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

%   *Judgment Reserved on: October 15, 2015*
Judgment Delivered on: October 19, 2015

\+   **LPA 418/2011**

R N RATTAN ..... Appellant
Represented by: Mr.R.M.Bagai and Ms.Damini Khaira, Advocates.

versus

ORIENTAL BANK OF COMMERCE & ANR ...... Respondents
Represented by: Mr.Jagat Arora and Mr.Rajat Arora, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. During arguments in the appeal, learned counsel for the appellant handed over a written note comprising four pages bearing date October 13, 2015 and said that arguments would be restricted to the said written note, which forms the basis of the present decision.

2. In harmony with the said written note learned counsel for the appellant argued four points in support of the appeal. The first point urged was that relevant documents demanded on February 09, 1998 and thereafter on April 22, 1998 and May 04, 1998 were not supplied and as a result prejudice has been caused to the appellant. The second point urged was that the Appellate Authority disposed of the appeal filed by the appellant against the order passed by the Disciplinary Authority dismissing appellant from

service without any application of mind evidenced by the cryptic order penned in the file by the Appellate Authority which reads: *"concur with the order of Disciplinary Authority and do not wish to interfere. The appeal is hereby disposed"*. The third contention urged was that the findings of the Inquiry Officer on the charges were perverse. The last contention urged was that the punishment was disproportionate because the bank did not suffer any loss nor did the allegations concerning the charge question the integrity of the appellant.

3. On January 23, 1998 a charge-sheet was served upon the appellant concerning acts of omission and commission by the appellant as the Manager of the Mahipalpur Branch of The Oriental Bank of Commerce. The charge-sheet reads as under:

> ***"Charge 1***
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> *He unauthorizedly purchased two cheques of ₹50 lacs each on 26.3.93, in the account of Shri Rakesh Kumar (a fictitious account). The said cheques were not sent for collection to the drawee bank and the proceeds were converted into term deposits at Extension Counters attached to B/O Mahipalpur. Subsequently, drafts in hand ac/entries of the said cheques were reversed on 16.4.1993 from the proceeds of a demand loan of ₹1 crore raised in the name of Shri Rakesh Kumar B/O Basant Lok with the connivance of incumbent-in-charge of that Branch namely Shri S.K.Arora (since removed from Bank's service for his fraudulent acts). The said loan standing at B/O Basant Lik was adjusted out of the proceeds of term deposits which were originally made after discounting above cheques.*
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> *By his above acts Shri R.N.Rattan did not discharge his duties with integrity, honest, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus, he*

violated Regulation 3(1) of Oriental Bank of Commerce Officer Employees' (conduct) Regulation, 1982 which read with Regulation 24 of the said Regulations constitutes misconduct punishable under Oriental Bank of Commerce Officer Employees' (Discipline and Appeal) Regulations, 1982.

Charge 2

He unauthorisedly debited ₹22,537/- and ₹17,463/- (total ₹40,000/- to interest paid account (CDR) on 25.7.95 without mentioning any detail of any CDR in the voucher and fraudulently credited the funds to the current account of Shri Rajeev Aggarwal (CA No.955) and M/s Mool Chand Motors (CA No.1121) respectively.

By his above acts Shri R.N.Rattan did not discharge his duties with integrity, honesty, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus the violated Regulation 3(1) of Oriental Bank of Commerce Officer Employees' (Conduct) Regulations, 1982 which read with Regulation 24 of the said Regulations constitutes misconduct punishable under Oriental Bank of Commerce Officer Employees' (Discipline and Appeal) Regulations, 1982.

Charge 3

He had allowed fictitious loans aggregating to ₹58 lacs on 10.5.1995 in the names of three non-existing persons as per details given hereunder:-

Date of Advance	*Name of Fictitious Account*	*A/C of Loan*
10.5.1995	*Shri.Moti Ram*	*₹20.20 lacs*
10.5.1995	*Shri.Kulwant Singh*	*₹27.00 lacs*
10.5.1995	*Marry Jones*	*₹10.80 lacs*
	Total	*₹58.00 lacs*

The proceeds of all the above accounts were credited to current Account No.955 of Shri.Rajeev Agarwal from where *the total amount of ₹58 lac was transferred to Loan Account ₹228 of one Shri Rajeev Agarwal (of M/s Mool CHand Motors) which was unsecured and clean in nature.*

By his above acts Shri R.N.Rattan did not discharge his duties within integrity, honesty, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus he violated Regulation 3(1) 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 and Appeal) Regulations, 1982.

