

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P (C) No. 9308/2004

% Judgment reserved on: 24th July, 2013
Judgment delivered on: 21st August, 2013

R.R.PERI Petitioner
Through: Mr.Ashok Sapra and Mr. R.K.
Jain, Advocates.

Versus

ORIENTAL BANK OF COMMERCE Respondent
Through: Mr. Jagat Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred against the impugned order dated 27.06.2003, whereby punishment of removal from service was imposed upon the petitioner by the Disciplinary Authority.
2. Vide the instant petition, order dated 27.02.2004 passed by the Appellate Authority has also been challenged, which confirmed the punishment of removal from service.
3. Ld. Counsel appearing on behalf of the petitioner submitted that keeping in view the long drawn litigation and having attained the age of 61 years, the petitioner feels that the substantial interest of justice

would be met if his case is decided on the principle of “proportionately of punishment”.

4. To strengthen the plea raised above, ld. Counsel has relied upon a case of ***Kailash Nath Gupta v. Enquiry Officer R.K. Rai, Allahabad Bank and Ors. (2003) SCC 480***, wherein it is held as under:

“The power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded.”

5. Ld. Counsel further relied upon a case of ***Cement Corporation of India Ltd. V. M.L. Aggarwal & Anr. 149 (2008) DLT 291 (DB)*** wherein it is held as under:

“The petitioner is guilty of misconduct and has to be suitably punished for the misconduct. However the nature of misconduct is more in the nature of violation of practice and procedure than in the nature of corruption. In view of what is stated in the foregoing paragraphs, it appears that the extreme penalty of removal from service is shockingly disproportionate to the offence.

21. The aforesaid reasons reflect an angle which is required to be considered by the Disciplinary Authority. It is not clear from the order of the Disciplinary Authority as to whether the aforesaid relevant materials and factors were considered while imposing the punishment of removal on the writ petitioner. We, Therefore, remit back the matter to the Disciplinary Authority for reconsideration of the issue of quantum of punishment to be imposed on the writ petitioner by taking

notice of all relevant factors and taking all the angles into consideration, including those mentioned by the learned Single Judge. We also make it clear that we do not intend to express any opinion ourselves on the merits of the issue of quantum of punishment in any manner, except for leaving it to the best judgment of the Disciplinary Authority, who, we are confident, would take all materials including the nature of misconduct into consideration for passing a fresh order of punishment in accordance with law. The Disciplinary Authority shall pass an order within four weeks from the date of receipt of a copy of this order. We also hold that if the writ petitioner is still aggrieved, he will have the liberty to file an appeal in accordance with law. We modify the order of the learned Single Judge to the aforesaid extent only.”

6. Ld. Counsel for the petitioner submitted that Article of Charges framed against the petitioner are as under:

“Article of Charge no. 1:

Sh. R.R. Peri, Chief Manager (Under Suspension), Regional Office, Hyderabad while posted as Senior Manager / Incumbent Incharge at Secunderabad Branch between the period 16.05.1997 to 11.05.2001 frequently recommended ad-hoc Cash Credit facilities in the account of M/s. Automotives (P) Ltd., without properly assessing the credit needs of the borrowers despite satisfactory conduct of the account.

By his above acts, Sh. R.R. Peri, Chief Manager (under suspension), Regional Office, Hyderabad did not discharge his duties with integrity, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus he violated Regulation 3 (i) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation “24” of the said Regulations constitute misconduct

punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

Article of Charge No. 2:

Shri R.R. Peri, Chief Manager (under Suspension), Regional office, Hyderabad while posted as Senior Manager / Incumbent Incharge at Secunderabad Branch between the period 18.05.1997 to 11.05.2001 unauthorisedly purchased cheques of accommodation nature drawn by sister / allied concerns of M/s. Everest Automotives (P) Ltd. in contravention of terms of sanction.

By his above acts Sh. R.R. Peri, Chief Manager (Under suspension), Regional Office, Hyderabad did not discharge his duties with integrity, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus he violated Regulation 3 (i) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation “24 of the said Regulation constitute misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

Article of Charge No. 3:

Shri R.R. Peri, Chief Manager (Under suspension), Regional Office, Hyderabad while posted as Senior Manager / Incumbent Incharge at Secunderabad branch between the period 18.05.1997 to 11.05.2001 failed to take preventive action to safeguard Bank's interest and continued accommodating M/s. Everest Automotive (P) Ltd., despite serious irregularities reported in the account, by the Stock Auditors.

