IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY,THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

W.P.(C).No.35029 of 2005 (T)

PETITIONER(S):-

E.V.RAMANARAYANAN,
SENIOR MANAGER (STANDS REMOVED),
UNION BANK OF INDIA, SERVICE BRANCH, ERNAKULAM.

NOW RESIDING AT "SAKETHAM", P.O.CHEVARAMBALAM,
CALICUT-673 017.

BY ADVS. SMT.SUMATHI DANDAPANI [SENIOR ADVOCATE]
SRI.MILLU DANDAPANI.

RESPONDENT(S):-
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1. THE GENERAL MANAGER (HRM),
HRM DEPARTMENT, INDUSTRIAL RELATIONS DIVISION,
UNION BANK OF INDIA, CENTRAL OFFICE 239,
VIDHAN BHAVAN MARG, NARIMAN POINT, MUMBAI-400021.

2. THE CHAIRMAN AND MANAGING DIRECTOR,
APPELLATE AUTHORITY, UNION BANK OF INDIA,
CENTRAL OFFICE, 239, VIDHAN BHAVAN MARG,
NARIMAN POINT, MUMBAI-400021.

3. PAUL MATHEW, REGIONAL MANAGER (RETD),
UNION BANK OF INDIA,
RESIDING AT 34/2564, MUKTHIL BETHANYA HOUSE,
JAWAHAR NAGAR, KADAVANTHARA, COCHIN-682020.

R1 & R2 BY STANDING COUNSEL SRI.A.S.P.KURUP.
R3 BY ADV. SRI.SADCHITH.P.KURUP.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-12-2015, THE COURT ON 23-12-2015 DELIVERED THE FOLLOWING:-

W.P.(C) NO.35029 OF 2005-T

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	TRUE COPY OF THE LETTER DATED 26.10.1999 SENT BY THE REGIONAL OFFICE, CALICUT, TO THE GENERAL MANAGER, CHENNAI.
EXT.P2	TRUE COPY OF THE LETTER DATED 29.07.2000 ISSUED BY THE CALICUT MAIN BRANCH TO THE REGIONAL MANAGER, REGIONAL OFFICE, CALICUT.
EXT.P3	TRUE COPY OF THE LETTER DATED 26.08.2000 ISSUED BY THE CALICUT MAIN BRANCH TO THE MANAGER (RAD), REGIONAL OFFICE, CALICUT.
EXT.P4	TRUE COPY OF THE LETTER DATED 30.09.2000 ISSUED BY THE REGIONAL OFFICE, CALICUT, TO THE MANAGER, CALICUT MAIN BRANCH.
EXT.P5	TRUE COPY OF THE LETTER DATED 29.11.2000 ISSUED BY THE CALICUT MAIN BRANCH TO THE REGIONAL OFFICE, CALICUT.
EXT.P6	TRUE COPY OF THE REPORT DATED 28.02.2001 SUBMITTED BY CALICUT MAIN BRANCH TO THE GENERAL MANAGER, CHENNAI.
EXT.P7	TRUE COPY OF THE MEMORANDUM OF ARTICLES OF CHARGE AND STATEMENT OF ALLEGATIONS DATED 11.02.2003 ISSUED BY THE RESPONDENTS TO THE PETITIONER.
EXT.P8	TRUE COPY OF THE LETTER DATED 16.06.2003 SUBMITTED BY THE PETITIONER BEFORE THE INQUIRY OFFICER.
EXT.P9	TRUE COP[Y OF THE LETTER DATED 10.10.2003 ISSUED BY THE INQUIRY OFFICER TO THE PETITIONER.
EXT.P10	TRUE COPY OF THE REPORT ON INSPECTION OF SECURITIES ISSUED BY THE CALICUT MAIN BRANCH TO THE SENIOR MANAGER (CREDIT), NRO, ERNAKULAM.
EXT.P11	TRUE COPY OF THE MEMORANDUM DATED 27.10.2004 ISSUED BY THE RESPONDENT TO THE PETITIONER.
EXT.P12	TRUE COPY OF THE ORDER DATED 16.06.2005 OF THE APPELLATE AUTHORITY.
EXT.P13	PHOTOCOPY OF STATEMENT, REFERRED TO IN THE REPLY AFFIDAVIT.

