

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1984 OF 2000

H.K.Shenoy,
Ex- Manager,
of Syndicate Bank
(Employee Sl.No. 107059)
C/o. Shri M.N. Hegde,
Flat No. 3, “Shaligram”,
L.T.Road,
Dahisar (West),
Mumbai 400 068.

.. Petitioner

Vs.

1. The Syndicate Bank,
A Nationalised Bank
having its Corporate
Office at Manipal
PIN 576 119.
Karnataka State.

2. The Deputy General Manager (P)
Syndicate Bank,
Head Office : Manipal
PIN 576 119.
Karnataka State.

3. The General Manager,
Personnel Department,
Syndicate Bank,
Head Office : Manipal
PIN 576 119.
Karnataka State.

4. The Chairman & Managing Director,
Syndicate Bank,
Head Office : Manipal
PIN 576 119.

Karnataka State.

.. Respondents

Mr.R.S.Apte, Senior Advocate a/w Mr.Saikumar Ramamurthy & Mr.Ramesh Ramamurthy, for the Petitioner.
Mr.V.N. Tayade i/b Mr.Piyush Shah, for Respondents.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.**

**RESERVED ON : 22th JUNE, 2017
PRONOUNCED ON : 04th AUGUST, 2017**

JUDGMENT (PER M.S.KARNIK, J) :

. The petitioner's challenge is to impugned orders of dismissal both dated 30/06/1995 and the two Appellate orders dated 04/11/1995 and 06/11/1995 respectively and two orders dated 13/01/1998 passed on the Review Petitions.

2. The petitioner at the relevant time was working as a Manager with the Syndicate Bank as one of the several managers. By letter dated 23/05/1991 permission was granted to the Assistant General Manager, Syndicate Bank, Nariman Point Branch, Mumbai permitting him to commence Portfolio Management Services (for short 'PMS') for the clients of the branch strictly in conformity with the guidelines contained in the RBI circular dated 18/01/1991. The

branch was expected to observe and adhere to RBI guidelines dated 18/01/1991. The petitioner was issued with the first charge-sheet dated 06/02/1993 and the second charge-sheet dated 13/05/1993 alleging misconduct relating to the period from November 1991 to October 1992. The petitioner was suspended on 08/02/1993. The petitioner filed reply to the first charge-sheet on 10/03/1993 and reply to the second charge-sheet on 27/06/1993. It would be material to reproduce charges levelled insofar as the first charge-sheet is concerned.

Articles of Charges

Articles of Charge No.1 :

That during the period between 13-12-1985 and 3-10-1992, you were functioning as Sub Manager/Manager at our Nariman Point Branch, Bombay, and that while functioning as such, you supervised the PMS operations at the branch in between 4-11-91 and 3-10-92 and that in the matter of conducting PMS operations of the Branch, you showed undue official favours to M/s.K.N.Amarchand, Broker, by

a. supervising purchase transactions in shares of 23 companies in between 30-1-92 and 28-5-92 at prices higher than the market rates prevailing on the relevant dates

and

b. supervising the sale transactions in shares of 9 companies in between 22-1-92 and 18-5-92 at prices below the market rates prevailing on the relevant dates.

and

c. supervising the sale of shares of 5 PMS clients to the tune of Rs.2,50,16,800/- on 24-3-92 and allowing the sale proceeds in the possession of the broker till 5-5-92, without initiating any recovery measures.

and

supervising the sale of shares to the tune of Rs.62,58,301/- in respect of certain PMS clients in between January 1992 and May 92 and allowing the sale proceeds to be left at the disposal of the

Broker indiscriminately;

d. causing payment of Rs.43,39,917-82 to the Broker on 3-4-92 and allowing the funds at the disposal of the Broker till 9-5-92 in the form of clean accommodation at low rate of interest, resorting to manipulation of records, knowing or having reason to believe that the transactions were not genuine.

and

e. causing purchase of shares to the tune of Rs.1,64,48,250 on account of 3 PMS clients in between March 92 and April 92 and causing the shares to be sold in between 29-4-92 and 19-5-92 in a hurried manner, thus causing financial loss to the Bank/PMS clients.

and

f. allowing the said brokers to utilise funds to the extent of Rs.37.66 crores in respect of sale of shares on account of certain PMS clients done in between 17-2-92 and 12-3-92, facilitating the Broker to enjoy the funds in the form of clean accommodation, resorting to manipulation of records, knowing or having reasons to believe that the transactions were fictitious;

and

g. making available clean accommodation to the extent of Rs.103.40 crores to the Broker in between 23-3-92 and 9-5-92 in the guise of purchase and sale transactions, which you were knowing or had reasons to believe were not genuine;

and

h. making available funds to the tune of Rs.57,50,000/- to the Broker on 19-5-92 for the ostensible purpose of purchase of shares of M/s.Essar Shipping Co.,without the receipt of securities and thereafter agreeing for substitution of securities in a causal manner.

The details of the transactions referred to above are more fully described in the Statement of Imputations of Misconduct mentioned herebelow.

In supervising and conducting these transactions, you acted in a manner detrimental to the interests of the PMS clients/Bank.

Articles of Charge No. II :

That you also showed undue official favours to M/s.Fairgrowth Investments Ltd., by making available to them, clean accommodation to the extent of Rs.22.78 crores in between 27.3.92 and 6.4.92 in the guise of purchase and sale of bonds, which you were knowing or had reasons to believe were not genuine, as per details more fully described in the Statement of Imputations of Misconduct mentioned herebelow. Thus, you

acted in detriment to the interest of the Bank/PMS clients.

