

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 386 OF 1995

Navinchandra Amratlal Chande deleted

1a. Mrs.Sharda Navinchandra Chande
Age – 74 years, Indian Inhabitant

1b. Yogesh Navinchandra Chande
Age – 48 years, Indian Inhabitant

1c. Himesh Navinchandra Chande
Age – 43 years, Indian Inhabitant

1d. Anand Navinchandra Chande
Age – 41 years, Indian Inhabitant,

All are Indian Inhabitant, residing
At Building No. 195, Paras, Block
5381, T.P. S 280, Pant Nagar,
Ghatkopar (E), Bombay – 400 075.

1e. Asha Jayesh Mehta,
Age – 51 years, Indian Inhabitant
Residing at A-12, Asha Building,
Plot No. 192, Garodia Nagar,
Ghatkopar (E), Bombay – 400 075.

.. Petitioners

Vs.

1. Union of India.

2. UCO Bank,
a Banking Company and the
Government of India
Undertaking under the
Banking Companies (Acquisition
& Transfer of Undertakings)

Act 1970, having its Registered Office
at 12, Old Customs House Street,
Calcutta 700 001, its Bombay
Main Office at UCO Bank Building,
Dr.D.N. Road, Fort,
Fort 400 001.

3. General Manager (Personnel),
Appellate Authority,
UCO Bank, Calcutta,
having his address at
UCO Bank, 12, Old Custom
House Street, Calcutta – 70001.

4. Deputy General Manager
(Disciplinary Authority)
having his address at
UCO Bank Zonal Office,
Mafatlal Centre, 2nd Floor,
Nariman Point,
Bombay 400 021.

5. Assistant General Manager,
Personnel Department,
Head Office,
Calcutta

.. Respondents

Mr.Vishal Talsania, Advocate a/w Mr.Amit Shroff, for the Petitioner.
Mr.D.A.Dubey a/w Mr.Y.R.Mishra, for Respondent No.1.
Mr.A.D. Shetty a/w Mr.Swapnil Kamble, for Respondents No.2 to 5.

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

**RESERVED ON : 04th AUGUST 2017
PRONOUNCED ON : 14th AUGUST 2017**

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

. Pursuant to the departmental enquiry instituted against the petitioner who is since deceased, now represented by his legal heirs, the Disciplinary Authority on 05/03/1993 passed the impugned order awarding the punishment of reduction in salary scale by 9 stages. The Appellate Authority enhanced the punishment by order dated 19/11/1994 and the petitioner came to be dismissed. These orders are impugned by way of the present Petition.

2. The petitioner was employed by the second respondent as clerk on 21/10/1963. The petitioner was promoted from time to time and from 09/11/1983, he started discharging duties as Acting Manager. The petitioner received 3 congratulatory letters. On 21/07/1987 the Chairman and Managing Director of the Bank appreciated the petitioner's work on achieving the target. In the said letter it is mentioned that though the petitioner has exceeded the target, he should not take it that hereafter nothing needs to be done by him. He was informed that Mumbai being a big city and all other banks are doing well, with more efforts put in by the petitioner and colleagues, it is possible to exceed a deposit target of Rs. 5 crores.

3. On 17/05/1989 the Zonal office appreciated the efforts of the petitioner and noticed that branch has shown profit as against losses being shown in earlier years. The Assistant General Manager on 02/06/1989 appreciated the efforts of the petitioner in registering increase in pure public deposit by 38.24%. On 14/06/1989, the Divisional Manager appreciated the efforts of the petitioner to have successfully achieved the target of Rs.510 crores and noticed that branch has been successful in achieving a growth of 44% in pure public deposits as on 31/03/1989 over December 1987.

4. The petitioner was due for promotion to scale IV and therefore participated in the process. On 20/09/1990, the petitioner was informed that a sealed cover procedure is initiated because departmental inquiry is proposed against him. The statement of allegations dated 18/10/1991 against the petitioner read thus :

Statement of Allegations

While working as Senior Manager of the Bank's Branch at Zaveri Bazar, Bombay, during the period from 25.6.1986 to 20.1.1990, Shri N.A.Chande committed several acts of commission and omission amounting to misconduct as stated hereunder :

1. He unauthorisedly, without the knowledge and without obtaining prior permission from higher authorities, allowed excess drawings in cash credit accounts of various parties to the tune of Rs.11.15 crores (approx.) which is

likely to cause financial loss to the Bank. The accounts are listed in Annexure I. He failed to obtain prior sanction subsequent confirmation for such drawings in these accounts.