RESPONDENTS' EXHIBITS:-

EXT.R1A	TRUE COPY OF REGULATIONS 6, 7 & 17 OF UNION BANK OF INDIA OFFICER EMPLOYEES (CONDUCT) REGULATIONS, 1976.
EXT.R1B	TRUE COPY OF THE MEMORANDUM NO.CO:IRD:6346:98 DATED 25.7.19987 ISSUED BY THE BANK TO THE PETITIONER.
EXT.R1C	TRUE COPY OF ENQUIRY PROCEEDINGS HELD AGAINST THE PETITIONER BEGINNING FROM 5.5.2003.
EXT.R1D	TRUE COPY OF THE INQUIRY REPORT SUBMITTED BY THE INQUIRY OFFICER TO THE BANK.

Vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.35029 of 2005-T

Dated this the 23rd day of December, 2015

JUDGMENT

The petitioner, a Senior Manager, challenges the order of dismissal passed against him; being a punishment imposed in a disciplinary proceeding initiated.

2. I have heard learned Senior Counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent-Bank.

3. The learned Senior Counsel would argue that the charges were vague and the petitioner was not offered adequate opportunity to defend his case in the enquiry proceedings, since the documents asked for by him were not supplied to him. It is also contended that there were other persons involved in the transactions, which formed the basis of the allegations levelled against the petitioner and none were imposed with such an onerous punishment. It is contented that the petitioner, on taking charge as Branch Manager of Kozhikode, had detected certain discrepancies in two accounts maintained in the Branch by

M/s.Kalpa Oils [for brevity "KO"] and M/s.Kaveri Trading Company [for brevity "KTC"], which he had promptly brought to the notice of the Regional Office. The petitioner contends that the facilities provided to the said two account holders were already murky and the petitioner who took charge as Branch Manager on 11.05.2000 was not at all responsible for the same. The petitioner brought to the notice of the higher-ups, the discrepancies in the accounts which has resulted in this vindictive action against the petitioner.

4. Challenging the proceedings on the ground of vagueness of charges, the learned Senior Counsel would rely on the decision in ***Govt. of A.P. v. A.Venkata Raidu*** **[(2007) 1 SCC 338].** With respect to the contention that, non-furnishing of documents required for the delinquent employee to defend his case appropriately; would cause serious prejudice to the delinquent employee resulting in violation of principles of natural justice, reliance is placed on the decision in ***State of U.P. v. Ramesh Chandra Mangalik*** **[(2002) 3 SCC 433].** The learned Senior Counsel would also place reliance on a Division Bench decision of this Court in **W.A.No.1766 of 2002** & connected cases

dated 10.08.2015 **[*Syndicate Bank v. P.I.Babu*]** on the same aspect. ***Union of India v. Gyan Chand Chattar*** **[(2009) 12 SCC 78]** was relied on to canvass the manner in which an enquiry had to be conducted**.** ***Narinder Mohan Arya v. United India Insurance Co. Ltd.*** **[(2006) 4 SCC 713]** is relied upon to urge the power conferred on this court to interfere with the punishment imposed. As to the necessity for parity in punishment, with co-delinquents, the decisions in and ***Rajendra Yadav . State of M.P.*** **[(2013) 3 SCC 73]** is relied upon.

5. The learned Counsel for the respondent-Bank, however, would submit that all the documents required by the petitioner were supplied and there could be no vagueness of charges alleged in the present case. It is also contended that the disciplinary enquiry was carried on, with full participation of the delinquent employee, who was assisted by another officer of the very same Bank. The Enquiry Officer was a retired Deputy General Manager of another public sector Bank. The documents produced by the Presenting Officer on behalf of the respondent-Bank were all supplied to the petitioner and the

petitioner was also permitted to have copies of documents which he intended to rely on; in defence, which is evident from the enquiry proceedings, through which the learned Counsel takes this Court.

