IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 507 of 2004

* Deepaksing s/o Premchand Rajput,
Age 31 years,
Occupation : Nil,
R/o 13, Kasturinagar, Bhusaval,
District Jalgaon. .. **Petitioner.**

Versus

1) Bank of Baroda,
Through its Chairman and
Managing Director, Central Office,
Bandra-Kurla Complex, Mumbai.

2) The Deputy General Manager,
Maharashtra & Goa
Appellate Authority,
Bank of Baroda,
Zonal Office, Sharda Centre,
2nd Floor,11/1 Khilare Path,
Erandavane, Pune 411 004.

3) The Assistant General Manager
(Nagpur),
Disciplinary Authority,
Bank of Baroda,
Regional Office, Dharampeth,
Nagpur - 440 010. .. **Respondents.**

Shri. S.B. Talekar, Advocate, for petitioner.

Shri. S.P. Karkare, Advocate, holding for Shri. P.K. Joshi, Advocate, for respondent No.3.

Coram: T.V. NALAWADE &
SANGITRAO S PATIL, JJ.

Date: 13 June 2017.

JUDGMENT (Per T.V. Nalawade, J.) :

1) The present petition is filed to challenge the order dated 29-8-2003 made by the Disciplinary Authority, Assistant General Manager (Nagpur), Bank of Baroda against the petitioner in departmental enquiry held by the bank. The Enquiry Officer held the petitioner guilty and the disciplinary authority has accepted the report and has made order of removal of the petitioner from service. As per the procedure, administrative appeal is available and such appeal was preferred. The appeal is also dismissed. Both sides are heard.

2) The petitioner was working as Cashier-cum-Clerk in Bank of Baroda, Branch Bambrud. Complaints were received against the petitioner involving following allegations:-

(1) He created false record in respect of loan transactions of at least three borrowers like Mrs. Sarubai Baviskar, Murlidhar Nikam and Jagan

Nhavi. There was allegation that by creating this false record he misappropriated the money which was to be given to these debtors and as the debtors were deceived, they did not repay the loan and that way loss was caused to the bank;

(2) He did not purchase insurance policy in respect of the loan transactions, milch cattle, of requisite period and thereby he caused loss to the bank;

(3) He gave threats to the Branch Manager of Bambrud to cause him physical harm and by giving such threats he was disturbing the functioning of this branch of the bank; and,

(4) He was not punctual in discharging his duty and he was not promptly and properly discharging his duties.

3) The allegations of creation of false record of loan transactions and causing loss to the bank were made as these acts were done by him when he was working as a member of the committee created to implement the Government scheme of self-employment. The scheme involved giving of loan of Rs.45,000/- to each person but the amount was not to be actually handed over to the debtor and by using this amount, three Jersey cows were

to be purchased for the debtor. Two cows were to be given immediately and the third cow was to be given after six months. These cows were to be insured with one insurance company for the period of three years. In this committee there were in all four members like the petitioner, Veterinary Doctor of Government hospital, a member of the Marketing Committee from where the cows were to be purchased and a person of insurance company with which the cattle were to be insured. The petitioner was expected to discharge his duty in respect of six such transactions. Complaints were received in respect of three transactions. Further, as per the record, in six transactions when two cows were to be given, only one cow was given. These debtors did not repay the amount and the transactions were made N.P.A.

4) During enquiry which was made as preliminary enquiry it was noticed that Mrs. Sarubai and Murlidhar were given only one cow. Such information was supplied by them and when inspection and inquiry was done it was released that only one cow was supplied. The third debtor Jagan informed that one Jersey cow and one Desi cow

were supplied to him but there was no ear tag to the Desi cow which was purchased through loan transaction. Further, the price of Desi cow which was informed by Jagan was much less than the price of the Jersey cow and this amount also was misappropriated if really Desi cow was purchased. There was no corresponding record about Desi cow. Enquiry was made into other aforesaid allegations and substance was found in these and the other allegations also and accordingly charge-sheet was prepared and show cause notice was served on the petitioner. The petitioner filed reply and he denied everything. He tried to put blame on the Branch Manager.

5) The petitioner was allowed to appoint representative through his union. Presenting Officer was appointed by the bank and he produced material before the Enquiry Officer for proving the aforesaid charges. Opportunity was given to the petitioner to give his own evidence and to have his say on the evidence given by the bank. The report of the Enquiry Officer was supplied to the petitioner and on it also his say was called and opportunity was given to him to have his say on the point

of penalty. Thus, necessary procedure was followed.

6) In the present proceeding, the learned counsel for petitioner argued on the circumstances as follows :-

(i) The report of verification which was expected from the Branch Manager was not produced even when application was moved by the petitioner before the Enquiry Officer;

(ii) The record with regard to purchase of milch cattle and of insurance and also the record created by the Veterinary Doctor was not properly appreciated;

(iii) The penalty imposed was not proportionate; and,

(iv) Action ought to have been taken against the Branch Manager also.

7) So far as the first ground is concerned, the record shows that the Branch Manager was examined and he submitted before the Enquiry Officer that no such report of verification of the things was prepared by him. The evidence given by the Branch Manager shows that due to shortage of staff the entire matter was entrusted

to the petitioner. When the Branch Manager himself was examined it can be said that absence of record of verification by the Branch Manager could not have made much difference in the result of the enquiry. Thus, there is no force in the first ground.