By his above acts Shri R.R. Peri, Chief Manager (Under Suspension), Regional Office, Hyderabad did not discharge his duties with integrity, devotion and diligence and acted in a manner which is unbecoming of

a Bank Officer. Thus he violated Regulation 3 (i) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation “24” of the said Regulations constitute misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

Article of Charge No. 4:

Shri R.R. Peri, Chief Manager, (Under suspension), Regional Office, Hyderabad while posted as Senior Manager / Incumbent Incharge at Secunderabad Branch Between at period 18.05.1997 to 11.05.2001 sanctioned / disbursed consumer loans without ensuring end use of funds.

By his above acts Shri R.R. Peri, Chief Manager (Under suspension), Regional Office, Hyderabad did not discharge his duties with integrity, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus he violated Regulation 3 (i) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation “24” of the said Regulations constitute misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

Article of Charge No. 5:

Shri R.R. Peri, Chief Manager, (Under suspension), Regional Office, Hyderabad while posted as Senior Manager / Incumbent Incharge at Secunderabad Branch Between at period 18.05.1997 to 11.05.2001 unauthorizedly discounted / purchased self drawn cheques and allowed clean overdraft beyond the vested powers in the account of M/s. Sarma Associates in contravention of the laid down procedure of the Bank.

By his above acts Shri R.R. Peri, Chief Manager (Under suspension), Regional Office, Hyderabad did not

discharge his duties with integrity, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus he violated Regulation 3 (i) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulations "24" of the said Regulations constitute misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

Article of Charge No. 6:

Shri R.R. Peri, Chief Manager, (Under suspension), Regional Office, Hyderabad while posted as Senior Manager / Incumbent Incharge at Secunderabad Branch Between at period 18.05.1997 to 11.05.2001 purchased / discounted cheques of substantial amount drawn on Richmond Road Bangalore Road Branch and had not ensured that the payment of the cheques discounted is received from the drawee Branch within reasonable time and in case of returning of discounted cheques the amount is debited to the respective accounts immediately.

By his above acts Shri R.R. Peri, Chief Manager (Under suspension), Regional Office, Hyderabad did not discharge his duties with integrity, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus he violated Regulation 3 (i) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulations "24" of the said Regulations constitute misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982."

7. Ld. Counsel submitted that the charges against the petitioner were more in the nature of violation of practice and procedure than the nature of corruption. In finding of the enquiry, the IO has nowhere

mentioned the *malafide* intention of the petitioner. The brief resume of the charges framed against the petitioner and the findings of the enquiry Officer are drawn as under:

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<i>CHARGES</i>	<i>OBSERVATION OF I.O.</i>
<i>Shri R.R. Peri, Chief Manager (Under Suspension), Regional Office, Hyderabad while posted as Senior Manager / incumbent in-charge at Secunderabad between the period 18.05.1997 to 11.05.2001:-</i> <i>i) Frequently recommended ad-hoc Cash Credit facilities in the account of M/s. Everest Automotives (P) Ltd., without properly assessing the Credit needs of the borrowers despites unsatisfactory conduct of the account .</i>	<i>CSO did not exercise due diligence while recommending the facilities to the superior office and thus the charge is proved.</i>
<i>ii) Unauthorosizedly purchased cheques of accommodation nature drawn by sister / allied concerns of M/s. Everest Automotives (P) Ltd., in contravention of terms of sanction.</i>	<i>He did not discharge his duties with integrity, devotion and diligence and held that the charge is proved.</i>
<i>iii) Failed to take preventive action to safeguard Bank's interest and continued accommodating M/s. Everest Automotive (P) Ltd., despite serious irregularities reported</i>	<i>Looking to the exhibit PE-14/ Management witness and the plea put forth by defence in his brief, the charge is proved.</i>