Articles of Charge No. III :

That on 1-1-1992, you supervised the purchase transaction in shares of 2 companies on account of PMS A/c.No. 21 through Sri Jamnadas T.Shah, Broker, at a price higher than the market price prevailing and thus caused an approximate loss of Rs.1,17,500/- to the Bank/PMS clients, at average market price, as per details more fully described in the Statement of Imputations of Misconduct mentioned below.

You thus showed undue official favours to the said Sri Jamnadas T. Shah, Broker, in detriment to the interest of the Bank/PMS clients.

Articles of Charge No. IV :

That during the period between February, 1992 and March, 1992, you supervised the sale of shares of certain companies on account of PMS clients to the tune of Rs.10,07,725/- through M/s.Kishore Kumar Hariram, Broker, and allowed the sale proceeds to be left at the disposal of the Broker for a considerably long period and thus caused a loan of Rs.17,580/- to the Bank/PMS clients as per details more fully described in the Statement of Imputations of Misconduct mentioned herebelow.

You thus showed undue official favours to the said Sri Kishore Kumar Hariram, Broker, in detriment to the interest of the Bank/PMS clients.

Articles of Charge No. V :

That on 31-3-92 you caused a payment of Rs.22.50 lakh to be made in favour of IBBI by raising a debit on IM A/c. No. 22 of M/s.Oil India Ltd., with false/fictitious details, resorting to manipulation of accounts and records, knowing or having reasons to believe the fictitious nature of the transactions, as per details more fully described in the Statement of Imputations of Misconduct mentioned herebelow.

You thus acted in detriment to the interest of the Bank.

Articles of Charge No. VI :

That in between 23-12-91 and 5-3-92, you supervised certain purchase and sale transactions of buy-back nature, in violation of RBI guidelines.

In the matter of conducting these transactions, you caused issuance of BRs against BRs, violating RBI guidelines.

You thus acted in detriment to the interest of the Bank/PMS clients.

By your above acts, you failed to discharge your duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation No.3 (1) read with Regulation No. 24 of Syndicate Bank Officer Employee's (Conduct) Regulations 1976.

Articles of Charge No. VII :

That in the matter of conducting PMS operations at the branch -

a. you failed to obtain/cause obtantion of the prescribed written agreements from 12 PMS clients for reasons best known to you.

and

b. you caused to be offered indicative yield on the funds invested by 20 PMS clients contrary to guidelines issued by RBI and SEBI and you caused to be approved unauthorisedly the acts of the Chief Manager of our K.G. Marg Branch, Delhi, in having his indicated yield on funds accepted from PMS clients.

And

c. you failed to ensure that the investment of Rs.14 crores made by M/s.Oil India Ltd., were deployed immediately.

and

d. you failed to ensure that the Bank's position with regard to its PMS operations is correctly reflected in the Balance prepared at the branch as at 31-3-92.

and

e. you failed to ensure that the deals were put through in a proper and systematic manner with adequate supervision and control on the processing as well as the accounting part of the transactions.

and

f. you failed to ensure that a system of periodical surprise verification of the securities was introduced and meticulously followed.

and

g. you failed to ensure that proper books of accounts were maintained evidencing receipt/delivery/movement of securities.

and

h. you failed to ensure that the panel of Brokers was got approved by the Head Office, fixing individual exposure limits, Broker-wise.

and

you failed to ensure that the BRs were issued in the form prescribed by IBA.

and

j. you failed to report individual transactions carried out under PMS to the Head Office, furnishing full details;

and

k. you failed to send periodical reports to PMS clients as prescribed in the guidelines issued by SEBI.

That when certain discrepancies in the holding of securities were observed, you allowed/caused to be allowed to effect adjustment of entries in an usual manner, in detriment to the interest of the BANK/PMS clients, as per details more fully described in the Statement of Imputations of Misconduct under S1.No.6.

That in the matter of conducting PMS operations at the Branch, you exposed the Bank to unnecessary/avoidable financial risks and litigation, damaging the overall image of the Bank and its reputation.”

3. Insofar as second charge-sheet is concerned, the charges are similar to the first charge-sheet but in respect of different transactions and therefore the same are not quoted.

4. The petitioner by his reply dated 10/03/1993 to the first charge-sheet and reply dated 27/06/1993 to the second charge-sheet denied the charges. The petitioner made request for copies of the documents. The respondent – Bank by its letter dated 25/05/1993 informed the petitioner that relevant documents will be made available to him at the appropriate stage. Even in respect of second charge-sheet, respondent – Bank by its communication dated 10/08/1993 informed the petitioner that the documents relied upon

by the Bank to sustain the charges will be made available to the petitioner at the appropriate stage of the enquiry.

5. After some preliminary hearings, the Enquiry Officer in the hearing held on 04/11/1994, fixed regular dates of enquiry for defence. The evidence was to be recorded on 30/11/1994 to 04/12/1994. The Presenting Officer examined 3 witnesses. Mr.B.N.Pai, Assistant General Manager, Mr.Y.A.Madhyaste, the Manager, Syndicate Bank, Vigilance Cell and Mr. K.G. Mallya, Deputy General Manger, Syndicate Bank, Ahmedabad Zone. All these witnesses were cross examined by the petitioner.

6. The petitioner in his defence examined Mr.Vittal Ramaji Shivekar who had worked at Nariman Point Branch of the Syndicate Bank on job work based for completing work relating to transfer of shares. The petitioner was examined on 11/12/1994.

7. The petitioner submitted the preliminary statement of defence in respect of first charge-sheet as well as second charge-sheet on 04/12/1994. The Enquiry Officer in his enquiry report dated 28/03/1995 in respect of the first charge-sheet held that except

charges (I)(e) & (f), Article V, Article VII (h) & (j), all other charges stood proved.