6. As to the parity in punishment, it is contended that quite serious discrepancies were noticed with respect to the maintenance of four accounts and not merely two and the primary person responsible was the petitioner herein, who was in charge of the Branch in which such discrepancies were noticed. The other persons who had also some responsibility in the matter, both supervisory and otherwise, were proceeded against; all of whom were imposed with punishments. In one instance the order of dismissal imposed by the disciplinary authority was converted to another major penalty by the disciplinary authority. In considering the parity of punishment, the learned Standing Counsel would specifically contend that the gravity of the offence would be different, especially in a like cause of action; where the cause itself arise by reason of the active connivance of one person and the others existing in the hierarchy having failed to

notice or having purposefully ignored such discrepancies, whenever it came to their notice. In such circumstance, the one who was at the center of the issue, who had been pivotal in causing such discrepancies, cannot be said to have a right to claim parity of punishment with other delinquent employees, is the argument.

7. It is trite that this Court sitting in judicial review under Article 226 of the Constitution, especially looking at a disciplinary proceeding and the punishment imposed by the disciplinary authority, would not sit as an appellate Court against the findings of the Enquiry Officer or the Disciplinary Authority. The employer has considerable lee-way in identifying the defaults in the working of his employee and levelling charges on allegations of misconduct. The evidence led at the enquiry and the findings entered into by the Enquiry Officer and the Disciplinary Authority cannot be interfered with, by this Court, on a re-appreciation of the evidence. What is significant at the outset, is the compliance of procedural formalities, which has to be scrupulously followed, since in complying with the principles of

natural justice as laid down in the various decisions of the Hon'ble Supreme Court and this Court, the paramount consideration would be the right of the delinquent to defend his case to its fullest extent. This should be by providing adequate opportunity to challenge the documents and the evidence adduced by the management, proffer his own explanation as to his innocence by putting forward sustainable evidence on that count. It is also trite that at each stage of the enquiry initiated, from the show cause notice, the petitioner should be put to knowledge of what exactly are the charges levelled against him and the documents and witnesses, produced and led in the enquiry to substantiate the charges levelled against him.

8. The disciplinary enquiry having been initiated on framing of charges, the delinquent has to be given every opportunity to defend his case and then on his being found guilty by the Enquiry Officer, he has to be issued with the enquiry report, on which objections are also to be invited by the disciplinary authority. The findings of the Enquiry Officer, as objected to by the delinquent, have to be looked into by the disciplinary authority and

a finding entered, as to whether based on the evidence led at the enquiry, the findings of the Enquiry Officer could be affirmed or differed from. A further opportunity offered for making objections on the punishment sought to be imposed has been taken away by the 42nd amendment; as has been held by the Hon'ble Supreme Court in **Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727].**

9. It is in this context the present case has to be examined. The petitioner, at the outset, contended that he had an unblemished service, which is controverted by the management by production of Exhibit R1B; an earlier enquiry initiated against the petitioner for almost similar charges, which ended in an imposition of punishment of major penalty of reduction of two stages in the time scale of pay. The show cause notice having been issued, on a consideration of the objections to which; the disciplinary authority issued the charge-sheet at Exhibit P7. The first ground raised by the petitioner is the vagueness of charges, which, he alleges, prejudiced him from properly defending the allegations.

10. The Articles of Charges are produced at Exhibit P7. The charges are that the petitioner as Branch Manager flouted the lending norms/procedures/rules and sanctioned/ recommended advances and enhanced the limit in the loan account, without proper assessment, despite the unsatisfactory antecedent dealings of the account holders and abuse of delegated authority, as also failure to monitor/supervise the financial transactions in the Branch; thus jeopardising the interest of the Bank. The said charges were on the basis of the petitioner granting excess limits indiscriminately in an account of KO, which continued unadjusted for long without affirmation from the higher authorities. It was also alleged that while allowing/ recommending the enhancement of limits, the petitioner has not looked into or informed the higher authorities about the antecedents or evaluated the creditworthiness of the borrowers. Allegations were also levelled against the operation of the bill purchased account of KTC, which were continuously overdue and were adjusted in an irregular manner by diverting amounts from other accounts. Such a diversion was alleged to have been suppressed by the petitioner

from the controlling office. The recommendations to the controlling office for enhancing the limits in the borrowers cash credit account were made, without informing the controlling office, about the antecedents of the customer, of having failed to maintain the overdue position within the limit granted. The charges levelled, as is seen from Exhibit P7, were:

> “1. Failure to take all possible steps to ensure and protect the interest of the Bank.
>
> 2. Failure to discharge his duties with utmost devotion and diligence.
>
> 3. Failure to discharge his duties with utmost honesty and integrity.
>
> 4. Acting otherwise than in his best judgement in the performance of his official duties”.

11. Along with the Articles of Charge, a detailed Statement of Allegations were also supplied to the petitioner. Suffice it to notice that the statement of allegations contained in Exhibit P7, speaks of the specific instances of discrepancies that were noticed in the account of KTC and KO, running to almost five pages with more emphasis on the discrepancies noticed in the account of KO. As far as KTC, the discrepancy was insofar as the

Demand Bill Purchased [DBP] account having remained overdue throughout and the petitioner having allowed adjustment of the account by diverting funds from KO, which were specifically noticed as having occurred on 30.12.2000, 18.01.2001 and 19.01.2001.

12. In addition to the aforesaid two accounts, the transactions in the accounts of M/s.Swastik Spices and M/s.Malabar Trading Corporation were also part of the allegations. The petitioner also has a contention that the same were not specifically alleged in the Articles of Charge. The Statement of Allegations enclosed along with the Articles of Charge (both produced as Exhibit P7), however, would indicate that the issue from which the specific allegations arose was the indiscriminate transactions permitted in the two accounts, being KTC and KO. The two other accounts, mentioned in the Statement of allegations, had an intrinsic connection with the aforesaid accounts. The connection was insofar as both the said accounts were said to be opened by employees of the Proprietor of KO and indiscriminate transfer of funds from both these accounts were

made to the other accounts so as to bring down the exceess limit in the Cash Credit account of KO. The essential allegation was that, gross excess of limit sanctioned, was found in KTC and KO, which were sought to be rectified by transactions between the said accounts and also by sanctioning limits in the name of two other fictitious firms and adjusting amounts from that accounts to bring down the overdue in the account of KO and KTC. The charges hence were supported by specific allegations and each transactions were highlighted in the Articles of Charge.

13. ***Venkata Raidu*** (*supra*) was a case in which the dismissal of the delinquent employee was challenged successfully before a Tribunal. Even the enquiry officer had found only one charge, out of the four, to have been proved. The proved charge was one of having violated the Government Orders issued from time to time. No G.O. was produced in the enquiry and the allegation was that the employee who was a General Manager had allowed the funds of the employer to be maintained in co-operative societies. The Hon'ble Supreme Court found that the charge was vague since even the dates or other details of the

G.O's were not referred to in the charge sheet and none were also produced at the enquiry. This Court is unable to find any vagueness in the charges framed or in the allegations levelled, in the instant case. It cannot also be said that the allegations with respect to Swastik Spices and Malabar Trading Corporation had no connection with the other accounts.

14. The next issue to be dealt with is the allegation of non-supply of documents, for which, the proceedings in the enquiry assumes significance. The learned Senior Counsel would specifically point to the Regulations produced by the Bank at Exhibit R1A, wherein it is incumbent to provide the delinquent employee with list of documents relied on by the employer along with copy of such documents and list of witnesses along with copy of statement of witnesses, if any. It is also provided in Exhibit R1A that the delinquent would be further permitted to submit a list of documents and witnesses that he requires to set forth his defence. The specific allegation raised is that the petitioner having been suspended, would not have access to the documents available in the Bank and the list of documents he had submitted

for the purpose of producing in his defence evidence, was not supplied to him.

