

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

45 WRIT PETITION NO. 94 OF 2005
WITH CA/14878/2015 IN WP/94/2005

Mr. Rameshwar Baburao Waghmare ... **Petitioner**
Age 49 years, Occu: Service,
R/o Ambad Road, Nutan Vasahat,
Taluka and District Jalna.

VERSUS

1. The Chairman,
Maharashtra Gramin Bank,
2. The Chairman and Disciplinary
Authority,
Maharashtra Gramin Bank
3. The Board of Directors i.e. ... **Respondents.**
Appellate Authority of
the Maharashtra Gramin Bank,

All r/o of Shivaji Nagar,
Nanded.

Mr. V.J. Dixit, Senior Advocate i/by Mr. Ramesh S.
Dhamangaonkar, Advocate for the petitioner.
Mr. V. P. Golewar h/for Mr. A. R. Joshi, Advocate for
the respondents.

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 25th October, 2016

JUDGMENT (Per S.V. Gangapurwala, J.):

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With
consent of parties, the petition is taken up for final

disposal.

3. Mr. Dixit, the learned Senior Advocate appearing for the petitioner submits that the petitioner was working as Branch Manager with the respondent bank. Show cause notice was issued to the petitioner on 5th January, 2016. The petitioner replied the said show cause notice. on 09.07.1996. The respondents obtained complaints from various persons and thereafter charge sheet was issued to the petitioner on 4th November, 1996 in respect of three charges. The learned Senior Advocate submits that without the complaint being on record, show cause notice was issued to the petitioner thereby initiating disciplinary proceedings. Such a procedure is unheard of. The learned Senior Advocate further submits that thereafter the Enquiry Officer was appointed on 10.01.1997. The said Enquiry Officer was changed and one Mr. Pathak was appointed as Inquiry Officer. In fact, the said Enquiry Officer himself was facing the charges of misconduct. Upon completion of departmental enquiry, the petitioner was imposed with punishment of compulsory retirement on account of two charges and one charge was not presented. The punishment was imposed only on two charges. The petitioner under Regulation 48 of the

Service Regulation, preferred an appeal before the Appellate Authority. The Appellate Authority, did not assign any reason though substituted the punishment. The petitioner was brought to the first stage of pay scale and all increments which were granted to the petitioner were taken away. The learned counsel submits that no reasons is given by the Appellate Authority while passing the order. Various grounds are raised by the petitioner in his appeal. None of the said grounds are considered. Validity of the enquiry proceeding itself was assailed. However, the Appellate Authority ignored all the said aspects and passed the order thereby imposing punishment of lowering to the first stage of basic pay of scale. The punishment was imposed even in respect of the charge which was not presented. The same is illegal. In fact the whole enquiry stands vitiated.

4. The learned counsel for the respondents submits that serious charges were levelled against the petitioner that of bribery, misconduct etc. The Enquiry Officer has adhered to the principles of natural justice, has given every opportunity to the petitioner. The charges framed were supplied to the petitioner and every opportunity was given to the

petitioner to adduce evidence. After considering all the documentary evidence as well as oral evidence, the Enquiry Officer has concluded the charges having been proved against the petitioner. The Enquiry Officer held the charge No.1B and 1C so also charge No.2 as proved. The Disciplinary Authority compulsorily retired the petitioner. On appeal, the Appellate Authority took a sympathetic view against the petitioner and set aside the punishment of compulsory retirement, instead, imposed the punishment of lowering the pay scale of the petitioner. It would be seen that the lenient view has been taken by the Appellate Authority. This Court in its writ jurisdiction, would not substitute the findings of the Enquiry Officer.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. It is trite that this Court, in its writ jurisdiction under Article 226 of the Constitution of India would not sit as an Appellate Authority over the findings of the disciplinary Authority nor would re-appreciate the evidence. This Court would be concerned with the adherence of the proper procedure, observance of principles of natural justice.

7. The petitioner was charged with following charges. The same are as under:

"1) You have taken bribe/illegal gratification from the following persons/borrowers for sanction/ disbursement of loans.

(a) A loan of Rs.3500/- under IRDP was sanctioned to Smt. Kaibai Janardhan Hogade r/o Lavani on 23.03.1995 for Kirana shop. The loan amount is disbursed on 27.05.95 alongwith subsidy. For disbursement of the loan, you have taken Rs.700/- from the borrower.

(b) Head office has sanctioned a loan of Rs.26,500/- to Shri Kisan Bhaurao Silage r/o Lavani for agriculture development on 23.03.94. Two instalments of Rs.5500- each were disbursed by you on 27.05.95 and 25.11.95. You have taken Rs.500/- from the borrower before submitting the proposal to head office, Aurangabad for sanction. you have also demanded petrol charges from this person whenever you have paid visits to his field.

(c) Under MPBCDC Scheme you have sanctioned a loan of Rs.6262/- to Smt. Yasodabai Baba Rathod r/o Mosa for goat unit on 23.11.1994. The said loan amount is disbursed alongwith subsidy Rs.2088/- on 22.10.95. For sanction/disbursement of the loan, you have taken a bribe of Rs.2000/- from the beneficiary.

Above acts on you part show your vested interest, irresponsible behaviour. Thus you have committed an act of-

i) Malafide and dishonest behaviour.

ii) violating the procedure and norms of the bank.

iii) Not serving the bank honestly and faithfully.