8. The Enquiry Officer in his enquiry report dated 28/03/1995 in respect of second charge-sheet found as under :

FINDINGS

Article I	Not proved
Article II	Proved
Article III	Proved
Article IV	Partly proved
Article V	Partly proved
Article VI	Proved
Article VII (a) and (e)	Not proved
VII (b) to VII (d)	Proved
VII (f)	Partly proved
Article VIII	Not proved
Article IX	Partly proved

9. The petitioner made a detailed representation to the Enquiry Officer's report in the first and second charge-sheets on 18/05/1995. The Disciplinary Authority by order dated 30/06/1995 imposed penalty of dismissal on the petitioner in respect of both the charge-sheets. The Appellate Authority vide its order dated 06/11/1995 in the first charge-sheet and order dated 04/11/1995 in the second charge-sheet was pleased to dismiss the Appeals. The Review filed against the Appellate orders also came to be rejected by

order dated 13/01/1998.

10. Learned Senior Counsel for the petitioner assailed the Enquiry Officer's report and the impugned orders on the ground that the entire enquiry is conducted in utter breach of principles of natural justice and fair play. Learned Counsel invited our attention to the circular dated 18/01/1991 in respect of PMS to contend that the same was management consultancy service provided by the Syndicate Bank. According to him, under the scheme the Bank can accept amounts from various clients including private persons, Government bodies, Semi Government, PSU for investment through the PMS scheme. As per RBI guidelines, the funds are to be accepted without any guarantee of rate of returns and entire investment is to be done at the risk of the client. Further RBI has prescribed that there will be lock in period of one year of the funds i.e. funds from the date of receipt in the PMS account will be kept for a period of one year before being returned to the client with either profit or loss. According to the petitioner, Controlling Officer i.e. petitioner's superior will decide about the investment to be done. In his submission, PMS scheme was operated by Nariman Point Branch as per RBI guidelines. Learned Counsel's emphasis was on the PMS

operations being in the nature of consultancy service and that the amounts were invested in specific securities as prescribed by RBI with one year period of lock in without any guarantee to the client. In his submission no money of Syndicate Bank was used in PMS transactions. It was the responsibility of the Assistant General Manager i.e. petitioner's superior to conduct PMS operation at that branch. In the submission of the learned Counsel for the petitioner whatever amount was invested in the PMS operations at Nariman Point branch was returned to them with interest and there was absolutely no loss caused to the Bank as alleged in the charge-sheets.

11. Learned Senior Counsel invited our attention to the criminal case filed by CBI in the Special Court in the Bombay High Court being Special Case No. 3 of 1998 where the finding has been recorded that no money of Syndicate Bank was used and no loss was caused to the Bank. In the submission of the learned Counsel even the Management witnesses admitted that the loss mentioned in the charge-sheets is only notional. Learned Counsel for the petitioner was at pains to point out that PMS operation was done completely in accordance with the RBI guidelines. There is no charge that RBI guideline has been violated. In his submission, there is absolutely

nothing on record to show that any of the clients who had invested their money in the PMS operation has lost any money. Learned Counsel argued that charges levelled in the second charge-sheet were vague and not definite and distinct as required under Syndicate Bank Officers D & A regulations 1976. Learned Counsel further contends that the documents demanded by the petitioner and which were relied upon by the management to draft the charge sheet were denied to the petitioner.

12. Learned Senior Counsel further urged that the common enquiry held in respect of the petitioner and two others charge-sheeted employees was without any sanction of the Competent Authority to hold the joint enquiry as is required by Regulation 10 of D & A regulations. Only on this ground of want of sanction of Competent Authority to hold enquiry, the enquiry is vitiated. In the submission of learned Counsel, common evidence recorded by the Enquiry Officer in the said common enquiry was without bifurcation of evidence of the witnesses in relation to the deposition made in respect of each of the charge-sheeted officer. The objection of the petitioner against recording of common evidence was brushed aside by the Enquiry Officer.

13. Insofar as the documents are concerned, the learned Counsel submits that around 390 documents are taken on record at one stroke without identification of the documents or proving the contents of the said documents. According to the petitioner, the documents referred to and relied upon by three management witnesses during the deposition though sought for by the petitioner were denied to them. The said documents are at serial nos. 1, 2, 3, 14, 15 & 22 of the list dated 24/01/1994 submitted by the petitioner. The said documents were used by the respondents while drafting charge-sheets, while producing the management documents in enquiry, during the evidence of their witnesses but despite the specific request by the petitioner, the said vital documents were deliberately denied to the petitioner.

14. The learned Senior Counsel for the petitioner raised objection to the management witnesses examined in the enquiry by submitting that none had any experience in the PMS operations and had no knowledge of security transactions. The witnesses did not lead any evidence in support of the charges but the evidence was given in general manner, without any reference to the specific allegation in the charge-sheet. Learned Counsel contends that the management

witnesses were not the authors or persons who dealt with any of the documents relied upon in support of the charge-sheet.

15. Learned Senior Counsel for the petitioner contended that the criminal case was initiated by CBI in respect of the same transactions. The substance of allegation in the criminal case and in the departmental charge-sheets are similar and documents on the basis of which both the proceedings have been initiated are the same. In the criminal case, the petitioner has been discharged by the Special Court and therefore according to the learned Counsel the effect of discharge of the petitioner in the said criminal proceedings would naturally be that there is no merit in the allegations regarding irregularities in PMS transactions. Learned Counsel relied upon the decision of the Apex Court in the cases of **Captain M.Paul Anthony Vs. Bharat Gold Mines Ltd. and anr. (1999) 3 Supreme Court Cases 679 & G.M.Tank Vs. State of Gujarat & Ors., (2006) 5 SCC 446** to contend that the acquittal in criminal trial based on same set of facts will have bearing in departmental proceedings.