15. At the outset it is to be noticed that the argument has been raised on the basis of Exhibit P8 dated 16.06.2003. Exhibit P8 is a short communication addressed by the petitioner to the Enquiry Officer, which enclosed a list of documents which the petitioner submits, were required to be proffered in defence. However, no list is attached along with Exhibit P8 produced herein; nor does the petitioner point out specifically the documents he was not supplied with. In that factual context the decision in ***Ramesh Chandra Mangalik*** (*supra*) goes against the petitioner. There the High Court set aside the findings in an enquiry on the specific ground of non-supply of documents. The documents were found to be those relating to the personal file of other officers and two letters recieved by the enquiry officer regarding the allegations of malafides raised against another officer and regarding the transfer of records from one office to another. None of these were relied on by the enquiry officer nor were they related to the specific charge against the delinquent.

The Hon'ble Supreme Court found that the High Court could not have merely set aside the findings at the enquiry on an allegation raised of non supply of documents, without looking at the relevance of the document. For this purpose it is necessary that the delinquent pinpoint the document, which was not supplied and contend specifically as to how prejudice was caused.

16. The Hon'ble Supreme Court found so in para 11:

> "Learned counsel for the appellant has further submitted that particular documents, copies of which are said to have not been supplied are not indicated by the respondent, much less in the order of the High Court nor their relevance has been pointed out. The submission is that the delinquent will also have to show as to in what manner any particular document was relevant in connection with the inquiry and what prejudice was caused to him by non-furnishing of a copy of the document. In support of this contention, reliance has been placed upon a case reported in *Chandrama Tewari v. Union of India* [1987 (Supp) SCC 518]. It has been observed in this case that the obligation to supply copies of documents is confined only to material and relevant documents which may have been relied upon in

> support of the charges. It is further observed that if a document even though mentioned in the memo of charges, has no bearing on the charges or if it is not relied upon or it may not be necessary for cross-examination of any witness, non-supply of such a document will not cause any prejudice to the delinquent. The inquiry would not be vitiated in such circumstances. In *State of Tamil Nadu v. Thiru K. V. Perumal and others* [(1996) 5 SCC 474] relied upon by the appellant, it is held that it is for the delinquent to show the relevance of a document a copy of which he insists to be supplied to him. Prejudice caused by non-supply of document has also to be seen. In yet another case relied upon by the learned consel for the appellant, reported in *State of U.P. v. Harendra Arora and another* [(2001) 6 SCC 392], it has been held that a delinquent must show the prejudice caused to him by non-supply of copy of document where order of punishment is challenged on that ground".

The above paragraph though reflects the submissions at the bar, has been extracted for reason of the binding precedents noticed thereat, on which the Hon'ble Supreme Court eventually placed reliance on.

17. The judgment in **W.A.No.1766 of 2002** is also pressed into service to urge the contention of violation of principles of natural justice for reason of the documents sought for having not been supplied. The facts in the said case reveal a series of litigations by the petitioner therein, which need not be gone into. Suffice it to notice that, therein a specific contention was raised, as to the document which the delinquent employee wanted to rely on, in the enquiry proceedings; the non-supply of which was found to be a clear violation of principles of natural justice. Further, it is also revealed that in the said case the Enquiry Officer had declined the supply of the documents on his own reasoning. The Division Bench found that the Enquiry Officer had no such authority and when a document is requested, the management should be asked to produce it and the management should either produce the document or could claim privilege on the ground of production of the same being against public interest. The Enquiry Officer, on production of the document, should supply it to the delinquent or could inform the delinquent about any privilege claimed. The facts of the said case clearly are not

applicable to the facts herein. Herein no document is pin pointed nor an effort made to establish the significance of that document asnd how prejudice was occassioned.

18. Further, the proceedings at the enquiry has been produced by the Bank as Exhibit R1C. A perusal of the same shows that the enquiry commenced on 05.05.2003 when the charges were put to the delinquent and he pleaded not guilty. Then the enquiry was posted on 16.06.2003 when the Presenting Officer produced 30 documents with respect to the account of M/s.Swastik Spices and 15 documents with respect to Malabar Trading Corporation and 13 documents with respect to KTC. The Presenting Officer also sought for a day's time, to produce documents with respect to KO. The petitioner does not have a case that copies of these documents were not supplied to him. After the production of all these documents, on 16.06.2003 the Enquiry Officer asked the CSO about the list of documents sought for by the CSO on 06.05.2003, to which a reply dated 20.05.2003 is said to have been made; wherein certain documents were enclosed and the delinquent advised to give the list of documents

on the day of the enquiry. The Enquiry Officer specifically noticed the list of documents produced by the delinquent as DEX-3 and provided a list of documents permitted by the Enquiry Officer as DEX-4. The Assisting Officer of the delinquent was specifically asked whether he was satisfied and whether a list of documents would be produced. The Assisting Officer replied to the Enquiry Officer in the following words, as is available in the file:

> "We are satisfied and we are presenting the list of documents now".

The list of documents produced by the delinquent also is seen listed out in Exhibit R1C proceeding. In such circumstance, this Court does not find any reason to sustain the allegation of documents requested by the delinquent employee having not been given to the delinquent. Nor is there any sustainable reason stated for finding a prejudice on that count

19. The enquiry report is also produced as Exhibit R1D. Again, this Court need not look into the various transactions. Apposite would be refernce to ***Ramesh Chandra Mangalik*** (*supra*), wherein Hon'ble Supreme Court observed:

> "The High Court has rightly observed that the factual aspect pertaining to the charges and the findings recorded by the inquiry officer thereon would of course not be the subject-matter of scrutiny in the writ proceedings under Article 226 of the Constitution".

However, it has to be noticed that each of the allegations levelled against, were considered by the Enquiry Officer on the basis of the evidence. The Enquiry Officer found that the Demand Bills Purchased [DBP] account of KTC had a limit of Rs.70 lakhs and the bills with respect to supply of Copra to four firms, drawn at site, was made in the said account. It was found that DBP account of KTC was in excess of the limit and that the delinquent had not followed up the matter as is understood in Banking practise. The DBP account is a facility opened by a Bank, which purchases the bills of the customer and sends it for realization to the party on whom the bill is raised, for onward credit of the amounts. Hence, when the DBP account holders supply goods, herein Copra, to the purchaser, the bills issued are purchased by the seller's Bank and transmitted to the purchaser for payment through the Bank. The reference to ‘following up’ the matter is, following up made by the Bank with the purchaser or the purchaser’s Bank and as such the bill purchased account cannot be satisfied by transfer from other accounts.

20. The excess limit in KTC account was reduced by remittance of Rs.33 lakhs in cash on 18.01.2001, which amount was withdrawn on the same day from the account of KO by three cheques for Rs.9 lakhs, Rs.9 lakhs and Rs.15 lakhs; thus, consequently, exceeding the limit of KO account also. Again on 30.12.2000, there was a transfer of an amount of Rs.30 lakhs to the account of KTC from the account of KO, when, consequently, the limit in KTC was reduced and there was effected purchase of nine other bills. Debiting the current account and clearing the long overdue amounts are found to be against the lending norms of the Bank. This essentially resulted in window-dressing,facilitating further purchase of bills,when the DBP account was already overdue and the bills purchased had not yet been realized.

21. With respect to KO, the Enquiry officer found that the excess of limit on three instances, at the closure of quarterly

accounts in the last day of the months of June, September and December was only on account of interest debit. But, however, the allegation of the limit having exceeded in the Cash Credit account was found to be on a continuous basis and the same were seen to have been not reported or got sanctioned from the controlling office. The limit of KO was always overdrawn exceeding Rs.70 lakhs, the sanctioned limit. It was found that the registers were not maintained properly and that the delinquent officer was responsible for the same. Each of the allegations were so dealt with by the Enquiry Officer and findings entered; all of which were said to have been proved.

