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

\+ **W.P.(C) No.44/2015**

% **5th January, 2015**

SH.Y.K.GUPTA ......Petitioner

Through: Ms.Rekha Aggarwal, Advocate.

VERSUS

ALLAHABAD BANK ...... Respondent

Through: Mr.Rajesh Kumar with Mr.Gaurav Kumar Singh, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This petition under Article 226 of the Constitution of India is filed by the petitioner, an employee of the respondent bank, impugning the orders passed by the departmental authorities; the disciplinary authority dated 29.9.2012 and the appellate authority dated 18.7.2014; by which the petitioner was imposed the penalty of "reduction to a lower grade of MMG Scale-II and fixing the basic pay at Rs.22,500/-."

2. As per the articles of charges/charge-sheet, the petitioner was confronted with a total number of 24 charges with respect to different accounts of taking wrong valuation/incorrect valuation of the property for grant of loans, non creation of a valid equitable mortgage and consequently jeopardizing the

financial interest of the bank, failing to comply with the regulations/guidelines/circulars of the bank of not associating other officers etc etc. I am not reproducing these 24 charges against the petitioner, except a few given hereinafter, to avoid prolixity, however, it is noted that as many as 21 out of the 24 charges were proved against the petitioner before the Enquiry Officer besides one charge being partially proved i.e out of 24 charges, 21 charges were completely proved and one charge was partially proved.

3. Though I am not reproducing the articles of charges in entirity, some sample of the charges against the petitioner read as under:-

> "**Article-1:**
>
> While posted and functioning as Senior Manager of Kaiserganj Branch from 02.11.2007 to 09.08.2008, Sri Y.K.Gupta sanctioned two loans in the name of Suresh Kumar Singh, an OD limit of Rs 11.90 lacs on 20.02.2008 under A1-property scheme and a PMRY loan of Rs.1.70 lacs on 27.03.2008. Sri Y.K.Gupta accepted contradictory income of borrower, without verifying the source of income of the borrower and did not adhere to take home net monthly income criteria of 40%. He accepted the valuation of property in very high side, thus sanctioned the OD limit beyond permissible finance. Sri Y.K.Gupta took the credit decision in a hasty and harried manner for sanctioning O/D limit, without examining the information and supportive documents.
>
> In violation of the extant guide line of bank he did not involve IInd Officer of the branch in joint visit of property and appraisal of the proposal.
>
> In violation of H.O. Circular No.9829/Retail Credit/2007-08/13 dated 15.11.2007, Sri Gupta accepted the value of Rural Residential building for deciding the quantum of loan. He allowed the OD facility without ensuring business need.

Sri Y.K.Gupta failed to create valid equitable mortgage of the property, thus exposed the bank's fund to jeopardy to the tune of the outstanding in the account. Both the accounts are irregular/PNP A with outstanding of Rs.8.45 lacs in OD Account and Rs.2.36 lacs in PMRY account, as on 31.03.2011.

x x x x x

x x x x x

**Article-18:**

While posted and functioning as Senior Manager of Kaiserganj Branch from 02.11.2007 to 09.08.2008, Sri Y.K.Gupta sanctioned and disbursed 8 PMRY loan but did not ensure utilization of bank's fund. No project was established out of Bank loan. All these accounts are irregular since inception.

**Article-19:**

While posted and functioning as Senior Manager of Kaiserganj Branch from 02.11.2007 to 09.08.2008, Sri Y.K.Gupta allowed, on 27.03.08, in very odd hours of night from 9 PM to past midnight, disbursal borrowers SB a/c's, without any debit authority on the disbursal transfer vouchers or request of the borrower, thus violated the extant guide line of bank All these accounts are irregular since inception.

**Article-20:**

While posted and functioning as Senior Manager of Kaiserganj Branch from 02.11.2007 to 09.08.2008, Sri Y.K.Gupta allowed on 28.03.08, loan disbursement in 3 PMRY accounts, through SB a/c's, without any debit authority on the disbursal transfer vouchers or borrower's request, in early hours of day, i.e. well before normal time for opening of branch business. All these vouchers are in one out side person's hand writing.