16. Learned Senior Counsel for the petitioner has relied upon decision of the Apex Court in **Sher Bahadur Vs. Union of India &**

Ors. 2002 SCC (L & S) 1028 and invited our attention to paragraph 7 wherein it is held by the Apex Court that evidence in departmental enquiry must link charged officer to alleged misconduct otherwise it would be no evidence in law. He also relied upon the decision of the Apex Court in the case of **State of Madhya Pradesh Vs. Chintaman Sadashiv Waishampayan AIR 1961 SC 1623 (V 46 C 308)** and invited our attention to paragraphs 5, 9 & 10 to contend that denial of opportunity to public servant to cross examine witnesses vitiates the enquiry and if copies of the documents are not given to the public servant, the same would violate the principles of natural justice.

17. Learned Senior Counsel relied upon the following decisions in support of his contentions :-

- i) **Kuldeep Singh Vs. Commissioner of Police & Ors. (1999) 2 SCC 10.**
- ii) **Nagaraj Shivrao Karjagi Vs. Syndicate Bank and anr. (1991) 3 SCC 219.**
- iii) **B.C. Chaturvedi Vs. Union of India & ors. AIR 1996 SC 484.**
- iv) **Punjab National Bank & Ors. Vs. Kunj Behari Misra (1998) 7 SCC 84.**

- v) SBI & Ors. Vs. D.C. Agarwal and Anr.(1993) 1 SCC 13.
 - vi) R.P. Bhatt Vs. Union of India & Ors. (1986) 2 SCC 651
 - vii) S. Bhaskar Reddy & Anr. Vs. Superintendent of Police and anr. (2015) 2 SCC 365.
 - viii) Manorama Verma (Smt.) Vs. State of Bihar and ors. 1994 SUPP (3) SCC 671.
 - ix) Dayaram Dayal Vs. State of M.P & Ors. (1997) 7 SCC 443.
 - x) Anant Kulkarni Vs. Y.P. Education Society & Ors. (2013) 2 SCC 515.
 - xi) Union of India & Ors Vs. Naman Singh Shekhawat (2008) 4 SCC 1.
 - xii) State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha (2010) 2 SCC 772.
 - xiii) Chairman LIC of India & Ors. Vs. A. Masilamani (2012) 6 SCC 530
18. Learned Counsel for the respondents on the other hand supported the impugned orders. In his submission, the enquiry was

conducted in accordance with the principles of natural justice. All the documents relied upon during the course of enquiry were given to the petitioner and/or inspection thereof was given to him. In his submission, a glance at the charges levelled against the petitioner would indicate the seriousness of charges. The petitioner was given opportunity to cross examine the witnesses which he has availed of. Learned Counsel for the respondents invited our attention to the Enquiry Officer's report and contended that findings recorded by the Enquiry Officer are based on the materials on record and the same cannot be said to be perverse. In his submission, even the order passed by the Disciplinary Authority is a well reasoned order after considering the materials on record and the findings of the Enquiry Officer's report. The Appellate Authority also taken into consideration all the aspects of the matter and therefore, there are concurrent finding of fact recorded by the Disciplinary Authority and the Appellate Authority which do not call for any interference.

19. Learned Counsel submitted that the petitioner was given opportunity to defend himself at every stage and no prejudice has been caused to the petitioner in any manner and that as such, no interference with the impugned order is called for. Learned Counsel

further submitted that merely because the petitioner is discharged in the criminal case is no ground to exonerate the petitioner in departmental proceedings instituted against him. In his submission, the charges in the Disciplinary proceedings are more to do with the procedure that was adopted by the petitioner as a result of which, the Bank was exposed to a great risk. In the submission of the learned Counsel the petitioner holds an office of trust and merely because the Bank has not suffered any loss is no ground not to proceed against him if ultimately it is found that by act of the petitioner, the Bank has been exposed to a great financial risk. In his submission, the Enquiry Officer has considered all aspects of the matter and has arrived at the findings based on the evidence on record to prove the misconduct committed by the petitioner.

20. Learned Counsel for the respondents relied upon the decision of this Court in the case of **Harish Krishnaji Deshpande Vs. Central Bank of India 2005 II CLR 321** to support the contention that when an objection is not taken when Bank produced documents and were admitted, that the petitioner was given full opportunity to prove himself at every stage, that no prejudice has been caused to the petitioner in any manner and that in these circumstances no

interference with the impugned order is called for.

21. Learned Senior Counsel for the petitioner also relied upon the decision of this Court in the case of **Raghunath Vishnu Patil Vs. R.N.Gavande and ors. 1993 II CLR 50** in support of his submission that non-supply of report on the basis of which the enquiry is initiated, if not relied upon in the disciplinary enquiry, no prejudice is caused to the petitioner.

22. We have considered the submissions advanced on behalf of learned Counsel for the parties. Let us first examine the petitioner's contention in respect of the first charge-sheet. The Enquiry Officer found that Charges Nos. I (a) to (d), (g) & (h) are proved. Further he has recorded the finding that Charges Nos. II, III, IV, VI, VII (a) to (g), (i) and (k) are proved. Insofar as Article I (e) & (f), Article V, Article VII (h) & (j), the Enquiry Officer returned findings that the said Charges are not proved.

23. The Enquiry Officer while considering Charge I (a) has relied upon the document at Exhibit S-2 which is a statement which depicts the details of the shares purchased through M/s.