22. The allegation with respect to opening of accounts in the name of Swastik Spices and Malabar Trading Corporation were also found to have been proved. The account holders were found to have been introduced by the Proprietor of KO, one Jehangir Gopal. The proprietors of the two firms, who were provided with credit facilities, were found to have no creditworthiness and no enquiry was seen to have been made by the petitioner while granting huge financial limits to both these two

account holders. The guarantor of Swastik Spices, one Mariamma, was also an account holder of the Bank, again introduced by Jehangir Gopal. The husband of the said account holder had disputed his wife having stood as guarantor. The signatures of Mariamma available in the documents in the Bank relating to her own account and those in the documents where she stood as guarantor to Swastik Spices were examined and found to differ. The petitioner had joined as Branch Manager at Kozhikode on 11.05.2000 and the accounts of Swastik Spices and Malabar Trading Corporation were opened respectively on 15.05.2001 and 24.03.2001; without verification of the creditworthiness or antecedents of the account holders. All the charges which are extracted hereinabove were found to be proved in the enquiry.

23. The petitioner was supplied with the copy of the enquiry report and the objections were called for. The disciplinary authority passed Exhibit P11 order, which is confirmed in Exhibit P12. The disciplinary authority specifically concurred with the Enquiry Officer and ordered a major penalty of dismissal from the

service of the Bank. No procedural irregularity as has been found in **Gyan Chand Chattar** (supra) is discernible in the instant case That was a case in which an employee, a cashier in the Railways, was charge sheeted and punished. The charges were with respect to travelling in First Class compartment while on duty, which he was not entitled to, playing cards with RPF Rakshaks, non payment of salary to the employees and demand of 1% commission for payment of salary. An additional charge with respect to refusal to accept the memo from the superior officer was also levelled against the delinquent employee. The enquiry officer held all the charges to be proved, upon which the delinquent employee was removed from the service.

24. The Hon'ble Supreme Court found that there was nothing to show that the delinquent was not entitled to travel by First Class and there were references to orders which permitted such travel if a Second Class ticket was not reserved for the employee. As to the charge of playing cards with RPF Rakshaks, it was found that there could be no dereliction of duty alleged, as the delinquent while travelling was not enjoined upon with any

duty. The non payment of salary to certain employees was found to be justified insofar as the Rules provided that payment above Rs.500/- should be made in the presence of a gazetted officer and no such officer was present. As to the demand of bribe, the same was found to be only hearsay; none having specifically stated as to such a demand having been made. A serious charge of corruption should be proved to the hilt as it brings civil and criminal consequences upon the employee was the finding. The only charge which could be held to have been proved, was the refusal to accept the memo.

25. The Hon'ble Supreme Court held so in paragraph 35:

> "In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor

> the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct."

This Court does not find any like reason, as dilated upon by the Hon'ble Supreme Court, in the above case, to cause interference, in this case, with the report of enquiry and the findings thereat as confirmed by the disciplinary authority.

26. This Court is also unable to find any discrepancy with the punishment imposed, especially looking at the gravity of the offences. ***Narinder Mohan Arya*** (*supra*) is relied upon to contend that this Court could interfere with the penalty/punishment in judicial review. It is contended that the Hon'ble Supreme Court has specifically held that the High Court, while exercising its Writ jurisdiction, ought to examine whether the evidence adduced before the enquiry officer had a nexus with the charge and could or could not lead to the guilt of the employee. Herein, having examined the charges levelled against the

delinquent employee, with specific instances of transactions against the norms and regulations of the Bank, as also the evidence adduced at the enquiry, this Court is unable to find any such lack of nexus nor an absence of sufficient material to sustain the guilt of the employee.

27. It is also to be noticed that the above cited case was with respect to a charge sheet for ante dating an insurance cover. The delinquent employee was alleged to have ante dated an insurance cover after the accident occurred; dating the cover to have been issued on the previous day. The delinquent was proceeded against departmentally and removed from service. The insured filed a suit against the insurer, which was decreed specifically refuting the claim of the insurer that the cover note was ante dated. The Hon'ble Supreme Court found that the insurer had, in the civil suit, specifically contended that the enquiry departmentally proceeded against the delinquent had found the forgery to be a fact. The Civil Court rejected the contention and it was held by the Hon'ble Supreme court that the same would have precedence over the findings of the departmental enquiry. A

crucial finding like forgery arrived at on evidence adduced in a Civil Court and the declaration that the particular defence set up, would be *non est* in the eye of law was held to be significant enough to interfere with the disciplinary proceedings, since it is an accepted principle that a Civil Court which considers a challenge against the disciplinary proceedings and findings on enquiry could also have entered into such findings on the basis of the evidence adduced before the Civil Court. The said decision has no application in the facts of the case.