**Article-21:**

While posted and functioning as Senior Manager of Kaiserganj Branch from 02.11.2007 to 09.08.2008, Sri Y.K.Gupta with ulterior motives and in contravention of the system and procedure of the bank, allowed cash withdrawals, before business hrs i.e. between 8.28 a.m. to

8.33 a.m. on 28.03.2008, in SB a/c's of 14 borrowers. All these S/B accounts were credited by the amount of PMRY loan disbursed to the borrowers in late/early hrs of 27.03.2008/28.03.2008. All withdrawal slips are filled up by only one person. All these accounts are irregular since inception. One of these borrowers, Smt. Reeta Devi has lodged a complaint dated 29.09.2009 in the matter, alleging inter alia that Sri Amresh Bahadur Singh managed to receive the loan amount through her SB account.

**Article-22:**

While posted and functioning as Senior Manager of Kaiserganj Branch from 02.11.2007 to 09.08.2008, Sri Y.K.Gupta on 31.03.08, in contravention of Bank's guideline, allowed disbursal in 19 PMRY a/c's through SB a/c's of borrowers without their authority on the transfer vouchers or their requests and in 15 such S/B accounts withdrawal in cash was allowed, in continuation, on same date. All withdrawal slips appears to be filled by only one person.

**Article-23:**

While posted and functioning as Senior Manager of Kaiserganj Branch from 02.11.2007 to 09.08.2008, Sri Y.K.Gupta, sanctioned loan of Rs.4.00 lacs to Kaushal Kishore & Neelam Trivedi (PN27005) on 04.01.08 for vehicle under RTO. Loan was allowed jointly to two persons, who are residents of two different places and not related in any way to each other, on the basis of a Partnership Deed, meant only for the purpose of this loan. Sri Gupta did not obtain require 12.50% margin money. Account with outstanding of Rs.3.18 lacs, as on 31.03.2011, is irregular.

**Article-24:**

While posted and functioning as Senior Manager of Kaiserganj Branch from 02.11.2007 to 09.08.2008, Sri Y.K.Gupta, sanctioned loan of Rs.25000/- under GCC scheme to Smt. Suman w/o Amresh Kumar Diwedi (OD-26) on 04.03.2008 and sanctioned Rs.3.00 lacs on 28.03.2008 for car loan to Amresh Kumar Diwedi. In car loan Sri Gupta did not verify the liability shown in credit report of guarantor. Said car loan having outstanding balance of Rs.3.17 lacs and GCC loan account with outstanding balance of Rs.0.39 lac, as on 31.03.2011, are irregular/PNPA.

While sanctioning Loan under GCC to Smt. Suman w/o Sri Diwedi Sri Gupta ignored income of her husband Sri Amresh Kumar Diwedi.

Sri Y.K.Gupta did not discharge his duties with the diligence & devotion, honesty and integrity and thereby had jeopardized the Bank's interest to the extent of the outstanding in aforesaid accounts. The aforesaid acts of omission & commission on the part of the said Sri Y.K.Gupta are in violation of Regulations 3(1) & 3(3) of Allahabad Bank Officer Employees' (Conduct) Regulations, 1976 and is a misconduct in terms of Regulation 24 of the said Regulations."

4. The Enquiry Officer in this case has given a detailed report running into about 37 pages and has examined the evidence on record as also the respective contentions of the parties, before arriving at the findings. The disciplinary authority has accepted the Enquiry Officer's report after hearing the petitioner. The appellate authority has also by a detailed order running into about 13 pages dealt with each of the grievance raised by the petitioner against the findings of the disciplinary authority, and has dismissed the appeal by passing a speaking order.

5. Before turning to the arguments urged on behalf of the petitioner, it is required to be noted that appreciation of evidence is in the realm of the duties of an Enquiry Officer and the disciplinary authority. This Court does not sit even as an appellate court for examining the conclusions of the Enquiry Officer, disciplinary authority and the appellate authority. This Court is entitled to interfere in the findings of the departmental authorities only if the findings are against the principles of natural justice or the findings are against

the rules/regulations of the bank or the findings are perverse or the punishment imposed is disproportionate.