<i>in the account, by the Stock Auditors.</i>	
<i>iv) Sanctioned and released 300 consumer loan advances ranging from Rs.15,000 to Rs.50,000/- aggregating Rs.97.86 Lacs between the period March, 1998 to August, 1999 without ensuring end use of funds.</i>	<i>The CSO did not observe rules and failed to observe the end use of the Bank funds and the charge is proved.</i>
<i>v) Unauthorizedly discounted / purchased self drawn cheques and allowed clean overdraft beyond the vested powers in the account of M/s. Sarma Associates contravention of the laid down procedure of the Bank.</i>	<i>The record shows that the CSO purchased many cheques within the discretionary powers of the CSO and many overdrafts allowed were within the discretionary powers of CSO. However, the defence did not counter the charge in respect of the cheques purchased / overdrawings allowed beyond the discretionary powers of the CSO. Hence the charge is partially proved.</i>
<i>vi) Purchased / discounted cheques of substantial drawn on Richmond Road Bangalore Branch and had not ensured that the payment of the cheques discounted is received from the drawee branch within reasonable time and in case of returning of discounted cheques the amount is debited to the respective accounts immediately.</i>	<i>Looking to the principle of natural justice and the arguments put forth by the CSO of the prevailing practice at that time does hold goods. As such, the charge could not be proved by the prosecution / arguments put forth by the management witness.</i>

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8. Ld. Counsel submitted that Rule 14 of CCS (CCA) Rules, framed by Central Vigilance Commission, applies to the respondent Bank in the cases as under:-

(i) Cases in which there is a reasonable ground to believe that the criminal offence has been committed by the Govt. servant but the evidence forthcoming is not sufficient for prosecution in a court of law for example:

(a) Possession of disproportionate assets;

(b) Obtaining or attempting to obtain illegal gratification;

(c) Misappropriation of Govt. property, money or stores

(d) Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

(ii) Falsification of Government records.

(iii) Gross irregularities or negligence in the discharge of official duties with a dishonest motives.

(iv) Misuse of official position or power for personal gain.

(v) Disclosure of secret or confidential information even though it does not fall seeking within the scope of official Secrets Act.

(vi) False claim on the Government like T.A. claims etc.

Under the Vigilance Management in Public Sector Bank viz-a-viz the role and function of CVC.

i) Irregularities in opening of accounts leading to the creation of fictitious accounts;

- ii) Recurrent instances of sanction of ODs in excess of discretionary powers / sanctioned limits without reporting;
- iii) Frequent instances of accommodation granted to a party against norms e.g. : Discounting bills against bogus MTRs; purchase of bills when bills had earlier been returned unpaid; Affording credits against uncleared effects in the absence of limits and opening LCs when previous opened LCs had devolved.

9. Ld. Counsel for the petitioner submitted that from perusing the above Rule position, it is implicit that none of the charges leveled against the petitioner fall in the ambit of the Rule position as enumerated above. Therefore, imposing the penalty of removal under the head, major penalty, by itself is bad in law and is beyond jurisdiction of the Disciplinary Authority. The ingredients contained for invoking major penalty proceedings as per Rule 14 CCS (CCA) Rules, framed by Central Vigilance Commission, did not fall or contain the ingredients in the charges leveled against the petitioner. The charges against the petitioner are of minor in nature and thus warrant the minor penalty rather than the major penalty, as inflicted upon the petitioner.

10. Ld. Counsel has further submitted that Disciplinary Authority has neither properly appreciated the type of charges, i.e., minor charges and major charges, for the purpose of punishment awarded to the petitioner. Relevant factors have not been considered by the Disciplinary Authority which has bearing on the quantum of punishment while imposing the penalty for removing from service.

11. The enquiry officer has nowhere mentioned that the petitioner obtained any undue advantage by recommending or dealing with the loan proposals of the Banks while working as Senior Manager. As per the Banking practice, in the banking sector, in day-to-day working of the Bank to increase the business of the Bank system, the Branch Manager has to take such type of decisions. The aspect to be considered by this court is that whether the concerned Manager has taken any undue advantage or undue favour by which he gained something in cash or kind.

12. Ld. Counsel for the petitioner submitted that in the long past service, there was no occasion indicating his irregularities and misconduct except the present charges.

13. Ld. Counsel submitted that these aspects have not been considered by the respondent authority in the proper perspective as has been decided in ***Kailash Nath Gupta (Supra)***.

14. Ld. Counsel submitted that there was no malafide intention on the part of the petitioner or misappropriation of funds or loss caused to the Bank in view of the alleged irregularities committed by the petitioner. It is to be noted that actions of the petitioner were ratified by the Regional Office of Oriental Bank of Commerce at Chennai. For the sake of argument, even presuming that the petitioner had no power since the actions of the petitioner were ratified and did not result in any loss to the bank, the petitioner cannot be held guilty of the charges.

