THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.6711 OF 2005

ORDER:

This writ petition is filed by the workman seeking issuance of a writ of mandamus, declaring the proceedings of the Disciplinary Authority dated 26.04.2003 as confirmed by the appellate authority vide proceedings dated 18.08.2003, as illegal, arbitrary and contrary to law and consequently, quash the said proceedings and direct the respondents to reinstate the petitioner into service with all consequential benefits including continuity of service.

2. The petitioner joined the respondent bank in the year 1976 as an Officer Trainee and after one year of training, he became an officer. In June, 1996 the petitioner was transferred from Public Garden Road, Hyderabad to Nandyal branch as a Branch Manager. While he was working at Nandyal Branch, basing on a report from the public, in February, 2000 the Manager (Regional Inspectorate) made a surprise visit and conducted inspection and found certain irregularities and misappropriation on the part of the petitioner. Vide proceedings dated 10.03.2000 of the Deputy General Manager (Disciplinary Authority), the petitioner was placed under suspension, *prima facie* on the following grounds;

> "Whereas there are *prima facie* grounds to believe that you have committed serious irregularities in as much as you have fraudulently misappropriated proceeds of certain VSU (Vijaya Shree Units) deposits of parties by closing them without their knowledge/mandate and credited the proceeds to O.D.accounts 32/97 and 33/97 of your spouse, destroyed certain vital records in order to conceal the irregularities, sanctioned loans under your delegated powers in active connivance with a middleman who has introduced several SB accounts, sanctioned loans to borrowers in order to confer undue pecuniary benefits to them and to

> show undue favour, misutilized/misappropriated the subsidy/margin money received from Minorities Corporation, SC/ST Corporation, committed serious irregularties in the matter of saction of Secured Loans, received illegal gratification/undue pecuniary benefits for sanctioning loans under V-cash and committed other grave/serious irregularities while functioning as Branch Manager of Nandyal branch."

3. Thereafter, vide charge sheet dated 06.11.2000, enquiry was ordered and the following charge has been framed against the petitioner.

> "During your tenure as Branch Manager of Nandyal branch actuated by *mala fides* and in gross abuse of your official position in the Bank, so as to derive/confer undue pecuniary benefits, you have sanctioned 18 production loans amount to Rs.2.70 lakhs to such persons who were not possessing lands in their names, sanctioned loans against such properties against which local credit cooperative societies had already advanced loans, made excess finance in case of 22 production loans without taking into account the scale of finance, failed to conduct pre/post sanction inspection, failed to insist on No due certificates from Primary Cooperative Credit Societies while financing crop loans as number of borrowers were found to have availed double finance, renewed 15 production loans aggregating to Rs.1.80 lakhs without taking into account the scale of finance in contravention of instructions contained in Circular No.31/96, sanctioned crop loans under the head Production loans instead of fixing limits under Vijaya Kisan Card with effect from 15/1/99, sanctioned 9 LMV loans in benami names for purchase of Autos which were not available for inspection despite the fact that number of LMVs had become overdue, sanctioned Secured Loans in benami names, allowed opening of SB accounts in benami names and issued cheque books to unauthorized persons without observing

rules/regulations and facilitated misuse of cheque books, opened number of SB accounts on the introduction of a person and his relatives whose *bona fides* were suspicious without observing rules/regulations, facilitated, opening of SB accounts in the names of fictitious persons for the purpose of sanctioning loans, sanctioned 183 Production loans, to Electricity Board employees under V-cash by collecting Rs.500/- as donation from each borrower, sanctioned/released several loans without obtaining proper documentation, maintained business transactions with one Rasool Azad to whom several benami LMV/SL accounts were sanctioned, sanctioned loans such as SL/CTL etc. to the said Rasool Azad/his relatives without ensuring creation of assets/end use of funds, prevailed upon the parties to deposit Rs.10,000/- each in VSU account on the assurance of sanction of loans at the behest of Sri S.P.Y.Reddy, Industrialist Nandyal, sanctioned loans to JND collector and temporary staff members when other loans sanctioned to them were overdue/outstanding, sanctioned OD facilities in the name of your wife flouting bank's rules and regulations against third party deposits, failed to obtain AODs/Revival letters so as to keep the debts in force and committed other grave irregularities. Operations/transactions in your OD account reflects entries disproportionate to your known sources of income."

4. It is the case of the petitioner that his request for visiting the branch to verify the records for submitting detailed explanation was denied. Vide proceedings dated 23.06.2001 Sri U.M.Chettigar, Senior Manager of the Personnel Department (IRD) was appointed as Enquiry Officer. After enquiry, the enquiry officer submitted his report holding that charges leveled against the petitioner are partly proved. The petitioner filed detailed objections to the findings of the enquiry officer. Without considering his objections, the Disciplinary authority vide proceedings dated 26.04.2002 removed the petitioner from

services with immediate effect.