K.N.Amarchand, broker at the rates higher than the rates quoted at the Bombay Stock Exchange and the quotations published by the Exchange and the quantum of loss sustained by the Bank on account of such purchases. Exhibits S-3, 5, 7, 9, 11, 13, 15, 17, 19, 21 and 23 are the contract notes issued by the said broker for the purchase of shares of various companies. The Enquiry Officer has taken into consideration the documents in the nature of Stock Exchange quotations on the dates of the respective contracts entered into. These quotations indicate the rates at which the transactions have taken place with reference to the shares dealt with. Exhibits S-25 to 47 are the vouchers through which the cost of shares purchased on behalf of the PMS clients were debited to the respective PMS accounts. These vouchers are authorised and authenticated by the petitioner. On the basis of these documents and upon verification of contract notes with the quotation lists of the Bombay Stock Exchange of the same dates, it is found that shares referred to in Exhibit S-2 were purchased at higher rates than the quotations prevailing on the contracted dates. PW.2 - Shri Y.A.Madhyasta deposed that on account of such purchases, an approximate loss of Rs.66.69 lacs was caused to the Bank/PMS clients and the loss has been arrived at on the basis of the average market rates of the shares on the dates. The

petitioner took a stand that at the relevant point of time Shri B.P.D.Pai was the branch Manager and all decisions were taken by Shri B.P.D. Pai. At the highest the petitioner was only following the instructions of his Manager. On the basis of the deposition of the S.W. 1 –Shri B.N.Pai, the Enquiry Officer has arrived at a findings that the petitioner was supervising PMS operations in addition to other duties in the Nariman Point branch and that there is no evidence available on record to show that the petitioner was actually performing significant duties in the branch other than looking after PMS operations. The Enquiry Officer relied upon deposition of S.W. 3 – Shri K.G.Mallya and arrived at a finding that the petitioner was handling and supervising the PMS operations. The investment proposal notes (Exhibit D-17) of different dates recommending investment/dis-investment in PMS operations are signed by the petitioner as Manager and Shri B.P.D Pai as AGM. Shri B.P.D Pai was also the branch Manager at Nariman Point branch and therefore as the petitioner had made signature on these proposals, the Enquiry Officer has inferred that major day to day work of PMS operation was looked after by the petitioner. Even various correspondence issued from the Nariman Point Branch in regard to PMS operation include the word “HKS” in the letter numbers issued which would

indicate that the correspondence was looked after by the petitioner.

It is in this light, the Enquiry Officer has arrived at the following findings :

“It is noticed from the exhibits that the CO was party to payments for the shares even above the highest quoted price during the day on which the purchases were made. It is impossible to make all the transactions at the highest quoted price. Thus it is established that the CO caused substantial loss to the PMS clients by making purchases much above the ruling prices. This has exposed the bank to claims from the PMS clients. This also points out to lack of integrity and honesty on the part of the CO.”

24. Insofar as Charge I (b) is concerned, the Enquiry Officer has relied upon Exhibit S-69 which is a statement relating to the sale of shares through M/s.K.N. Amarchand at rates lower than the BSE quotations and the quantum of loss suffered or sustained on account of such sale transactions. The Enquiry Officer has relied upon various contract notes and the list of quotations of the Bombay Stock Exchange on the given dates to arrive at the finding that shares were sold at rates lower than the market quotations thereby causing loss to the Bank/PMS clients. As per the deposition of S.W.2 Shri Y.A.Madhyashta approximate loss caused to the Bank/PMS clients was of the order of about Rs.1.03 crores.

We do not find any merit in the submissions of learned Counsel for the petitioner that it is physically impossible for the Bank officials

to know what is the market rate on a given date as at that point of time on-line trading was not available and the Bank officials were completely dependent on the brokers. The Enquiry Officer has found that there was no justification for the sale of shares below the market quotations for the reasons that the transactions have been undertaken at Bombay, the premier Stock Exchange and the prices of shares are easily ascertainable. The Enquiry Officer has thus found that the petitioner was supervising PMS operations and there is also evidence of S.W.3 – Shri K.G.Mallya that it is the petitioner who was handling and supervising PMS operations. The Enquiry Officer came to the conclusion that it is the petitioner who was generally supervising the PMS operations in the branch. The Enquiry Officer also found that the petitioner was party to the sale of shares even below the lowest quoted price during the day on which the sales were made and that it is impossible to make all transactions at lowest quoted price. It is in this light that the Enquiry Officer came to the conclusion that substantial loss was caused to the PMS clients by making sales much below the ruling prices. This has exposed the Bank to claims from the PMS clients.

25. Insofar as Charge No. I (c)(i), the Enquiry Officer has

found that on the basis of contract notes at Exhibits S-81, 83, 85, 86, 88, 89 and 91 of M/s.K.N. Amarchand all dated 28/03/1992 for the sale of shares of certain companies and bills raised by the said broker on Syndicate Bank, sale proceeds of the shares which were allowed to remain with the broker even after the pay-out dates i.e. upto third week of April 1992 which is supported by Exhibits S-93 to S-97. The Enquiry Officer thus found that by allowing funds to remain with the broker beyond the stipulated time, loss has been caused to Bank/PMS clients and the same was detrimental to the interest of Bank/PMS clients. The Enquiry Officer has observed that the PMS funds have been received from the PMS clients after indicating certain yield on the funds deployed under PMS. The yield varied between 15% to 20%. In such situation it was not correct on the part of the petitioner to allow the funds to be retained by the broker when the funds could be invested even for a few days to earn interest in the call money market, units and PSU Bonds before these could be deployed in the other high yielding investments. We therefore do not find any merit in the contention of the learned Counsel for the petitioner that the RBI guidelines prohibited any investment in the call money market. Suffice to say the petitioner allowed the funds to remain with the broker much beyond the stipulated time. The

findings by the Enquiry Officer insofar as this charge is concerned is based on the evidence on record.