15. Ld. Counsel for the petitioner submitted that there was inordinate delay between the occurrence of the events and issuance of the chargesheet. The alleged event occurred in the year 1997 or so and the charge sheet was issued on 27.11.2001.

16. On the issue raised above, ld. Counsel has relied upon a case of ***State of MP v. Bani Singh, 1990 Suppl. SCC 738*** wherein it is held that inordinate and inexplicable delay in finalization of charge sheet can itself be a ground for quashing of the same on the ground of denial of reasonable opportunity.

17. Ld. Counsel for the petitioner has prayed this Court that if this Court come to the conclusion that the punishment awarded to the petitioner is not proportionate to the misdemeanor committed by the petitioner, in that eventuality this Court should not send the case back to the Disciplinary Authority to impose a fresh penalty other than removal for the reason, the petitioner has already completed 62 years of age and it will amount to denial of justice.

18. Ld. Counsel for the petitioner has relied upon a case of ***Narender Kumar Bansal v. Engineers India Ltd. & Ors. LPA 571/2008*** wherein Division Bench of this Court on 23.04.2013 passed as under:

“In that view of the matter, we are of the considered view that the appeal should be allowed to the extent to modify the punishment of removal. Accordingly, we direct that the punishment of removal of the appellant is modified to one of withdrawal of three increments without cumulative effect. The appellant shall not be entitled to any

backwages from the date of removal till the date of filing of the appeal. It is informed by ld. Counsel for the appellant that the appellant has since retired, the question of reinstatement, therefore, does not arise. However, we make it clear that by virtue of the order in this appeal, the appellant is entitled to pension, wages regarding the unearned leave and gratuity, as a consequence of this order.”

19. Ld. Counsel for the petitioner submitted that the respondent Bank slapped with penalty of removal from service in other cases such as ***Suresh Pathrella v. Oriental Bank of Commerce 2007 I LLJ 728*** where there was a misappropriation of amount of Rs.10 Lac etc. of a customer without his authority / consent. There has been a criminal act and procedural violations in that case.

20. In another case of ***State Bank of India v. Bela Bagchi 2005 LLJ 721*** where an employee had received money from the account holder for depositing in his bank, but did not deposit the money. A fictitious entry was made in the passbook of the account holder. This is also a criminal act and procedural violation.

21. In ***CMD United Commercial Bank Ltd. v. PC. Kakkar AIR 2003 SC 1571***, the charged officer fabricated and manipulated the records, which is also a criminal act and procedural violation.

22. Ld. Counsel for the petitioner submitted that in the present case, there has neither been any criminal act, nor charge of bribe, corruption or any misappropriation of money. Therefore, the penalty of removal from service is shocking and has to be set aside. He has prayed that while considering the length of service and age of the petitioner, some

lenient view may be taken for the simple reason, the present penalty is disproportionate to the present violation. He is now a senior citizen and not getting any pension. It will be difficult for him to survive in the present situation.

23. On the other hand, Id. Counsel for the respondent Bank submitted that petitioner was working as a Senior Manager with respondent Bank when he was chargesheeted for act of misconduct vide chargesheet dated 27.11.2001. The enquiry was conducted. The principle of natural justice was applied. Thereafter punishment order of removal from service was passed on 27.06.2003 which was thereafter clarified by Corrigendum dated 21.10.2003 passed by the Disciplinary Authority.

24. Against the aforesaid order, petitioner had filed an appeal before the Appellate Authority, same was also dismissed after considering all the issues in detail. Thus, the order of Disciplinary Authority merged with the Appellate Authority and having considered various misconduct that stood proved against the petitioner and the decision of removal from service was upheld. The charges have been found to be proved in the enquiry. Same has been upheld by the Appellate Authority.

25. Id. Counsel for the respondent submitted that this court would not weigh the gravity or the charges, which are of very serious nature of financial irregularities, exceeding powers granted to a Chief

Manager. The only punishment for such an Officer would be to remove him from service to safeguard the public funds.