5. Aggrieved by the dismissal order, the petitioner preferred appeal before the appellate authority, which resulted in dismissal vide orders dated 07.12.2002. The petitioner filed W.P.No.12603/2003 questioning the appellate order stating that K.Jayakar Shetty, who passed the dismissal order in the capacity of Disciplinary Authority, the same person, who was later posted as General Manager, has passed the order in the capacity of Appellate Authority, which cannot be permitted in law. This court after considering the issue allowed the writ petition and directed to nominate another person as Appellate Authority and transfer the matter to him. The nominated appellate authority also after considering the issue, dismissed the appeal of the petitioner vide orders dated 18.08.2003. Questioning the same, the present writ petition is filed.

6. It is contended by the petitioner that the enquiry officer has split the charges into 18 issues and out of which he held that 9 charges are partly proved, 8 are proved and one not proved. The charges proved are only a deviation in complying with the procedural formalities, for which imposition of major penalty of dismissal from service is irrational and arbitrary. His further case is that the scale of business and the magnitude is not decided at the branch level and he acted only in obedience to the directions of the controlling authorities and the head office, and therefore, the problems for recovery cannot be an irregularity on his part, warranting major penalty.

7. The respondents filed detailed counter reiterating the charge sheet contents. The respondents detailed the violations of the petitioner as under;

i. The petitioner sanctioned Production Loans to 18 farmers though they were not possessing any lands in their names;

ii. The petitioner sanctioned 22 Production Loans to the borrowers exceeding the scale of finance;

iii. Number of undated “No Due Certificates” issued by Bhimavarm Larger Sized Co-operative Credit Society were kept along with the Production Loan documents by the petitioner;

iv. The petitioner renewed a number of crop loan accounts so as to close the existing overdue crop loan accounts;

v. Violating the circular instructions issued by the Bank vide Circular No.1/99, dated 01.01.1999, the petitioner sanctioned number of crop loans under the head "Production Loan Accounts" instead of fixing the limit under Vijaya Kisan Card Scheme of the Bank w.e.f 15.01.1999, due to which, several production loans became overdue;

vi. Abusing his official position, the petitioner sanctioned several loans in benami names for the purpose of purchase of Autos;

vii. The Autos hypothecated to the Bank were sold by the borrowers without notice to the Bank and without clearing the loans;

viii. The petitioner failed to take timely steps for seizure and sale of the vehicles;

ix. The petitioner sanctioned number of LMVs indiscriminately flouting all the lending norms;

x. The petitioner disbursed around 183 Pro-Note loans under V-cash to the employees of Electricity Board by fraudulently collecting Rs.500/- from each borrower by way of donation to M/s.Amar Yoga Vikas Kendra, having SB Account No.7694 at the Branch;

xi. By abusing his official position, the petitioner sanctioned number of secured loans in the names of Benamies;

xii. The petitioner sanctioned number of credit facilities to one B.Seetharamudu, JND Collector and to such persons, who worked as temporary sub-staff at the cost and risk of the Bank;

xiii. The petitioner by taking staff members as guarantors, sanctioned loans to their relatives outside the purview of staff loans by deviating from the instructions issued in Circulars No.68/92 and 19/98;

xiv. The petitioner facilitated Rasool Azad and his associates to take SB Cheque Book on behalf of some other persons;

xv. The petitioner prevailed upon some of the parties to deposit Rs.10,000/- each in VSU accounts on the assurance of sanctioning loans in connivance with Mr.S.P.Y.Reddy, Industrialist of the Town, and subsequently, he fraudulently closed such deposit accounts opened by the depositors without their knowledge/consent by sanctioning loans, misappropriated the amounts so deposited and destroyed the vital records;

xvi. The petitioner sanctioned OD Account No.32/97 dated 10.12.1997 with a limit of Rs.4.15 lakhs and OD Account No.33/97 dated 10.12.1997 with a limit of Rs.4.25 lakhs in the name of his wife Mrs.Kiran Mayi against third party deposits purportedly belonging to his brother without obtaining proper documents in terms of Circular No.68/92, 19/98 and guidelines contained in the Hand Book of instructions.

xvii. The petitioner made Rasool Azad as his agent at whose connivance number of SB accounts were opened for sanction of loans.

xviii. The petitioner failed to obtain acknowledgment of debts/revival letters prior to the debt getting time barred as required in terms of instructions contained in HO Circulars No.57/81, dated 26.03.1981, No.136/2 dated 28.08.1982 and guidelines;

8. It is alleged that the petitioner has exhibited lack of integrity, honesty, devotion to duty and diligence and acted in a manner unbecoming of a Bank Officer and committed acts of misconduct within the meaning of Regulation 3(1) read with Regulation 24 of Vijaya Bank Officer Employees' (conduct) Regulation, 1981 actionable under Regulation 4 of Bank Officer Employees' (Discipline & Appeal) Regulation 1981 and therefore, there are no ground to interfere with the impugned termination order of the petitioner.