Charge No.4

He had unauthorisedly allowed/sanctioned advances to M/s. Mool Chand Motors and its Associates as per details given below:

(a) He unauthorisedly sanctioned OD limit of ₹4.12 lacs to M/s. Mool Chand Motors (CA -1048) on 03.05.94 against FDR for ₹5.50 lacs favouring Sh.Moti Ram (a fictitious account).

(b) He sanctioned CC limit of ₹5 lacs (CC A/C No.23) + to M/s. Mool Chand Motors against stock without obtaining stock statement and charging any security and unauthorisedly accommodated upto ₹9 lacs during the period 25.06.94 to 06.09.94.

(c) He unauthorisedly allowed a working capital term loan of ₹7.47 lacs to M/s. Mool Chand Motors on 06.09.94 beyond the lending powers vested with him.

(d) He sanctioned limit of ₹10.50 lacs to M/s. Mool Chand Motors (OD A/C No.1121) and unauthorisedly accommodated upto ₹16 lacs. He also unauthorisedly allowed clean OD to the aid firm ranging from ₹8 lacs to 24 lacs during the period

01.06.95 to 31.07.95.

(e) Sh.Rattan sanctioned OD limit of ₹10.97 lac to M/s. Shivam Oil Co. (Prop.M/s.Rajeev Aggarwal) but unauthorisedly accommodated from ₹15 lacs to ₹37.88 lacs during the period 22.12.93 to 06.01.94.

(f) He unauthorisedly allowed demand loan of ₹52.50 lacs to Sh.Rajeev Aggarwal in irregular manner on 08.01.94 against FDR No.11/94 dated 07.01.94 for ₹70 lacs issued by B/O Basant Lok, New Delhi in the name of the "Ram Jan Bhumar" a non-existent entity. He also unauthorisedly verified the signatures of said 'Ram Jan Bhumar' on the back of FDR knowing very well that the said named person is fictitious.

(g) Sh.Rattan unauthorisedly credited the proceeds of following CDRs:

No.	*Amount*	*Favouring*
185/94	*₹22.05 lac*	*Sh.Kamal*
268/94	*₹7.90 lac*	*Sh.Rajeev*
860/94	*₹1.50 lac*	*Sh.Rajeev*
1046/94	*₹4.00 lac*	*Sh.Kamal*

To the current account No.955 of Sh.Rajeev Aggarwal without any mandate from the customers.

(h) He unauthorisedly allowed clean OD to M/s.Rajeev Aggarwal in CA No.955 ranging from ₹2.25 lacs to ₹16 lacs during the period 25.01.94 to 24.11.94. Subsequently, he sanctioned an OD limit of ₹13.50 lac against deposit in the said account but unauthorisedly accommodated upto ₹26.51 lacs during the period 31.05.95 to 15.04.96.

By his above acts Sh.R.N.Rattan did not discharge his duties with integrity, honesty, devotion and diligence and acted in a manner which is unbecoming of a Bank Officer. Thus, he violated Regulation 3(1) of Oriental Bank of Commerce Officer

Employees' (conduct) Regulations, 1982 which read with Regulation '24' of the said Regulations constitutes misconduct punishable under Oriental Bank of Commerce Officer Employees' (Discipline & Appeal) Regulations, 1982."

4. Before the inquiry commenced before the Inquiry Officer on April 22, 1998 the appellant demanded the documents listed in his communication dated February 09, 1998 to which the disciplinary authority responded that the demand for supply of documents were not as per rules. Though not indicated in the reply, but learned counsel for the respondent clarified that since relevance of documents has to be determined before a document demanded by a charged employee is given to him, the appropriate stage for demand of the document has to be when the Inquiry Officer commences the inquiry proceedings.

5. As the inquiry commenced the appellant moved an application before the Inquiry Officer on April 22, 1998 followed by another letter dated May 04, 1998. In the former he demanded as many as thirty four documents, out of which he received six documents. While demanding the documents the appellant indicated the relevance of the documents. By the letter dated May 04, 1998 the appellant demanded photocopy of STM-47 as on May 31, 1993 and photocopy of STM-46 as on September 1995, March, 1996, September, 1996, March 1997 for relevant entry concerning charge No.3. Relevant would it be to note that the documents which were not supplied were on account of they not being traceable or not found in the record. It is not clear whether some documents were non-existing documents. Learned counsel for the parties could through no light on this aspect of the matter i.e. whether some documents never existed and thus the question of they

being supplied does not arise or whether the documents were not traceable.

6. The Inquiry Officer proceeded to record evidence and submitted an inquiry report indicting the appellant of all the charges.