26. Even insofar as Charge I(c)(ii) is concerned, the Enquiry Officer has relied upon the statement at Exhibit S-98 indicating the details of sale transaction and the loss caused to the Bank for the delayed payment by the broker. The Enquiry Officer has also relied upon Exhibits S-99 to S-111 which are the ledger folios of the IM accounts of certain PMS clients to which sale proceeds of the securities were created belatedly. S.W.2- Shri Y.A.Madhyassta in his deposition has stated that the sale proceeds were at the disposal of M/s.K.N.Amarchand and the proceeds were received belatedly on account of which the loss of around Rs.0.67 lacs was caused to the Bank.

27. As regards Charge I(d), the Enquiry Officer found that as regards purchase of bonds aggregating Rs.43,39,917-82/-, towards the cost of the bonds with the broken period interest, the payment orders were drawn in favour of Corporation Bank. There was no evidence for having received the bonds at all. These pay orders have been issued by the petitioner. The Enquiry Officer has returned the

finding that on 09/05/1992, same bonds were sold through the same broker but at the reduced price. It is found that the records maintained by the branch established the non-receipt of the bonds. In fact, Exhibit S-185 is a letter dated 10/04/1992 written by M/s.K.N.Amarchand to the Bank informing his inability to deliver the bonds for the reason that he could not get required fraction denomination of bonds from the counter party. An offer to deliver NPC bonds as substitute was made. The substitution of NPC bonds was suggested not only in respect of MTNL bonds but also other bonds namely NLO bonds, SCICI bonds contracted separately for purchase. The substitution of the securities as desired by broker M/s.K.N.Amarchand was recommended by the petitioner to the AGM Manager. The Enquiry Officer therefore came to the conclusion that payment of the bonds were made by the petitioner only against the Cost Memos of the broker and without receiving the contracted bonds. The Enquiry Officer after considering the documents on record came to the conclusion that the petitioner made payments and in the guise of purchase and sale of the transactions on behalf of PMS clients, the broker was provided with the funds to the extent of Rs.43.40 lacs from 03/04/1992 (purchase) and 09/05/1992 (sale by adjustment) in the nature of clean accommodation at 13% or less

while the PMC clients were assured of higher yield/return.

28. Insofar as Charge No. I(g) is concerned, the Enquiry Officer on the basis of Exhibits S-203 to S-226 came to the conclusion that Bank earned only the coupon rate of interest for a short period though PMS clients on whose behalf the funds were received and invested have been assured substantial highest yield. S.W.-1 Shri B.N.Pai has deposed that the petitioner supervised the purchase and sale of the bonds carried out through M/s.K.N.Amarchand and that there was no record to show that the securities were received by Bank. The sale transactions were squared up only by means of or on the basis of sale note received from the broker. S.W.1 - Shri B.N.Pai in his deposition has stated that clean accommodation to the extent of Rs.103 crores was made available to the broker. S.W.2- Shri Y.A.Madhyashta in his deposition has stated that in the transactions, Bank received only interest at coupon rate and clean accommodation of huge sums were made available to broker/counter party i.e. FGIL and these transactions are of buyback in nature and in violation of RBI guidelines. The Enquiry Officer has considered the deposition of S.W. 3 – K.G.Mallya who has stated in general and at length about the undue official as well as financial favours shown to FGIL. Thus,

the Enquiry Officer has found that there is no evidence that actual purchases and sales had taken place as the sale rate has been worked out on the basis of loading the interest on purchase rate, it is probable that it was actually a clean accommodation in the guise of purchase and sales. The Enquiry Officer therefore held the said charges as proved.

29. Insofar as Charge No. I(h) is concerned, the Enquiry Officer considered the contract notes and bills issued by M/s.K.N. Amarchand at Exhibit S-227 to Exhibit S-229 indicating the purchase of 50,000 shares of Essar Shipping on 19/05/1992, Exhibit S-230 which is a letter of M/s.K.N.Amarchand expressing their inability to deliver the shares and alternatively requesting the bank to hold 30000 shares of Reliance Industries Ltd. It is found on the basis of the remark in the said letter that the petitioner was aware of the fact that contracted shares were not received on that date. The evidence of S.W.2 -Shri Y.A.Madhyashta indicates that though the payments for 50000 shares of Essar Shipping were made, the Bank did not receive the said shares and the broker informed the bank about his inability to deliver the contracted shares and requested to hold 30000 shares of Reliance Industries Ltd. The Enquiry Officer came to the

conclusion that there are no records to indicate the delivery of shares of Reliance Industries. As regards the remark on page 8 of Exhibit D-12 which shows that 30000 shares of Reliance Industries Ltd. were available on 01/07/1992, the Enquiry Officer found on the basis of the evidence of S.W.2 – Shri Y.A.Madhyassta that the same are not authenticated. The Enquiry Officer did not rely upon the list as the same is incorrect as it showed shares of Essar Shipping in custody whereas it is not in dispute that these shares were not in custody of Bank on 01/07/1992. In this view of the matter, the Enquiry Officer came to the conclusion that payments were made to the broker without actual receipt of the contracted shares and the substitution of shares had been made in a casual manner. The Enquiry Officer considered Exhibit D-17 which are investment proposal notes of different dates recommending investment/disinvestment in PMS operations which have been signed by the petitioner as Manager thereby indicating that the petitioner as Manager was taking part in decision making in PMS operations with Shri B.P.D Pai. The conclusion of the Enquiry Officer that the petitioner was looking after major day to day work of PMS operations is based on the material on record and it cannot be said to be perverse.

