dismissal from service – Dismissal whether vitiated – Held: The charge-sheet was issued as per the rules and regulation of the transferee Bank and the same would be applicable to the transferred official – The transferee Bank was justified in initiating disciplinary proceedings in respect of alleged irregular transaction because the erstwhile Bank could not take any decision in respect of the alleged irregularity, due to amalgamation of the Banks – Thus, the dismissal order was not vitiated – Punjab National Bank Officer Employees (Discipline and Appeal Regulations), 1977.*

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**Dismissing the appeal, the Court**

**HELD: 1. The admitted position is that the appellant was a Scale-III officer in the respondent/transferee Bank while the rank of the Assistant General Manager in the respondent Bank is Scale-V. The appellant could only have been placed in Scale-III in terms of his responsibilities and keeping in mind the corresponding**

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A scale upon the amalgamation of the erstwhile Bank with the respondent Bank. [Para 23] [444-C]

2. There is no allegation by the appellant that he was either reduced in rank or that his placement was incorrect or any similar grievance. That being the position, the appellant cannot contend that his placement in the respondent Bank was erroneous and therefore the issuance of the charge-sheet by the Assistant General Manager in the respondent Bank was vitiated in any manner. [Para 24] [444-G-H]

3. The rules applicable to the appellant were the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977. In terms of these Regulations, the disciplinary authority of the appellant was the Assistant General Manager (P). That being the position, merely because the appellant was an Assistant General Manager in the erstwhile Bank does not mean that the Regulations of 1977 would not be applicable to him or that the Assistant General Manager (P) in the respondent-Bank could not have issued a charge-sheet. The appellant became an employee of the respondent Bank and was subject to the discipline of all its rules and regulations, including those pertaining to misconduct. [Paras 25 and 27] [445-A-C; F]

4. It cannot be said that the allegations against the appellant had already been inquired into by the erstwhile Bank and therefore the respondent-Bank could not reopen issues relating to the alleged misconduct and hold an inquiry into them. There were a large number of transactions which were alleged to be irregular and in which the appellant was said to be involved. The appellant has not pointed out which were the

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transactions which were the subject matter of concern in the erstwhile Bank and which were the transactions which were the subject matter of inquiry by the respondent-Bank. It is the admitted position that in respect of one alleged irregular transaction, the erstwhile Bank could not take any decision one way or the other due to the amalgamation of that Bank with the respondent-Bank. [Para 28] [445-G-H; 446-A,C,E] A B

*Chairman, Canara Bank, Bangalore v. M.S. Jasra* (1992) 2 SCC 484: 1992 (2) SCR 68 – relied on. C

*K.I. Shephard v. Union of India* (1987) 4 SCC 431: 1988 (1) SCR 188 ; *Union of India v. Mohd. Ramzan Khan* (1991) 1 SCC 588:1990 (3) Suppl. SCR 248; *Managing Director, ECIL v. B. Karunakar* (1993) 4 SCC 727: 1993 (2) Suppl. SCR 576 – referred to. D

Case Law Reference

1988 (1) SCR 188	referred to.	Para 4	E
1990 (3) Suppl. SCR 248	referred to.	Para 13	
1993 (2) Suppl. SCR 576	referred to.	Para 13	
1992 (2) SCR 68	relied on.	Para 26	F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6975 of 2009

From the Judgment and Order dated 24.07.2006 of the High Court at Calcutta in F. M. A. No. 388 of 2001 G

Dinesh Dwivedi, Bhaskar Prasad Gupta, Rajesh Kumar, Gaurav Kumar Singh, Rakesh Chaurasiya (for Mitter & Mitter Co.), K. K. Mohan, Krishnan Mishra, Manish Shankar H

A Srivastava, Nishant Singh, Dipak Kumar Jena, Minakshi Ghosh Jena, P. P. Nayak for the appearing parties.

The Judgment of the Court was delivered by

B **MADAN B. LOKUR, J.** 1. This appeal is directed against the judgment and order dated 24<sup>th</sup> July, 2006 passed by the Division Bench of the High Court at Calcutta in FMA No.388 of 2001.

C 2. The issue for consideration is whether the termination of the services of the appellant Gambhir was in any manner vitiated. In our opinion, the question requires to be answered in the negative and we uphold the judgment and order of the Division Bench confirming the dismissal of the writ petition filed by Gambhir.