7. Under cover of memorandum dated December 03, 1998 the report of the Inquiry Officer was furnished to the appellant for his response and on December 16, 1998 the appellant gave a response running into twenty six pages, and we need to note that in the reply to the memorandum dated December 03, 1998, while responding to the report of the Inquiry Officer, the appellant did not raise any issue of prejudice caused to him on account of non-supply of the documents which he had demanded on April 22, 1998 and May 04, 1998.

8. Considering the reply filed by the appellant in which he dealt with the report of the Inquiry Officer the disciplinary authority levied penalty of dismissal from service by accepting the report of the Inquiry Officer. The appellant preferred an appeal against the order dated December 21, 1998 dismissing him from service. The appeal dated January 14, 1999 spans forty seven pages and we find that in the appeal no ground has been urged by the appellant of any prejudice caused to him by non-supply of the documents which he had demanded before the Inquiry Officer. The appeal filed, as noted hereinabove in para 2 was rejected by the appellate authority by recording a concurrence with the order passed by the disciplinary authority.

9. The onward march took the appellant before the learned Single Judge who has dismissed the writ petition filed by the appellant by the impugned order dated January 20, 2011.

10. We propose to deal with the first contention urged concerning non

supply of documents demanded by the appellant on February 09, 1998, April 22, 1998 and May 04, 1998 and their along with the third contention concerning findings of the Inquiry Officer on the charges being perverse for the reason a part of the factual issue is inter-linked.

11. Concerning an issue relating to non supply of documents the settled law is that mere non supply of documents is not enough to be established by the charged officer. Prejudice caused has to be shown. This was the law declared by the Supreme Court in the decision reported as AIR 1994 SC 1074 *Managing Director, ECIL, Hyderabad, etc. vs. Karunakar etc, etc.* As noted in para 8 above, neither in the response to the report of the Inquiry Officer submitted by the appellant to the disciplinary authority nor in the appeal filed against the order dated December 21, 1998 passed by the disciplinary authority dismissing the appellant from service, the appellant raised the issue of any prejudice caused to him. That apart, we do not find any prejudice caused to the appellant by non supply of the documents, and we illustrate with reference the five documents sought concerning the first charge. The five documents together with their relevance, as per the appellant would be as under:-

Document	**Relevance**
Photocopy of STM-47 as on 31.3.93	Statement showing purchase of cheques was intimated to RO/HO through STM 47 for the information of the higher authorities.
P/C of Statutory Auditors report for the year ending March 1993	The Auditors have not pointed out any objection to the purchase of cheques under reference in their report after auditing the business transacted in March, 1993.
P/C of ARM/CM/Regional Heads Qtly visit reports for the quarter March, 93	This report pertains to Business transacted during the year in which aforesaid cheques were purchased and FDRs were issued and

	no irregularity was pointed in respect thereof.
Photocopy of Loaning documents/vouchers for raising ₹1 crores Loan at B/o Basant Lok in the name of Rakesh Kumar	These documents shall prove that Rakesh Kumar was the customer of Basant Lok Branch and which will establish identify of said Rakesh Kumar.

12. As per the appellant, concerning the STM-47 statement as on March 31, 1993 the relevance was that the appellant had informed the higher authorities that he had purchased two cheques in sum of ₹50 lacs each on March 26, 1993 pertaining to the account of Sh.Rakesh Kumar. We note that this was the defence taken by the appellant who admitted to the factual part of the charge No.1 concerning purchase of two cheques in sum of ₹50 lacs each in the account of Sh.Rakesh Kumar but claimed that he had taken the consent of the superior officers. The relevance of the report of the statutory auditors was that the auditors did not point out this defect. Same would be the situation concerning the third and the fourth document i.e. that neither the inspection report nor the report pertaining to business transactions upto March 1993 pointed out any such shortcoming. Relevance of the fifth document that Rakesh Kumar was the customer at Basant Lok Branch and this would mean that he was not a fictitious person.

13. Merely because statutory auditor or the internal officers of the Bank who carried out inspection and submitted reports did not point out the illegality does not mean that the illegality was committed. It is trite that it is the non production of a primary document which would cause prejudice and not a document from which a possible inference can be drawn. If we look at the first charge we find that its first limb is that the appellant

