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**(2013) 01 P&H CK 0233**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : LPA No. 66 of 2013 (O and M)**

Punjab and Sind Bank

APPELLANT

Vs

Mrs. Surinder Kaur and Others

RESPONDENT

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**Date of Decision :** 16-01-2013

**Acts Referred:**

Punjab and Sind Bank Officer Employees (Discipline and Appeal) Regulations, 1981 — Regulation 6(7)

**Citation :** (2013) LabIC 1061

**Hon'ble Judges :** A.K. Sikri, C.J.; Rakesh Kumar Jain, J

**Bench :** Division Bench

**Advocate :** J.S. Sathi, for the Appellant;

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## Judgement

Rakesh Kumar Jain, J.—D.S. Shamsheer (now deceased), petitioner in the writ petition (hereinafter referred to as the respondent), was working in the appellant-bank. When he was about to retire from the post of Chief Manager, Zonal Office at Chandigarh on 31.7.1988, he was served with a charge-sheet dated 23.6.1988 alleging that during his tenure, he advanced to 16 DIC sponsored cases knowing that the parties availing the loan were not utilizing the same and the payments were made to bogus concerns and the actual beneficiary of the loans was one Amarjit Singh Virk in almost all cases. It was, therefore, alleged that the respondent had actually acted in collusion with Amarjit Singh Virk and the concerned Branch Managers in misappropriating the bank funds and subsidy made available by the Government of India. Departmental inquiry was initiated against the respondent in which charges levelled against him were proved. Consequently, he was dismissed from service on 7.2.1990. His appeal against the said order was rejected on 26.6.1990 and vide order dated 24.7.1990, he was denied the benefit of leave encashment and gratuity. All these orders were challenged by the respondent by way of writ petition but unfortunately he expired during its pendency.

2. The only argument raised by learned counsel for the respondent before the

writ Court was regarding denial of fair opportunity in defending the case during the course of inquiry. It was alleged that the Presenting Officer of the bank was law qualified but the request made by the respondent to pursue his defence through a lawyer was turned down being not permissible under the service rules.

3. The writ petition has been allowed by the learned single Judge vide his order dated 5.9.2011 on the ground that the interest of the respondent was prejudiced as he was not allowed to take the help of a legal practitioner. In this regard, a reference is made to Regulation 6(7) of the Punjab and Sind Bank Officers Employees (Discipline and Appeal) Regulations, 1981 (hereinafter referred to as the Regulations), which reads as under:--

The officer-employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purposes, unless the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permits.

4. The learned single Judge has observed that the aforesaid Regulation permits a legal practitioner to represent the employee if the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permits. It was further observed that the request of the respondent was turned down being not permissible under the service rules and on the ground that no prejudice is caused to him if he is not allowed to defend himself by a legal practitioner but the fact remains that fair opportunity was not afforded to him during the inquiry as the Presenting Officer of the appellant-bank was a law graduate, to say the least trained in law or well versed with the intricacies as against the respondent, who was naive in that regard.

5. Aggrieved against the order of the learned single Judge, the present appeal has been filed along with an application being C.M. No. 200-LPA of 2013 for condonation of delay of 411 days in re-filing of the appeal

6. Learned counsel for the appellant has argued that the learned single Judge has erred in giving too much importance to the fact that the Presenting Officer of the bank was a law graduate though he was an old law graduate who had not practiced law and was an employee of the bank. However, he did not dispute that the application of the respondent for defending himself through a legal practitioner was rejected on the ground that the service rules do not provide the same and no prejudice is going to be caused to him.

7. Insofar as the application for condonation of delay in re-filing of the appeal is concerned, it is averred that the main appeal was filed within limitation but it was returned by the Registry with certain objections. After taking the paper book, it was kept for removing the objections but in the meantime, the Clerk to the counsel joined some other office, therefore, the appeal could not be filed as it escape the notice of the counsel for the appellant and during the Christmas vacations, while he was straightening his record, the paper book of this appeal

came to his notice in the first week of January, 2013 and was re-filed.

8. After hearing learned counsel for the appellant, we are of the considered opinion that neither the appeal could succeed on merits nor there is any sufficient cause assigned in seeking condonation of delay in its re-filing.

9. It is not disputed that during departmental inquiry, the Presenting Officer of the bank had the legal background muchless he was a law graduate and respondent had moved an application for seeking the help of a law graduate to defend his case which was turned down on the ground that there is no provisions in the service rules but Regulation 6(7) of the Regulations, referred to above, categorically provides that the officer/employee cannot engage the legal practitioner unless the Presenting Officer is a law practitioner. Once it is provided in the Regulations itself that the officer/employee can engage a legal practitioner to defend his case during inquiry if the Presenting Officer is also having legal background, the denial of this opportunity to the respondent on the ground that there is no such provisions in the Rules is patently illegal and arbitrary as it has not only violated Regulation 6(7) but also the principle of natural justice of equal opportunity in trial.

10. Thus, we do not find any merit in the present appeal to tinker with the order passed by the learned single Judge.

11. As far as the application for condonation of delay in re-filing of the appeal is concerned, we are of the considered opinion that the reason assigned is totally unjustified. It would not be inappropriate to observe here that there has been a casual approach of the appellant in re-filing the appeal which remained with it for 411 days, whereas the legal representatives of the respondent, who have succeeded before the learned single Judge, were expecting notice of the Higher Court, in case some appeal is filed by the appellant, up to a particular period of time and, thereafter, they might have been thinking that no such case has been filed against them and the judgment passed in their favour has become final. Naturally, they would be taken aback when they would receive the notice from the Court after a long period of time when delay in re-filing in such a case is condoned. As a matter of fact, every litigant, who has been successful, has a right to sit back and relax after the expiry of prescribed period of time that no case is filed against him by his opponent but these days, there is a growing tendency to file incomplete cases and then take unreasonably long time to remove the defects, even where such defects can be cured within a very short time.

12. Hence, in these circumstances, we are not inclined even to condone the delay in re-filing of the appeal and as such, the application is hereby dismissed. As a consequence of the above, the present appeal is hereby dismissed on the ground of delay in its re-filing as well as on merits.