D 3. Gambhir was working as an Assistant General Manager in the Hindustan Commercial Bank Limited. This bank was amalgamated with the Punjab National Bank on 19<sup>th</sup> December, 1986. On amalgamation, the services of 28 or 29 officials of the Hindustan Commercial Bank including Gambhir were not taken over by the Punjab National Bank (for short the 'PNB'). It may be stated that two other banks were similarly amalgamated with the Canara Bank and the State Bank of India, but we are not concerned with them.

E 4. Several officers whose services were not taken over by the PNB and other banks filed a writ petition in this Court under Article 32 of the Constitution challenging the failure of the transferee banks in not taking over their services. This Court decided the writ petition and the decision is reported as ***K.I. Shephard v. Union of India***<sup>1</sup>. It was held by this Court that the transferee banks could not refuse to take over the

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H <sup>1</sup> (1987) 4 SCC 431

services of the officials of the transferor banks. Consequently, the PNB was obliged to take over the officials of the Hindustan Commercial Bank including Gambhir. It was also directed if there was any necessity of initiating disciplinary proceedings against any of the transferred employees, the transferee banks including PNB were at liberty to do so.

5. As far as Gambhir is concerned, while he was working with the Hindustan Commercial Bank, he was issued a charge-sheet on 3<sup>rd</sup> February, 1983 alleging irregularities in sanctioning of loans to the customers of the bank and a failure to take follow up steps. Gambhir replied to the charge-sheet and was thereafter administered a 'caution' and was asked to be more discreet in respect of granting advances and management of credit portfolio. Thereafter in 1986 another set of allegations were made against Gambhir but no final decision was taken by the Hindustan Commercial Bank until its amalgamation with the PNB.

6. In view of the above, the PNB issued a charge-sheet to Gambhir on 28<sup>th</sup> November, 1987 in which it was alleged that he had deliberately flouted the bank lending norms and accommodated some parties unauthorisedly thereby putting huge funds of the bank at stake.

7. Feeling aggrieved by the initiation of departmental proceedings against him, Gambhir preferred W.P. (C) No. 121 of 1988 in this Court under Article 32 of the Constitution. By an order dated 22<sup>nd</sup> April, 1988 this Court declined to entertain the writ petition but expressed the view that the inquiry against Gambhir should be completed quickly. Thereafter, the inquiry was conducted and by a report dated 22<sup>nd</sup> September, 1988 the Inquiry Officer held that the charges against Gambhir were proved and that he had failed to discharge his duties with utmost integrity, honest devotion and diligence thereby putting huge funds of the bank at stake.

A 8. In the meanwhile, Gambhir preferred a writ petition in the Calcutta High Court being C.M.No.11992 (W) of 1988 challenging the charge-sheet issued to him and the inquiry proceedings.

B 9. It appears that during the pendency of the writ petition Gambhir was dismissed from service with effect from 2<sup>nd</sup> August, 1989.

C 10. Be that as it may the writ petition was dismissed by the learned Single Judge by judgment and order dated 7<sup>th</sup> December, 2000.

D 11. Before the learned Single Judge, Gambhir raised three contentions. It was firstly contended that the charge-sheet was issued to him by an officer of the same rank, that is, an Assistant General Manager and this was not permissible in law. Therefore, since the issuance of the charge-sheet was itself vitiated the entire departmental proceedings against him were null and void. The learned Single Judge rejected this contention by referring to Clause 12 of the scheme of amalgamation whereby the PNB was entitled to classify and categorize the employees of the Hindustan Commercial Bank whose services were being taken over. As far as Gambhir is concerned, even though he may have been an Assistant General Manager in the Hindustan Commercial Bank, he was placed as a Scale-III officer in the PNB. This is an admitted position and Gambhir did not make any grievance about this at any stage. The charge-sheet was no doubt issued by an Assistant General Manager of the PNB but he was placed higher than a Scale-III officer in the hierarchy and under the Punjab National Bank Officer Employees (Discipline and Appeal Regulations), 1977 the Assistant General Manager was the disciplinary authority for officers placed in Scale-III.

H 12. The second contention urged by Gambhir was that the allegations against him were already the subject matter of

an inquiry by the Hindustan Commercial Bank and thus could not be reopened by the PNB merely because of a change of employer. This contention was also rejected by the learned Single Judge holding that what was sought from Gambhir by the Hindustan Commercial Bank was an explanation with regard to certain transactions which indicated an irregular conduct on his part. However, no formal disciplinary proceedings had been initiated against Gambhir and that did not preclude the PNB from looking into those alleged irregularities and holding a formal inquiry into them.