26. Ld. Counsel for the respondent Bank submitted that a Bank Officer has to maintain a very high standard of honesty and act in accordance with the sanctioned powers. The departmental authorities are the best judge to ascertain the conduct of the delinquent official. Merely because no loss is caused or the advances made unauthorizedly are settled by the Bank would not justify taking a lenient view against the officer concerned.

27. Ld. Counsel for the respondent has admitted that first four charges are established and mere reference to the said charges as mentioned in the charge sheet dated 27.11.2001 would show that the petitioner exceeded his sanctioned powers and indulged in transactions which would cause financial loss to the respondent bank. Such a conduct disregarding the rules of the bank can cause havoc in the working of the public financial institutions and deserves to be condoned by taking strong punitive action against the delinquent official as has been done in the present case.

28. Ld. Counsel for the respondent submitted though charges no. 1 to 4 have been proved against the petitioner, however, charge 5 has been proved partially and charge six not proved.

29. Ld. Counsel for the respondent has relied upon a case of ***Disciplinary Authority-cum-Regional Manager and Ors. v. Nikunja Bihari Patnaik 1996 (73) FLR 1252*** wherein it is held that in some

cases, it is true no loss has resulted from such acts; it is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy. The advances have become sticky and irrecoverable. It is not a single act. It is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a Bank - for that matter, in the case of any other organization - every officer/employee is supposed to act within the limits of his authority. If each officer/ employee is allowed to act beyond his authority, the discipline of the organization / bank will disappear.

30. Further relied upon a case of **Suresh Pathrella (Supra)** as relied upon by the petitioner also, wherein held as under:

“In the present case the appellant acted beyond his authority in breach of bank's Regulation. Regulation 3(1) of the bank's Regulation required that every officer of the bank at all times take all possible steps to protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a bank officer. It is a case of loss of confidence in the officer by the bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service, preceded by an enquiry, and to direct the bank to take back the officer in whom the bank has lost confidence, unless the decision to remove the officer is tainted with malafide, or in violation of principles of natural justice and prejudice to

the officer is made out. No such case is made out in the present case.”

31. Also relied upon a case of ***Bela Bagchi (Supra)*** as relied upon by petitioner wherein held as under:

“A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, [1996] 9 SCC 68, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.”

32. Counsel for the respondent submitted that in case of ***State of India & Ors. v. Ramesh Dinkar Punde 2006 SCC (L&S) 1573***, it is held that a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. It needs to be emphasized that

in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. Against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.

33. I heard, Id. Counsels for the parties.

34. Instant petition has been preferred against the impugned order dated 27.06.2003, whereby punishment of removal from service was imposed upon the petitioner by the disciplinary authority and the same has been confirmed by the appellate authority vide order dated 27.02.2004.

35. During arguments, Id. Counsel appearing on behalf of the petitioner submitted that keeping in view the long drawn litigation and petitioner having attained the age of 62 years, he feels that the substantial justice would be met if his case is decided on the principle of “proportionately of punishment”.

36. The case of the respondent Bank is that Bank Officer has to maintain a very high standard of honesty and act in accordance with the sanctioned powers.

37. There were six charges against the petitioner as enumerated in Para 6 above. Charge nos. 1 to 4 has been proved against him. However, charge no. 5 has been proved partially and charge no. 6 is not proved. As alleged, by his act, he did not discharge his duties with

integrity, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus, he violated Regulation 3 (i) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation “24” of the said Regulations constitute misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

38. Charge sheet dated 27.11.2001 would show that the petitioner exceeded his sanctioned powers and indulged in transactions, which would cause financial loss to the respondent Bank. It is admitted that no loss is resulted from such acts. Also admitted that in some instances such acts have yielded profit to the Bank. It is equally true that in some other instances funds of the Bank have been placed in jeopardy. Therefore, if each officer / employee is allowed to act beyond his authority, the discipline of the Bank will disappear.

39. It is held in ***Bela Bagchi (Supra)*** that a Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. The very discipline of an organization more particularly a bank is dependent upon of its officers and their acting and operating within allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct.

40. In a case of *Ramesh Dinkar Punde (Supra)* it is held that Bank Officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. Against the interest of the bank and the depositors, he must deal with iron hands and he does not deserve to be dealt with leniently.