2. He unauthorisedly, without the knowledge and permission from higher authorities allowed overdrafts to various parties much in excess of the powers vested in him to the tune of Rs.22.63 lacs (approx.) which is likely to cause financial loss to the Bank. He allowed overdrafts immediately after opening of the current account without gaining sufficient experience of the account holders. Further, overdrafts were also allowed in various accounts of the Group concern, viz., Tea Plantation Agencies. These are examples of wrongful accommodation which have exposed the Bank to the risk of financial loss. A list of all such overdrafts is listed in Annexure II.

3. He failed to exercise due care while releasing/allowing drawings to various parties as per the terms and conditions of the sanction letters inasmuch as disregarding the basic conditions of complying with the creation of equitable mortgage of property by way of collateral security etc. He released/dispensed the limits in favour of various parties and allowed excess drawings to them (as per Annexure III) involving sizeable funds of the Bank.

4. In the accounts of M/s.Audio Crafts, M/s.Padma Arts and Crafts and M/s. Ruchi Products, he continued to allow withdrawals against uncleared effects even when the cheques deposited in the accounts were being repeatedly invariably returned unpaid. Further the name of the proprietor of all the three accounts is one and the same i.e. Shri Avinath Damodar Sawant.

All the transactions in the accounts are in round figures. From the mode of operations allowed in these accounts it is evident that these accounts have been opened and operations allowed therein solely to provide wrongful accommodation.

The Debit balance as on 11.12.1989 in these accounts is as under :

M/s.Audio Crafts	– Rs. 6,01,837.57
M/s.Padma Arts & Crafts	– Rs. 1,50,387.72
M/s.Ruchi Product	– Rs.42,142.17

Statement of accounts as well as particulars of credits afforded to the above accounts is appended as at Annexure IV.”

5. The enquiry proceeded and the Enquiry Officer filed his report on 19/12/1992 and held that the charges levelled against the petitioner stand proved. The Disciplinary Authority by the impugned order dated 05/03/1993 concurred with the enquiry report and awarded punishment of reduction of salary scale by 9 stages. The petitioner filed an Appeal to the Appellate Authority against the punishment awarded. The Senior Manager of the petitioner's branch on 27/07/1993 wrote a letter in support of the petitioner and pointed out that the petitioner has been severely punished by Bank by reducing 12 increments and that though there were several officers who are similarly situate, it is only the petitioner who was treated unfairly in the matter of punishment. It was therefore requested that punishment granted to the petitioner may be reviewed and lenient view may be taken.

6. A letter dated 24/06/1993 was received from the Central

Vigilance Commission, Government of India informing the Bank that they concurred with the Bank's assessment that the petitioner should be dismissed. The show cause notice dated 01/09/1993 was issued by the Appellate Authority asking the petitioner to show cause as to why an enhanced punishment of dismissal may not be imposed on him. The petitioner responded to the show cause notice by reply dated 23/09/1993 and personal hearing was given to the petitioner before the Appellate Authority on 02/11/1993. On 19/11/1994, the Appellate Authority passed an order enhancing the punishment of the petitioner and terminating his service.

7. Learned Counsel for the petitioner submits that during the pendency of the Petition, the petitioner expired and his legal heirs are brought on record. As on the date of the dismissal, the petitioner had worked for 31 years with the Bank. In his submission, at the highest, the petitioner can be said to be overenthusiastic, but there are no allegations against him about his integrity being doubtful in the context that the petitioner has in any manner monetarily benefited by the transactions.

8. Learned Counsel for the petitioner invited our attention

to the Enquiry Officer's report and submitted that the findings are perverse. In the alternate, he submitted that the Appellate Authority should not have enhanced the punishment and that the decision of the Appellate Authority is influenced by the opinion of the Central Vigilance Commission. According to him the Appellate Authority was not justified in enhancing the punishment and interfering with the punishment order passed by the Disciplinary Authority.

9. Learned Counsel for the respondent No.2 - Bank on the hand contends that based on the materials on record, the Enquiry Officer has found that the charges levelled against the petitioner are proved. According to them, this Court cannot exercise writ jurisdiction to re-appreciate the evidence on record. In his submission, the charges are serious and therefore, the Appellate Authority was justified in enhancing the punishment. According to him, the Appellate Authority has imposed the punishment of dismissal only after issuing a show cause notice to the petitioner and upon hearing the petitioner. He contends that the decision of the Appellate Authority is not influenced by the opinion of the Central Vigilance Commission. In his submission the enquiry has been conducted in due observance of the principles of natural justice. The

charges proved are of a serious nature and for the proved charges the punishment of dismissal imposed by the Appellate Authority cannot be said to be disproportionate. According to him, the findings of the Enquiry Officer cannot be said to be perverse so as to warrant interference.