13. The third contention urged by Gambhir before the learned Single Judge was that Inquiry Report was not supplied to him before his dismissal with effect from 2<sup>nd</sup> August, 1989. This contention was rejected by the learned Single Judge by holding that the requirement of supplying the Inquiry Report arose out of a decision of this Court in **Union of India v. Mohd. Ramzan Khan**<sup>2</sup>. However that decision was rendered by this Court (on 20<sup>th</sup> November, 1990) after Gambhir was dismissed from his service. That decision had only prospective effect. Subsequently, the Constitution Bench in **Managing Director, ECIL v. B. Karunakar**<sup>3</sup> made it clear that orders of punishment passed prior to the decision in **Mohd. Ramzan Khan** without furnishing the report of the Inquiry Officer should not be disturbed. Therefore, Gambhir had no right to a copy of the Inquiry Report prior to his dismissal.

14. At this stage it may be mentioned that Gambhir has not challenged the merits of the inquiry at any stage or the punishment awarded to him. In that sense Gambhir was not prejudiced by the failure to supply him with a copy of the Inquiry Report.

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<sup>2</sup> (1991) 1 SCC 588

<sup>3</sup> (1993) 4 SCC 727

A 15. Feeling aggrieved by the decision rendered by the learned Single Judge, Gambhir preferred an appeal before the Division Bench but that was dismissed by the impugned judgment and order dated 24<sup>th</sup> July, 2006.

B 16. Before the Division Bench Gambhir raised five contentions. These were noted by the Division Bench as follows:-

C “(i) Gambhir was entitled to be appointed in terms of the order of the Apex Court in K.I. Shephard (supra). He was to be fitted in the appropriate post which he was holding earlier which was not done.

D (ii) The disciplinary authority who issued the charge-sheet was not properly authorized to act as such under the service rules.

E (iii) No copy of the inquiry report was given to him. As a result he could not defend himself in the proceeding by offering his explanation to the disciplinary authority pointing out the illegality and irregularity crept in the enquiry report.

(iv) No second show cause notice was issued to him.

F (v) The charges were stale and could not be proceeded with.”

G 17. As far as the first contention is concerned it has already been mentioned that Gambhir was posted as a Scale-III officer in the PNB upon the amalgamation of the Hindustan Commercial Bank with the PNB. No grievance was made by Gambhir at any point of time regarding his placement. The Division Bench therefore rejected his contention and held that he was appropriately placed in the PNB as a Scale-III officer.  
H The Division Bench held that that apart since the Hindustan

Commercial Bank was a much smaller bank than the PNB, A  
Gambhir's designation as an Assistant General Manager in  
the Hindustan Commercial Bank could not be equated with  
the corresponding designation in the PNB. In any event, there  
was no loss of pay as far as Gambhir was concerned.

18. The second contention urged by Gambhir was also B  
rejected by the Division Bench relying principally upon the  
decision of the learned Single Judge. Additionally, it was held  
that when Gambhir preferred W.P.(C) No. 121 of 1988 in this C  
Court, it was observed that the inquiry against Gambhir should  
be expedited. The Division Bench was of the view that this  
was an indication that this Court did not find any procedural  
irregularity in the issuance of the charge-sheet against  
Gambhir.

19. The third contention urged by Gambhir was rejected D  
in view of the decisions rendered in *Mohd. Ramzan Khan*  
and *Karunakar*. Additionally, it was noted that Gambhir had  
been supplied with a copy of the Inquiry Report but had not E  
raised any issue on the merits of the allegations made against  
him and the findings arrived at by the Inquiry Officer.

20. The fourth contention was also rejected by the Division F  
Bench on the ground that there was no requirement of issuing  
a second show cause notice to Gambhir.

21. The last contention urged by Gambhir was also G  
rejected since the PNB was entitled to look into any final  
irregularity committed by the employees of the Hindustan  
Commercial Bank whose services were taken over by the PNB.  
On this basis, the Division Bench dismissed Gambhir's appeal  
by the impugned judgment and order dated 24<sup>th</sup> July, 2006. It  
is under these circumstances that Gambhir is now before us.

22. The contentions urged by learned counsel for Gambhir H

A are merely repetitions of the contentions urged either before  
the learned Single Judge or before the Division Bench of the  
High Court.