8) The contention of the petitioner that there was relevant record like purchase receipts prepared in A.P.M.C., the record of insurance company etc. and this record was sufficient to prove that the milch cattle were purchased is also not acceptable. Material is produced to show that the so called vendor came forward and he submitted that nobody had approached him for sale of milch cattle and the record which was available with the bank in respect of purchase of milch cows like receipts was not prepared by him. His place of residence is different than which is shown on the receipts. It needs to be observed that from the record it can be said that other members of the committee had helped the petitioner in creation of false record and thus the man from A.P.M.C., Veterinary Doctor and the man from insurance company were involved in the fraud. Only due to this, the petitioner

could misappropriate the amount in respect of one cow which was to be supplied to each of the six debtors. The record and the submissions made show that Departments of other members of the committee had taken appropriate action against them also. Thus, it cannot be said that the record was genuine and correct. The material on the record is sufficient to establish for the purpose of enquiry that false record was created in respect of one cow in respect of each debtor by the petitioner. He was the person who was expected to purchase the cows and supply them to the debtors and everything was in his hands.

9) There is not only the aforesaid evidence but there are many other circumstances. The payment of the loan amount was not to be made to the debtor and it was to be made to the vendor of the milch cattle. The material on record and particularly the evidence of the Branch Manager and the cheques show that account payee cheques were not given to the vendor and by using bearer cheques the amount was shown to be paid. Even the particulars of the currency notes given for encashing the

cheques were not given as per the duty list and as per the orders given by the Branch Manager. It is the petitioner who made the payment and it can be said that he did not make payment to the vendor and he himself collected the cheque amount. These circumstances support the charge.

10) Most important of all is the evidence of the debtors. They are villagers, illiterate persons and they have given evidence that they were deceived by the petitioner by saying that second cow will be given after few days. Their signatures or thumb impressions were obtained on the record but no second cow was supplied to them and the record of purchase also shows that second cow was not at all purchased for each debtor. This material is more than sufficient to prove the charges in respect of the loan transactions. As the second cow was not supplied, the debtors did not repay the loan amount and the transactions were made N.P.A. Thus loss was caused to the bank in respect of these transactions.

11) Evidence is given by the Branch Manager on the overall conduct of the petitioner. There is also other

material showing that the petitioner was behaving arrogantly and he was disobeying orders of the superiors. By giving threats he was avoiding to discharge the duty and on occasions he had turned up to the bank at 4.00 p.m., very late. Lame excuses were not accepted and record of late coming was created. The petitioner dared to give threats to the superior of causing physical harm and immediately reports were given by the Branch Manager to his immediate superior. That record was already created and so it cannot be said that these allegations were afterthought in nature. Thus there is more than sufficient material to establish that the petitioner was misbehaving with the superiors, he was not discharging the duty properly and he was not punctual.

12) To rebut the available material there is nothing with the petitioner. It is noticed that whenever there are such schemes, poor people are deceived by the persons from bank like the present petitioner. Such instances cannot be taken lightly as damage is caused to the image of the bank and to the purpose of Government schemes. Unless stern action is taken against such persons, such

criminal minded persons do not realize that they would loose service if they indulge into such activities.

13) Learned counsel for the petitioner placed reliance on some observations made by the Apex Court in the case reported as **(2010)2 SCC 772 (State of U.P. v. Saroj Kumar Sinha).** On the basis of the observations made, the learned counsel submitted that some charges were not informed to the petitioner and so the punishment cannot sustain in law. This submission is not at all acceptable. It appears that some points were segregated by the Enquiry Officer while preparing his report on the basis of the contents of the charge. It cannot be said that the points considered by the Enquiry Officer were not part of the charge-sheet. Thus there is no force in this contention. So the case cited supra is of no help to the petitioner.

14) Learned counsel for the petitioner placed reliance on another case reported as **(1998)6 SCC 651 (State of U.P. v. Shatrughan Lal)** and submitted that some documents were not supplied to him and due to that punishment imposed on him cannot sustain in law. It was

submitted that complaints filed by the debtors were not supplied to him. It is not the case of the petitioner that any application was given in that regard. Further complaints are duly proved. Submission was made in respect of verification report which was to be prepared by the Branch Manager. This point is already dealt with. Thus there is no force in this contention also and this case is of no help to the petitioner.

15) Learned counsel for the petitioner placed reliance on one more case reported as **(2013)3 SCC 73 (Rajendra Yadav v. State of M.P.)**. It was submitted that to the other members of the committee such punishment was not given by their employer and so the punishment given to the petitioner is not proportionate. The facts of the reported case were different. It appears that in the present matter everything was to be done by the petitioner. His employer is expected to take decision on the basis of material available against the petitioner and so the matter of the present petitioner cannot be compared with other members of the committee and it cannot be said that the punishment is not proportionate to

the charges proved.

16) The learned counsel for the respondent bank placed reliance on the observations made by the Apex Court in the case reported as **AIR 2000 SC 3129 (Janatha Bazar v. Secretary, Sahakari Noukarara Sangh)**. In this case, the Apex Court has held that when there is charge of misappropriation lenient view is not expected as such persons do not deserve sympathy and such persons can be removed from service. There cannot be dispute over this proposition. Corruption and instances of misappropriation by persons like present petitioner are on increase and it is unfortunate that unnecessary lenient view is taken in favour of such persons. Such lenient view also is responsible for increasing such instances. This Court holds that lenient view cannot be taken in favour of the present petitioner. As there are no merits in the present petition, the petition stands dismissed. Rule discharged.

Sd/-
(SANGITRAO S PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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