Your above acts are misconduct under regulation No.19 of the Aurangabad-Jalna Gramin Bank (Staff) Service Regulation, 1984.

2) As recommended by you, Head office has sanctioned a loan of Rs.26250/- to Shri Jadhav Subhash Rambhau r/o Yedalapur under VJNt scheme for bricks business. The first installment of Rs.8500/- alongwith subsidy Rs.2800/- has been disbursed and credited to his S/B A/c No. 1830 on 3.6.96. On 8.6.96, Bank of Maharashtra, Ner Branch has given letter No. NIL dated 8.6.96 stating that the said person has availed loan from them and is in default and also requested not to disburse him loan. On the basis of this letter officiating Branch Manager very rightly returned the cheque No.162134 for Rs.10400/- received for collection from SBH Jalna on 7.7.96 since the balance in the SB A/c was in respect of the loan amount through the reason stated was refer to drawer. The borrower again issued cheque No.162135 dated 6.7.96 for Rs.1000/- in his father's name and received to the branch for collecting through SBH, Partur. Instead of taking the cognizance of Bank of Maharashtra letter dt.8.6.9. You have passed the cheque on 18.8.96.

Above acts on your part show your vested interest, irresponsible behaviour. Thus you have committed an act of-

i) Not serving the bank faithfully and honestly.

ii) Negligence with dishonest behaviour.

iii) Violated the procedure and norms of the bank."

8. Upon the enquiry being conducted, the charge

No.1(a) was not presented. However, the Charge No. 1(b), 1(c) and 2 were held to be proved. The disciplinary Authority awarded following punishment.

Charge No.	Charges	Punishment Awarded
01 A	Charge Not presented	--
B	Bribe taken for illegal gratification of loan to Shri Kishan Bhaurao Silage r/o Lawani	Compulsory retirement from service.
C	Bribe taken for illegal gratification of loan to Smt. Yashodabai Babu Rathod	Compulsory retirement from services.
2)	Loan sanctioned/disbursed under NJNT scheme to Shri R.S. Jadhav inspite of instructions received from Bank of Maharashtra Ner branch that Shri S.R.Jadhav is their defaulter.	Stoppage of one increment.

9. The petitioner filed an appeal, raising various grounds. The Appellate Authority passed a final order on 17.11.2003 which reads as under.

"FINAL ORDER

In pursuant to the earlier final order issued by the Chairman & Disciplinary Authority vide No. HO/Personnel/C.Hd.2002-3 dated 19.4.2003 retiring compulsorily from the services, Shri

R.B. Waghmare preferred an appeal before the Board as Appellate Authority requesting to withdraw the punishment given by the Disciplinary Authority.

The Board of Directors considered the appeal made by Shri R.B. Waghmare in the board meeting held on 31.10.2003 and on compassionate ground decided to reinstate Shri R.B.Waghmare on starting basic pay in Scale I.

As per the board resolution, the punishment is awarded as under:

Charges	Punishment awarded
1) Charge No.1 A,B,C	Lowering to the first stage of basic pay of scale I.
2) Charge No.2	Lowering to the first stage of basic pay of scale I.

All the punishments will run concurrently.

As per the earlier final order Shri R.B. Waghmare was not on duty w.e.f. 19.04.2003. As per the Board & Appellate Authority's decision, he is reinstated in Scale-I from the date of this order. As regard to the period of his absence, it will be treated as "Not on duty" and hence without pay. He will not be entitled for any remuneration for this period."

10. Appeal is provided under regulation 47 and 48 of

the Officers and Employees Services Regulations, 2001. The Appeal is substantive right of the petitioner. The petitioner had exercised the said right. It is also trite that when the Appellate Authority concurs with the judgment of the disciplinary Authority, lengthy reasons need not be given. However, the Appellate Authority is required to deal with the averments of the appellant raised in the appeal memo. Some reasons are required to be given while negating the grounds raised by the petitioner in the appeal. Perusal of the order passed by the Appellate Authority, it is manifest that the same is bereft of any reason. Reasons depict the application of mind of the Authority passing the order. It depicts the subjective satisfaction of the Authority, based on objective assessment of the circumstances and evidence on record. Reasons, now a days, are considered to be a third limb of the principles of natural justice. The order of the Appellate Authority, being bereft of any reasons, not depicting the application of the mind of the Appellate Authority, cannot be sustained. Though the Appellate Authority, on compassionate ground, had reduced the punishment, however having failed to consider the grounds agitated by the petitioner in his appeal,

thereby has failed to exercise the jurisdiction vested in it.

11. In light of the above, the impugned order of the Appellate Authority cannot be sustained.

12. The order passed by the Appellate Authority is quashed and set aside.

13. The parties are relegated before the Appellate Authority. The Appellate Authority shall reconsider the appeal of the petitioner and decide the same afresh.

14. Till the appeal of the petitioner is decided by the Appellate Authority, the benefit which the petitioner is being given on the basis of the order of the Appellate Authority that is set aside by the instant judgment shall continue and further course of action shall be taken in tune with the judgment that would be delivered by the Appellate Authority in the appeal filed by the petitioner. The Appellate Authority shall decide the said appeal afresh expeditiously, preferably within six months of the date of receipt of this order.

15. The petitioner if so chooses, may present himself before the Appellate Authority.

16. Rule is made absolute accordingly. There shall be no order as to costs.

17. Civil application stands disposed of.

(K. L. WADANE, J.)
JPC

(S. V. GANGAPURWALA, J.)