10. We have considered the submissions advanced by the learned Counsel for the parties. We have gone through the Enquiry Officer's report. In our opinion, no perversity can be found in the findings recorded by the Enquiry Officer as the same are based on the evidence on record and the enquiry has been conducted in compliance with the principles of natural justice.

11. As noticed earlier its Disciplinary Authority imposed the punishment of reduction in salary scale by 9 stages. The Appellate Authority enhanced the punishment to dismissal. We may quote the findings of the Appellate Authority.

“I have carefully examined the charge-sheet issued to Shri N.A.Chande, the Enquiry Officer's Report and other relevant papers in this connection and I observe that it has been proved in the enquiry that Shri Chande had allowed excess drawings in a number of cash credit accounts much in excess of his powers. While allowing such drawings he did not obtain prior permission from the higher authorities. Though some of the accounts were regularized at a later stage, the accounts of

M/s.N.Chetan Kumar & Co., M/s.N.Hemant Kumar & Co., M/s.Nagji & Co., Account No.1 M/s.Nagji & Sons, Account No.1 could not be adjusted. In fact, the Bank was compelled to transfer the limits of the above mentioned companies to M/s.Antex Pvt. Ltd., a concern pertaining to the above group. This company also, I find, failed to comply with the stipulation of the sanction and the Bank was left with no other alternative but to initiate legal steps against the party to recover huge outstanding in the account to the tune of more than Rs.56 lacs. Therefore, the contention of Shri Chande that he did not recommend the limit to Zonal Office holds no water as the limit was the outcome of his own omission and commission. It is also observed by me from the Enquiry Officer's report that Shri Chande had allowed overdrafts to various constituents of the Bank much in excess of the discretionary powers vested in him. He even allowed overdrafts to certain parties immediately on the opening of the account without gaining adequate knowledge about the financial worthiness of the party. This constitute wrongful accommodation by Shri Chande. Though Shri Chande in his defence has stated that the accounts where he allowed excess drawings were adjusted at a later stage, he by exceeding his discretionary powers has put the Bank to serious financial risk. The very purpose of setting up limits for parties and entrusting officers with discretionary powers for advances is not meant for indiscriminate and rampant use of such powers. It should be ensured that accounts are operated within these stipulated limits to protect the interest of the Bank. Shri Chande, I find, has failed in this respect.

I also find from the enquiry proceedings that Shri Chande released the advance amounts to parties before creating equitable mortgage. Only in 3 out of 8 accounts, namely M/s.Dimple Textiles, M/s.Madhusudan & Co. and M/s.Saraswati Construction Co., the Bank got the equitable mortgage created in its favour subsequent to Shri Chande's transfer from Zaveri Bazar Branch. Shri Chande thus failed to follow the Bank's guidelines and released or disbursed the limits in favour of the party without fulfilling the required terms of sanction thereby exposing the Banks to great financial risk.

I also observe from the Enquiry Officer's report that he allowed parties to draw against uncleared effects. He allowed withdrawal against clearing to parties wherein the cheques in the accounts were being returned regularly. Shri Chande's contention that he had allowed drawings against uncleared instruments on account of disruption in outward clearing and also for the development of Bank's business is not a valid one. Looking into the seriousness of the charges proved against Shri Chande, I find that he at times acted recklessly in allowing overdrafts to the Bank's constituents and has betrayed the faith

reposed in him by the Bank and by such deeds he has exposed the Bank to serious financial risk. In the circumstances, I feel that ends of justice would be met if I dismiss Shri Chande from the services of the Bank.

Accordingly, in exercise of powers conferred on me under Regulation 17 of UCO Bank Officer Employee's (Discipline & Appeal) Regulations, 1976, as amended. I impose the following penalty on Shri Chande in terms of Regulation 4(h) of the said Regulations for each of charges proved against him: -

“Shri N.A.Chande be dismissed from the service of the Bank which shall ordinarily be a disqualification for future employment.”

12. The Appellate Authority thus found that the petitioner allowed excess drawings in a number of cash credit accounts much in excess of his powers and that he did not obtain prior permission from the higher authorities. The Appellate Authority held that the petitioner made indiscriminate and rampant use of powers and that the petitioner failed to ensure that accounts are operated within the stipulated limits to protect the interest of Bank. By exceeding his discretionary powers, the petitioner has put the Bank to serious financial risk.