30. As regards Charge No. II, the Enquiry Officer

has taken into consideration various cost memos, pay orders issued by the Corporation Bank, letters written by M/s. FGIL to the Bank wherein they have acknowledged the receipt of the amounts and expressed their inability to deliver the contracted bonds and requested the branch to hold securities in the form of certain shares delivered till the alternate arrangements for PSU bonds are made. On the basis of the documentary evidence on record, the Enquiry Officer came to the conclusion that without receiving/delivering the securities, certain entries were made in the records and huge funds were made available to FGIL. The Enquiry Officer has relied upon the evidence of S.W.3 – Shri K.G.Mallya about undue official and financial favours shown to FGIL. The Enquiry Officer therefore held Charge II as proved.

31. As regards Charge No. III, on the basis of the documentary evidence on record the Enquiry Officer came to the conclusion that the shares were purchased at price higher than the market rates and therefore substantial loss was caused to the Bank and PMS clients. In respect of Charge No. IV considering the material on record in the form of Exhibit 98 which is a statement indicating the details of sale transactions where payment were

received belatedly from the brokers viz. M/s.K.N.Amarchand and M/s.Kishore Kumar Hari Ram, the Enquiry Officer came to the conclusion that the petitioner showed undue official favour to broker - M/s.Kishore Kumar Hari Ram in detriment to the interest of the Bank/PMS clients.

32. While finding Article of Charge VI as proved, the Enquiry Officer came to the conclusion that between 23/12/1991 and 05/03/1992, the petitioner conducted certain purchase and sale transactions of buyback nature in violation of RBI guidelines. The Enquiry Officer relied upon Exhibits-266, 267, 283 & 284 which are the statements of purchase and sale transactions. The Enquiry Officer has given details about the transactions which were in the nature of buyback transactions and strictly prohibited under the RBI guidelines in force. He further held that the buyback transactions in PSU bonds and also with the same/identical parties is not at all permitted. The Enquiry Officer relied upon the evidence of S.W.2-Shri Y.A.Madhyassta who deposed that transactions carried out are of buyback nature and violative of RBI guidelines. Even in respect of Charge No. VII(a), the Enquiry Officer came to the conclusion that the petitioner failed to obtain prescribed written agreements from 12

PMS clients.

33. We have gone through the findings recorded as regards Charges No. VII (b), VII (c), VII (d), VII (e), VII (f), VII (g), VII (i) & VII (k). The Enquiry Officer on the basis of documentary evidence and the deposition of the witnesses held the charges as proved. We do not find any perversity in the findings recorded by the Enquiry Officer.

34. The petitioner was served with an enquiry report in respect of the first charge-sheet on 28/03/1995. The petitioner made a detailed representation to the enquiry report on 18/05/1995. The Disciplinary Authority while passing the order of dismissal dated 30/06/1995 observed thus :

“I have perused all the papers/materials/records connected to the case placed before me including the Written Submissions of Sr.H.K.Shenoy. I observe from the proceedings of inquiry that the department inquiry was conducted as per the provisions vide Regulation No. 6 of Syndicate Bank officer Employee's (Discipline & Appeal) Regulations, 1976. I also observe that all the reasonable opportunities have been extended to Sri H.K.Shenoy to defend his case in the inquiry in consonance with the principles of natural justice. I further observe that the Inquiring Authority has submitted his findings based on oral as well as documentary evidence adduced during the course of department inquiry. In his written submissions, Sri H.K. Shenoy has contended that he was discharging his duties as per the directions of his superior authority by enclosing the letter of Sri B.P. D. Pai. His contention is not tenable in as much as the submissions of Sri B.P. D. Pai cannot be given any weightage as the lapses alleged and proved

against Sri H.K. Shenoy were committed by him in contraventions of SEBI/RBI guidelines and in detriment to the interest of the Bank/PMS clients causing huge loss. As such, the gravity cannot be minimised on the ground that he committed such acts on the direction of Sri B.P.D. Pai who apparently had no such powers and is also facing disciplinary action as for major penalty. There are no other extenuating factors in his written submissions and hence the same does not effect the findings of the inquiring Authority. Therefore, I concur with the findings of the Inquiring Authority and hold Sri H.K. Shenoy guilty of the charges levelled against him vide Charge-sheet cited supra to the extent which are proved in the inquiry. The acts for which he has been held guilty constitute misconducts within the meaning of Regulation No.3 (1) read with Regulation No.24 of Syndicate Bank Officer Employee's (Conduct) Regulations, 1976. I find that the misconducts committed by and proved against Sri H.K. Shenoy are serious in nature and that substantial funds of the bank have been put into jeopardy, which warrants imposition of deterrent punishment on him. Therefore, taking into consideration all the aspects of the case, I pass the following :

ORDER

For breach of Regulation No. 3(1) read with Regulation No. 24 of Syndicate Bank Officer Employee's (Conduct) Regulations, 1976. Sri H.K.Shenoy be and is hereby dismissed from the services of the Bank with immediate effect.”

35. The petitioner filed Appeal on 01/09/1995 and the Appellate Authority was pleased to reject the Appeal on 06/11/1995. The review filed by the petitioner was dismissed on 13/01/1998.

36. We have also gone through the findings recorded by the Enquiry Officer on the second charge-sheet. We are not reproducing charges as the charges are somewhat similar to the charges in the

first charge-sheet but in respect of different transactions. On the basis of the documentary evidence on record and the evidence of the witnesses examined, the Enquiry officer has submitted a detailed enquiry report dated 20/03/1995. The Enquiry Officer held Charges No. II, III, VI, VII (b) to VII (d) as proved. He held Charges No. IV, V, VII (f) and IX as partly proved. However, he was of the view that Charges No. I, VII (a) and VII (e) and Article VIII are not proved.

37. The petitioner was dismissed by the appointing authority on 30/06/1995 in respect of second charge-sheet. The Appeal in the second charge-sheet was rejected on 04/11/1995 and the review was also rejected on 13/01/1998. We find that the Enquiry Officer upon considering the material on record and the evidence, documentary as well as oral, has found the charges levelled against the petitioner as proved or partly proved. We may reproduce the findings of the Appellate Authority while dismissing the Appeal filed by the petitioner in respect of second charge-sheet.