28. As to the ground of parity in punishment with respect to the other employees who were also proceeded against for the discrepancies noticed in the two accounts, the respondent-Bank has clearly listed out the designation of the officials and the punishment imposed. The Regional Head, Kozhikode was imposed with a minor penalty of censure, while the Chief Manager of Kozhikode was imposed with a major penalty of reduction by three stages in the time scale of pay with cumulative effect. Another Chief Manager of the Regional Office, who was imposed with major penalty of dismissal, succeeded in his appeal, which

resulted in reduction of penalty by reduction in grade from SMGS-IV to MMGS-III. A Senior Manager of the Regional Office was imposed with a major penalty of reduction by two stages in the time scale of pay with cumulative effect and another Manager was imposed a punishment of reduction by one stage in the time scale of pay with cumulative effect. It is to be noticed that the Regional Head, the Chief Managers and the Senior Managers of the Regional Office were all controlling officers of the petitioner, who would have been proceeded against for the supervisory lapses. One Manager who was imposed with the penalty would also have been a person who held the charge of the Kozhikode Branch; but did not have the involvement, the petitioner had in the transactions.

29. Looking at the principle of parity of punishment imposed on co-delinquents, on the ground of proportionality, it has to be stated that ***Rajendra Yadav*** (supra) does not lay down any principle that every person who has been proceeded with on the basis of a single cause of action has to be imposed with identical punishments. Therein, the allegation was with respect to

acceptance of bribe of Rs.3,000/- from a person who had raised a complaint before the higher authorities. One other delinquent employee, who was also proceeded against on the very same incident, was reinstated in service and the appellant before the Hon'ble Supreme Court was dismissed from service. It was revealed that the other person had demanded and received money, with the tacit approval of the appellant, and he was imposed with a lesser punishment. The other person who had the major role and which charge was proved in the enquiry against him, having been imposed with a punishment of compulsory retirement, was later reinstated by modifying the punishment to one of reduction of increment with cumulative effect of one year. The appellant's dismissal, hence, was set aside and he was directed to be reinstated.

30. The Hon'ble Supreme Court also noticed the decisions of other Benches in ***DG of Police v. G.Dasayan*** **[(1998) 2 SCC 407]** and ***Anand Regl. Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah*** **[(2006) 6 SCC 548].** Therein also, more than one employee was proceeded against,

but, however, on identical charges and in such circumstance they were held to be entitled to be treated on the same footing and imposed with a similar punishment. The principle of parity in punishment among co-delinquent does not at all apply herein. The cause of action for proceeding against the various persons, who were officers in the hierarchical system in the Bank, was same, but the allegations were different. The petitioner, who was responsible for the transactions in the branch of the Bank and had the over all responsibility of the Branch had a more onerous responsibility, the default in discharge of which, was alleged against him. The Branch Manager, with respect to the transactions in the Branch, has a direct responsibility and proceedings were initiated against him and also his superior officers at the various levels of the hierarchy in the Bank. The controlling officers though responsible for supervisory lapses, cannot be said to be involved in an identical manner as the Branch Manager itself, who holds a pivotal position insofar as the Branch and the transactions carried on thereat.

31. The petitioner who joined in the branch on 11.05.2000 was responsible for not bringing to the notice of the controlling office the continuous exceess in limits of the accounts of KTC and KO. The petitioner also had, immediately after taking charge as Manager, opened two other accounts, M/s.Swastik Spices and M/s.Malabar Trading Corporation, and facilitated transfer of funds from the said accounts to the irregular accounts of KO and KTC. The allegations levelled were of serious nature and the petitioner was at the eye of the storm and the irregularities originated from him. The gravity of offence hence alleged against him is more onerous than that alleged against the others. No parity of punishment could be found in the aforesaid circumstances.

For all the above reasons, the writ petition is found to be devoid of merit and the same is accordingly dismissed. Parties are directed to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

Vku/-

[true copy]