9. Learned Counsel appearing for the writ petitioner submits that the Enquiry Officer has sub-divided the charges into 18 categories and out of them, found that '8' proved, '9' partly proved and one not proved. This, according to the learned Counsel, has resulted in denial of reasonable opportunity to him. It is further submitted that when he wanted to inspect the records by visiting Nandyal, the same was not

acceded to. It is further submitted that the Enquiry Officer having found many of the items of the charges partly proved, his dismissal from service is disproportionate and that the authorities have failed to take into consideration the submissions made by him and hence the writ petition.

10. On the other hand, learned Counsel appearing for the respondent/bank submits that during the course of enquiry, ample opportunity was afforded to the writ petitioner and as a matter of fact, he also produced certain documents and on behalf of the department, 18 documents were marked and five witnesses were examined. The charges are divided into '18' for the sake of convenience and clarity and since each incident had to be adverted to in detail and hence by such sub-division no prejudice is caused to the writ petitioner. On the other hand, this has facilitated the delinquent Officer as well as the Enquiry Officer in properly placing the material on record and appreciating the same with reference to each of the violations alleged. With regard to the punishment, it is submitted that since the writ petitioner was found to have committed grave mis-conduct which adversely reflects upon his integrity and that the bank can ill-afford to be represented by the said officials who shall only erode public confidence and trust rather than reinforce the same, since the integrity is the foundation for all public transactions and the bank being a financial institution, continuance of the writ petitioner was not justified and hence his removal is just and proper.

11. I have gone through the voluminous oral and documentary evidence that has been adduced during the proceedings. The writ petitioner having joined the respondent/bank on 06-09-1976 as an Officer – General Management Grade-I, has served in different places and ultimately he was transferred to Nandyal Branch on 13-06-1996. All the acts of omissions and commissions are said to have taken place at Nandyal. After conducting a preliminary enquiry, the writ petitioner was suspended on 10-03-2000 and ultimately after due and

proper enquiry, he has been dismissed from service. The period of suspension was treated as *not on duty*. The Enquiry Officer has conducted the enquiry by following the due process and without violating the principles of natural justice. The relevant documents and some of the witness who are concerned with the allegations have been examined. After considering each and every aspect in detail and perusing the records, the Enquiry Officer found him guilty. The disciplinary authority has again considered each and every aspect minutely and accepting the findings of the Enquiry Officer, imposed the punishment. The writ petitioner preferred an appeal, which was originally dismissed and on the writ petition being filed, the appeal was re-heard by another Officer and ultimately the appeal stood dismissed confirming the punishment imposed on the writ petitioner.

12. Briefly stated, the allegations that were proved against the writ petitioner are that he has fraudulently misappropriated the proceeds of certain fixed deposits made by the parties without their knowledge and transferred the proceeds to the accounts of his wife; that he sanctioned loan in active connivance of a middle man; sanctioned loans to borrowers in order to confer undue pecuniary benefits to them; misappropriated the subsidy/margin money received from the minorities, SC/ST Corporation, and committed serious irregularities in the matter of sanction of secured loans; received illegal gratification and undue pecuniary benefits for sanctioning loans under V-Cash and committed other irregularities. The explanation that was offered by the writ petitioner was found to be not satisfactory and upon perusing the report of the Enquiry Officer, the disciplinary authority and the appellate authority, I do not see any reason to hold that the findings that are delivered by the authorities suffer from any irregularity or illegality warranting any interference. The writ petitioner has failed to show as to how the procedure followed by the Enquiry Officer has caused any prejudice to him or he was denied reasonable opportunity to place on record his side of the case. The substantive charges are

based on documents, the genuineness of which could not be denied. Therefore, I see no merits in the writ petition and the findings of the competent authorities are liable to be confirmed.

13. The next aspect of the matter is about the punishment. As has been observed holding that continuance of an Officer such as the writ petitioner would not be in the larger interest of the bank and would erode the public confidence and trust, he was removed from service. It is submitted that the writ petitioner joined the bank as long back as in September, 1976 and put in 24 years of unblemished service and by the date of his suspension, he was aged more than 54 years. It is further submitted that as at present he is nearly 70 years old and that therefore the punishment of removal from service may be converted into compulsory retirement. The record reveals that the alleged acts of omissions ad commissions on the part of the writ petitioner were such that it cannot be said that there was any acceptance of illegal gratification or any attempt was made to derive any undue advantage by the writ petitioner. No doubt, he has committed certain irregularities but the magnitude of the said acts was not such that dismissal from service can be said to be the only effective punishment. Compulsory retirement from service would also entail in removal from service but the stigma that is attached to a dismissed employee will not be there and except for that, there is no other benefit to the writ petitioner.

14. In view of the foregoing discussion and taking into consideration, the totality of the material evidence on record and facts and circumstances, I feel that the ends of justice will be met if the punishment of dismissal from service which shall be a disqualification for future employment needs to be modified into that of compulsory retirement from service.

15. Subject to the above modification with regard to the punishment, the writ petition is dismissed directing that the respondent/bank shall treat the writ petitioner as having been compulsorily retired from service instead of dismissed from service. In

the circumstances, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.S.K.Jaiswal, J

Date: 19th January, 2016

Dsr/smr