purchased two cheques in sum of ₹50 lacs each on March 26, 1993 from one Sh.Rakesh Kumar who was not having any account with the Mahipalpur Branch of the Bank. As per the appellant, said Rakesh Kumar was not a fictitious person because he had an account with the Basant Lok Branch of the Bank. The second limb of the charge is that the cheques were not sent for collection to the drawee bank and the proceeds were converted into a term deposit at the extension counter attached to the Mahipalpur Branch. The third limb of the charge is that account entries of the cheques were reversed on April 16, 1993 from the proceeds of a demand note of ₹1 crore in the name of Rakesh Kumar at the branch office at Basant Lok in connivance with the Branch Manager of said branch Sh.S.K.Arora. The last limb of the charge brings out the result of the preceding allegations. The loan standing in the name of Rakesh Kumar at the branch office at Basant Lok was adjusted out of the proceeds of the term deposits which were originally made after discounting the cheques. No factual aspect of the charge has been denied by the appellant. We pose a question. What was the need for Rakesh Kumar to resort to this stratagem of contrivance? As per the appellant, Rakesh Kumar had an account with the branch at Basant Lok. Rakesh Kumar could have gone to the said branch and got the two cheques purchased by the Branch Manager thereof and thereafter the amount credited to his account could be got converted into a fixed deposits and said deposits could be used to satisfy the loan account. That the transaction took place at the close of the financial year is also important. Rakesh Kumar resorted to the stratagem on March 26, 1993 by presenting two cheques at the Mahipalpur Branch of the bank where he did not have an account and thereafter obtaining two fixed deposits receipt from the

Mahipalpur Branch of the bank and by April 16, 1993 squaring off his liability with the branch at Basant Lok. Money laundering is writ apparent. We are not to identify what Rakesh Kumar did. Our job is to see whether the charge was proved and whether any prejudice was caused to the appellant by non supply of the five documents concerning charge No.1. We need not write further as we feel we have brought out that neither any prejudice was caused to the appellant and further it is not a case of no evidence concerning charge No.1.

14. A Writ Court is concerned with the decision making process and not the decision and thus it would be enough for us to bring out illustratively with reference to Charge No.1 that no prejudice whatsoever was caused to the appellant by non supply of five documents which as per the appellant were relevant and that it cannot be said to be a case of no evidence. We do not propose to burden the present opinion with detailed reflection of other charges and evidence relating thereto and alleged prejudice caused by not supplying documents which appellant claimed were relevant for his defence concerning said charges, and thus would briefly indicate that charge No.2, 3 and 4 centred around one Rajeev Aggarwal in whose name CA No.955, M/s Mool Chand Motors in whose name CA No.1121, Moti Ram, Kulwant Singh and Mery Jones. The charges bring out that the accounts in the name of Moti Ram, Kulwant Singh and Mery Jones were fictitious and proceeds from the accounts were credited to the account of Rajeev Aggarwal i.e. amounts advanced by way of loan in the name of the said three persons were immediately transferred to the account of Rajeev Aggarwal. The factual aspect of the charges has not been denied. It would not be a justification that ultimately all monies were returned for the reason the

contrivance would be that a Bank Manager whose power is to sanction a loan upto ₹20 lacs cannot sanction four loans in four fictitious accounts upto ₹20 lacs and then transfer the amounts to a fifth loan account sanctioned by him in sum of ₹20 lacs. Other elements of the charges regarding sanctioning credit limits against stocks without obtaining stock statement also brings out the abuse of power by the appellant. The position concerning non supply of documents demanded by the appellant is akin to the one concerning charge No.1.

15. We reject the first and the third contention advanced that prejudice was caused to the appellant by non supply of documents relevant to the defence and that it is a case of no evidence.

16. Concerning the second submission of prejudice caused due to a cryptic order passed by the appellant authority, suffice it to note that as long as there is material that the appellate authority duly applied its mind, if the appellate authority concurs with the view taken by the disciplinary authority a lengthy appellate order need not be penned in administrative matters. The record would evince that the appeal filed by the appellant was forwarded to the appellate authority with the comments against each paragraphs by the legal department. Record shows that considering the appeal and the comments given by the legal department, the appellate authority rejected the appeal. The third contention advanced is also rejected.

17. On the issue of proportionality of the penalty, merely because no loss was caused to the bank by the irregularities and illegalities committed by the appellant does not mean that the acts of blatant abuse of power and misuse of authority by the appellant have to be overlooked. The argument of the appellant is akin to a driver of a motor vehicle booked for over

speeding and driving rashly and negligently. It would be no argument in defence that since no accident was caused and nobody was injured the driver should be let- off with a mere warning. We would be failing not to emphasize that in banking industry utmost good faith, due diligence and probity is warranted at every level and in particular by a Branch Manager. Any deviation would obviously attract a lack of confidence by the employer in the employee and this by itself is good ground to terminate the service of a Branch Manager. The penalty imposed is hence not opined to be disproportionate.

18. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 19, 2015
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