13. It is further observed that the Bank got equitable mortgage created only in respect of 3 out of 8 accounts subsequent to petitioner's transfer from Zaveri Branch. The Appellate Authority observed that the petitioner acted recklessly in allowing overdrafts to the Bank's constituents and has betrayed the faith reposed in him by

the Bank and by such deeds he has exposed the Bank to serious financial risk.

14. Though the opinion of the Central Vigilance Commission opinion is on record, it does not appear to us that the Appellate Authority was influenced by the opinion of the Central Vigilance Commission.

15. Insofar as the proportionality of the punishment to be imposed, the Apex Court in the case of **S.R.Tewari Vs. Union of India and anr. (2013) 6 Supreme Court Cases 602** laid down the following tests which would be useful to quote. Paragraphs 25 to 29 read thus :

25. In *B.C. Chaturvedi v. Union of India & Ors.*, AIR 1996 SC 484, this Court after examining various its earlier decisions observed that in exercise of the powers of judicial review, the court cannot “normally” substitute its own conclusion or penalty. However, if the penalty imposed by an authority “shocks the conscience” of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, the court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent

Authority.

26. In *V. Ramana v. A.P. SRTC. & Ors.*, AIR 2005 SC 3417, this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be “shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards.” In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the Court itself can impose appropriate punishment by recording cogent reasons in support thereof.

27. In *State of Meghalaya & Ors. v. Mecken Singh N. Marak*, AIR 2008 SC 2862, this Court observed that a

“13....A Court or a Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges.

14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases.... The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

29. In *Union of India & Ors. v. R.K. Sharma*, AIR 2001 SC 3053, this Court explained the observations made in *Ranjit Thakur* observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in *Ranjit Thakur* are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the

punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds.

16. The scope therefore of judicial review as to the quantum of punishment is permissible only if it is found “shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards.”

17. We may now examine whether the punishment of dismissal imposed by the Appellate Authority needs to be interfered with. The Disciplinary Authority imposed the punishment of reduction in salary scale by 9 stages. As on 05/03/1993 when the punishment of dismissal was imposed on the petitioner by the Disciplinary Authority, he had put in 30 years service with the Bank. The petitioner worked as a Manager and was appreciated for achieving the target. His branch made profit in the year 1988-89 after loss in the previous year. He was appreciated for increasing the pure public deposit by registering a growth of 38.24%.

18. The Enquiry Officer found that the petitioner acted recklessly in allowing overdraft of the Bank's constituents and by his

acts of exercising his discretionary powers in this manner has put the Bank to serious financial risk.

19. 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 project 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".

20. In the light of the law laid down by the Apex Court we are conscious that the scope for interfering in the matter of punishment awarded is extremely limited. From the facts on record it appears that the petitioner has acted recklessly in order to achieve the target. Though the petitioner's acts exposed the Bank to financial loss, in the facts of the present case, it does not appear that the petitioner's intent was for some personal monetary gain nor such a charge was framed against him. Undoubtedly the petitioner being a responsible officer and holding the position of Manager in trust called for greater scrutiny and caution in the conduct of his duties. The Disciplinary Authority on the basis of the proved misconduct imposed the punishment of reduction in salary scale by 9 stages. The Appellate Authority in our opinion should have considered his past

record and the fact that the petitioner had served the Bank for 30 long years. During the pendency of the Petition, the petitioner expired and his legal heirs are brought on record. In our opinion, the punishment imposed by the Appellate Authority dismissing the petitioner from service is not appropriate. The Appellate Authority had also called for the opinion of the Central Vigilance Commission wherein Central Vigilance Commission had informed the Bank that they concurred with the Bank's assessment that the petitioner should be dismissed. No useful purpose will be served by remanding the matter back to the Appellate Authority for reconsidering the quantum of punishment in view of the passage of time and in view of the fact that the petitioner is no more. In these circumstances, we deem it appropriate to substitute the punishment imposed by the Appellate Authority. The following order in our opinion will meet the ends of justice.

ORDER

- i) The order of the Disciplinary Authority awarding the punishment of reduction in salary by 9 stages is retained.
- ii) The order dated 19/11/1994 passed by the Appellate Authority enhancing the punishment and dismissing the petitioner from the service is set aside and substituted with the punishment of

compulsory retirement from service of the petitioner with effect from 19/11/1994.

- iii) The petitioner No.1 (a) – wife of deceased petitioner may be paid the terminal benefits including pension, if admissible, and the arrears of pension, if any, consequent to the compulsory retirement of the petitioner with effect from 19/11/1994 within a period of 4 months from today.

20. The Petition is disposed of. Rule is made absolute in the above terms. No order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)