41. I note, qua charge no. 1, the Enquiry Officer has recorded that charged officer did not exercise due diligence while recommending the facilities to the superior office and thus the charge is proved. Qua charge no. 2, it is observed that the charged officer did not discharge his duties with integrity and devotion and diligence, accordingly, the charge is proved. Qua charge no.3, it is observed that looking to the exhibit PE-14 / Management Witness and plea put forth by defence in his brief, the charge is proved. As against the charge no.4, the Enquiry Officer has recorded that the charged officer did not observe rules and failed to observe the end use of the Bank funds, thus the charge is proved. Against the charge no. 5, it is observed that the records shown that the charged officer purchased many cheques within his discretionary powers and many overdrafts were allowed within his discretionary powers. However, the defence did not counter the charge in respect of the cheques purchased / overdrafts allotted beyond the discretionary powers of the charged officer, hence the charge is partially proved.

42. Qua charge no. 6, it is observed that looking to the principle of natural justice and the arguments put forth by the charged officer of the

prevailing practice at that time does hold goods. As such charge could not be proved by prosecution and arguments put forth by the management witness.

43. Undisputedly, Rule 14 of CCS (CCA) Rules framed by Central Vigilance Commission is applicable to the respondent Bank where there is a gross irregularity or negligence of discharge of official duties with a dishonest motives or misuse of official position or power for personal gain.

44. On perusal of the charges framed against the petitioner and Rule position as mentioned above, it is implicit that none of the charges leveled against the petitioner fall in the ambit of the rule position as enumerated above.

45. It is not the case of the respondent Bank that the petitioner obtained any undue advantage by recommending or dealing with the loan proposals of the Banks while working as Senior Manager. The aspect which has to be considered by this Court is whether the concerned Manager has taken any undue advantage or undue favour by which he gained something in cash or kind.

46. The case of the respondent Bank is not that the petitioner has done anything against the practice, but when such type of practice does not come in the knowledge of the Senior Officers and the Bank has gained the maximum business, then the same Officer receives appreciation. In that eventuality even Senior Officer appreciates the conduct and style of that Manager. But if, sometimes when it comes in

the open knowledge, then Senior Officers either do not appreciate openly or recommend some action against that officer. The present case falls in that category.

47. The petitioner joined the respondent Bank as Steno-Typist in the year 1975 and rose to the level of Chief Manager Grade-IV by dint of his hard work and interest. Before leveling the present charges, there was not even a single action for which he was even warned to be careful in future. The petitioner has put in more than 28 years of service as on the date of issuance of the memo.

48. Admittedly, there was no loss to the respondent Bank and even the loan in case of M/s. Everest Automotive Private Ltd. was finally settled and closed. Even in the charges the Bank has not alleged any financial loss to the Bank. The charges are purely of violation of practice and procedure and there is no corruption charges leveled against the petitioner.

49. Moreover, the actions of the petitioner were ratified by the Regional Office of respondent Bank at Chennai that it did not result in any loss to the Bank. Moreover, there was inordinate delay between the occurrence of the events and issuance of the charge sheet. The alleged event occurred in the year 1997 or so and the charge sheet was issued on 27.11.2001. Admittedly, neither there is any allegation of any criminal act against the petitioner nor charge of bribery, corruption or any misappropriation of money. Therefore, the penalty of removal from service is shocking and has to be set aside.

50. In view of the above discussion, I am of the considered opinion that imposition of penalty of removal from service against the petitioner is disproportionate to the misdemeanor committed by him.

51. In the eventuality, the proper way would be to remand the case back to the disciplinary authority to impose penalty other than removal from service. However, impugned orders were passed on 27.06.2003 and 27.02.2004 and the petitioner has attained the age of 62 years as on date. By sending the matter to the disciplinary authority would be denial of justice. Recently the Division Bench of this Court has dealt with a similar issue in the case of *Narender Kumar Bansal (Supra)*.

52. Therefore, in view of the above, punishment of removal from service is modified to the extent (i) withdrawal of three increments with cumulative effect & (ii) appellant shall not be entitled to any back wages from the date of removal from service till the date of filing of the appeal. Since the petitioner has retired, the question of reinstatement, therefore, does not arise. However, I make it clear that by virtue of the order in this petition, the petitioner is entitled to pension, wages regarding earned leave and gratuity as a consequence of this order.

53. In view of the above, instant petition is allowed with no order as to costs.

SURESH KAIT, J

AUGUST 21, 2013

jg