6. Before this Court, what is essentially argued is that there is violation of certain rules/regulations of the bank and that the findings of the departmental authorities are perverse. The arguments urged on behalf of the petitioner are as under:-

(i) As per the Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, the Enquiry Officer should not be connected with the case either as an investigating officer or a dealing officer. However, in this case the Enquiry Officer was an officer who was dealing with the various branches of the bank including the branch of the bank in which the petitioner was posted, and therefore the Enquiry Officer's report suffers from violation of rules/regulations and is therefore liable to be set aside.

(ii) The rank of the Enquiry Officer was the same as the rank of the petitioner, and as per the rules/regulations of the bank, an Enquiry Officer cannot be of the same rank as that of the charged officer, and the Enquiry Officer has to be higher in rank than that of the charged officer, and since both the Enquiry Officer and the charged officer were MMG Scale-III, therefore, there is violation of the rules/regulations of the bank, and therefore the orders of the departmental authorities are liable to be set aside.

(iii) The Enquiry Officer himself was a charged officer in another case, and therefore being a tainted officer, he could not have been appointed as an Enquiry Officer.

(iv) Some arguments were also raised with respect to incorrect findings of the Enquiry Officer, disciplinary authority and the appellate authority.

7. The first argument urged on behalf of the petitioner is misconceived inasmuch as I put it to the counsel for the petitioner that whether the rule/regulation which is relied upon of an Enquiry Officer being not connected with the case as an investigating/dealing officer is on account of any specific rule/regulation, however, no specific rule/regulation of the respondent-bank was pointed out. Even if I assume that there is such a rule/regulation that an Enquiry Officer should not have been connected with the case either as an investigating officer or a dealing officer, even then the argument urged on behalf of the petitioner has no legs to stand upon because what is barred by the instructions contained in a 'Programme on role of Enquiry Officer/Presenting Officer' of the bank is that the Enquiry Officer should not have been specifically connected with the facts of the case as an investigating officer or a dealing officer i.e a person who is otherwise dealing with the facts of the case should not be an investigating officer in a case, but merely because the Enquiry Officer who was dealing with the various branches of the bank was also a

dealing officer of the branch where the charged officer is posted, will not mean that the enquiry is flawed once the enquiry officer was connected to the specific facts of this case against the petitioner/charged officer. The first argument therefore urged on behalf of the petitioner is rejected.

8. So far as the second argument that the Enquiry Officer and the charged officer should not be of the same rank is concerned, it is noted that no rule/regulation of the respondent bank was pointed out except a commentary in a handbook published by the officers' association. The handbook published by the officers' association cannot become a rule/regulation of the bank, and therefore, since there is no rule/regulation of the bank in the Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 that the rank of the Enquiry Officer should be higher than the charged officer, I cannot accept the argument urged on behalf of the petitioner, and which argument is therefore rejected. Also it is not disputed that the disciplinary authority was of a rank higher than the petitioner.

9. Even with respect to the third argument that an Enquiry Officer cannot be a person against whom a charge-sheet has been issued, no rule/regulation was pointed out, and in fact it is not even the case of the petitioner before this Court that the Enquiry Officer has been held guilty by any departmental

authority of the bank. This argument urged on behalf of the petitioner is therefore rejected.

10. The last argument urged on behalf of the petitioner is not within the scope of the arguments which are permissible in a writ petition challenging the orders of the departmental authorities inasmuch as aspects with respect to arriving at the conclusions on the basis of the record pertained to the duties of the departmental authorities, and the departmental authorities are duly entitled to take a view on the basis of an evidence which comes on record, and unless there is a complete perversity in the findings of the departmental authorities, this Court has no power to interfere with the conclusions of the departmental authorities. Issues with respect to appreciation of evidence which have been argued before this Court do not in any manner amount to perversity for this Court to interfere with the orders of the departmental authorities.

11. In fact, in my opinion in this case the petitioner has got away very lightly because as many as 21 articles of charges have been proved against the petitioner, and which in fact could have been a reason for a much stricter punishment against the petitioner, however, the petitioner has only been inflicted upon the penalty of reduction of rank and pay scale, and therefore there is no reason why this Court should in any manner interfere with the

detailed findings and conclusions given by all the three departmental authorities being the Enquiry Officer, disciplinary authority and the appellate authority.

12. Dismissed.

**JANUARY 05, 2015** **VALMIKI J. MEHTA, J**
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