“On my perusal of all the records connected to the case I observe that the appellant was directly involved/attended to the PMS transactions in the branch during the material period. He has been persistently arguing that he was working in the branch on the instructions of Sri B.P. D. Pai as he was the higher competent authority who was authorised by HO to conduct PMS transactions at Nariman Point Branch, Bombay. The entire gamut of transactions listed out in the chargesheet in question was in contravention of the

SEBI/RBI guidelines and also in detriment to the Bank's PMS clients causing huge pecuniary loss to the bank. The argument of the appellant that he had carried out the orders of Sri B.P. D. Pai as a duty bound soldier is not tenable for the simple reason that the instructions given by Sri Pai were contrary to SEBI/RBI guidelines and hence the orders cannot be treated as lawful. Since the appellant had directly attended to/supervised the transactions, he is answerable to the transactions. As regards production of witnesses during the enquiry by the management, the appellant cannot have any say over the matter as it is left to the management to produce witnesses of its choice to sustain the charges levelled against the appellant. Assuming, without admitting, that the appellant had acted as per the orders of his superior, no such authority was conferred on Shri Pai to handle the PMS transactions in the branch. Hence the orders said to have been given by Sri B.P. D. Pai were unlawful and obeying unlawful orders also amounts to misconduct. I do not find any extenuating factors in the subject appeal to reconsider the decision of the Disciplinary Authority. Hence, while confirming the penalty of 'Dismissal from the service of the Bank with immediate effect' awarded by the Disciplinary Authority vide his proceedings under reference, I dismiss the instant appeal preferred by Shri H.K. Shenoy."

38. We find that the Enquiry Officer in respect of both the charge-sheets has given reasons in support of his conclusion that charges have been proved. We do not feel that the findings are in any manner perverse. Even Appellate Authority and Reviewing Authority have concurred with the view taken by the Disciplinary Authority. Learned Counsel for the petitioner was at pains to point out that the Enquiry Officer has not correctly appreciated the evidence on record. The law is well settled that this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India cannot re-appreciate the evidence on record as if sitting in Appeal

over the decision of the Disciplinary Authority.

39. In this context we may usefully refer to the decision of the Apex Court in the case of **Suresh Pathrella vs. Oriental Bank of Commerce [(2006) 10 SCC 572]**. In para 13 & 14 has observed thus :-

"13. In Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik: (1996) 9 SCC 69, this Court held that a bank officer's acting beyond his authority constituted misconduct and no further proof of loss is necessary.

In the case of **Regional Manager, U.P.SRTC. vs. Hoti Lal, (2003) 3 SCC 605**, this Court held in paragraph 10 at scc p.614 as under:

If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transaction or acts in a fiduciary capacity, the highest degree of integrity and trust-worthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding order of dismissal".

14. In the case of Chairman and Managing Director, United Commercial Bank vs. P.C.Kakkar, (2003) 4 SCC 364, this Court said in paragraph 14 at scc p.376 as under:

"A Bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good

conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court [In Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik](#), (1996) 9 SCC 69. It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court".

40. We are unable to accept the contention of the learned Counsel for the petitioner that the effect of discharge of the petitioner in the criminal proceeding would naturally mean that there is no merit in the allegation regarding irregularities in the PMS transactions. The departmental proceedings were initiated on account of failure on the part of the petitioner to adopt proper procedure in the PMS transactions and thereby exposing the Bank of financial risk. It is well settled that the proceedings in criminal case and departmental proceedings operate in different fields. The standards of proof and evidence required in the two proceedings are also different. The disciplinary proceedings are concerned with ensuring that the employees conform to the rules of conduct which are prescribed by the employer and

maintain discipline in relation to their employment. The disciplinary proceedings are to weed out persons who are considered unworthy of being a part of the employer organization. The criminal proceedings are with an object to punish the offender. The law is well settled. Acquittal by a criminal Court would not debar an employer from exercising disciplinary power in accordance with the Rules and Regulations in force. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of law. In departmental inquiry, on the other hand, penalty can be

imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. Acquittal of the petitioner in the criminal case by the Special Court, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Bank. We are, therefore, unable to uphold the contention of the petitioner that since he was discharged by a criminal Court, the impugned order dismissing him from service deserves to be quashed and set aside.

41. Learned Senior Counsel for the petitioner raised a contention that holding of common proceedings against the petitioner vitiates the enquiry as the same is without sanction of the Competent Authority. It is his submission that it was not possible to break up the evidence of witnesses as the same set of witnesses have deposed against all the officers charged. We are not inclined to accept this submission. We find that the charges against the petitioner are specific. The petitioner was granted adequate opportunity to cross examine the witnesses. The charge-sheets are issued to the charged officers separately for distinct and specific charges. In our opinion, no prejudice whatsoever can be said to be caused to the petitioner in

this regard as from the proceedings it can be seen that the petitioner correctly understood the charges he was required to defend and even has cross examined the witnesses.

42. Learned Senior Counsel for the petitioner contended that the enquiry conducted is against the breach of the principles of natural justice in as much as the relevant documents were not given to the petitioner. We find no prejudice is caused by non supply of the documents demanded by the petitioner as all the documents relied upon during the enquiry were made available to the petitioner.

43. We find that the enquiry has been conducted in due observance of principles of natural justice. Even the punishment imposed on the petitioner cannot be said to be disproportionate having regard to the charges proved. In these circumstances, we find no merit in the present Petition. The Petition therefore stands dismissed with no order as to costs. Rule stands discharged.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)