23. As far as the principal ground urged by learned  
B counsel that the charge-sheet could not have been issued to  
Gambhir by the Assistant General Manager in the PNB is  
concerned, we find no merit in the contention. The admitted  
position is that Gambhir was a Scale-III officer in the PNB while  
C the rank of the Assistant General Manager in the PNB is Scale-  
V. Gambhir could only have been placed in Scale-III in terms  
of his responsibilities and keeping in mind the corresponding  
scale upon the amalgamation of the Hindustan Commercial  
Bank with the PNB. Clause 12 of the scheme of amalgamation  
as sanctioned by the Government of India clearly states as  
D follows:-

“The transferee bank shall, on the expiry of a period not  
longer than three years from the date on which this  
scheme is sanctioned, pay or grant to the employees of  
E the transferor bank the same remuneration and the same  
terms and conditions of service as are applicable to the  
employees of corresponding rank or status of the  
transferee bank subject to the qualifications and  
experience of the said employees of the transferor bank  
F being the same as or equivalent to those of such other  
employees of the transferee bank.”

24. There is no allegation by Gambhir at any point of  
time that he was either reduced in rank or that his placement  
G was incorrect or any similar grievance. That being the position,  
it is now too late in the day for Gambhir to contend that his  
placement in the PNB was erroneous and therefore the  
issuance of the charge-sheet by the Assistant General Manager  
in the PNB was vitiated in any manner.

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25. We are in agreement with the view of the High Court A  
that the rules applicable to Gambhir were the Punjab National B  
Bank Officer Employees (Discipline and Appeal) Regulations, C  
1977. In terms of these Regulations, as discussed by the High D  
Court, the disciplinary authority of Gambhir was the Assistant E  
General Manager (P). That being the position, merely because F  
Gambhir was an Assistant General Manager in the Hindustan G  
Commercial Bank does not mean that the Regulations of 1977 H  
would not be applicable to him or that the Assistant General I  
Manager (P) in the PNB could not have issued a charge-sheet J  
to Gambhir.

26. At this stage, it may be mentioned that in **Chairman,**  
**Canara Bank, Bangalore v. M.S. Jasra**<sup>4</sup> an employee of the  
Lakshmi Commercial Bank (which had amalgamated with  
Canara Bank at the same time when Hindustan Commercial  
Bank amalgamated with the PNB) the contention of the  
employee was that the age of retirement (60 years) in Lakshmi  
Commercial Bank could not be varied to his disadvantage (58  
years) on the amalgamation of that Bank with the Canara Bank.  
This contention was rejected by holding that the employee  
became an employee of the Canara Bank and was, therefore,  
entitled to the rights given to employees of the Canara Bank.

27. Applying this principle to the facts of this case, it is  
clear that Gambhir became an employee of the PNB and was  
subject to the discipline of all its rules and regulations, including  
those pertaining to misconduct.

28. It is also contended that the allegations against  
Gambhir had already been inquired into by the Hindustan  
Commercial Bank and therefore the PNB could not reopen  
issues relating to the alleged misconduct and hold an inquiry  
into them. We do not find any merit in this submission also.

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<sup>4</sup> (1992) 2 SCC 484

- A There were a large number of transactions which were alleged to be irregular and in which Gambhir was said to be involved. It is possible that there may have been an overlap in respect of some of them (although no such overlap has been shown to us) but that is not an indication that the alleged irregularities
- B committed by Gambhir in respect of other transactions were condoned. In fact, Gambhir has not pointed out which were the transactions which were the subject matter of concern in the Hindustan Commercial Bank and which were the transactions which were the subject matter of inquiry by the
- C PNB. This would have certainly given us a far clearer picture.

However, on a random consideration of the allegations made, it does appear that there were certain transactions particularly the transactions pertaining to R.K. Tandon & Co.

D which were not inquired into by the Hindustan Commercial Bank. It may be recalled that it is the admitted position that in respect of one alleged irregular transaction, the Hindustan Commercial Bank could not take any decision one way or the other due to the amalgamation of that Bank with the PNB. We

E have not found any duplication in the allegations and are not inclined to carry out any investigation in this regard at this stage.

- F 29. In view of the above, we find no reason to interfere with both the judgments delivered by the Calcutta High Court. The appeal is dismissed.

Kalpana K. Tripathy

Appeal dismissed.