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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1883 OF 2003

A.D. Padhey of Mumbai Indian
Inhabitant having his address
at State of Bank of India
Shivaji Park Housing Society
Balgovindas Road, Mahim,
Mumbai 400 016.

...Petitioner

vs.

State Bank of India
having its Vigilance Department
and Local Head Office at Post
Box No.10003, Madame Cama Road,
Mumbai 400 021.

...Respondent

Mr. Yash Tiwari i/by K.P. Tiwari & Co., for Petitioner.
Mr. Rupesh Ramchandra Lanjekar, for the Respondent.

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

RESERVED ON : 17th JULY 2017

PRONOUNCED ON : 31st JULY 2017

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

The petitioner was working as Assistant General Manager with the respondent-bank and was heading Personal Banking Division. The petitioner is challenging the order dated 8th March, 2000 compulsorily retiring the petitioner pursuant to the Departmental Inquiry held against him in respect of the transactions relating to the Securities Scam of 1991-92. The transactions in question were carried out by the Securities Division, Mumbai Main Branch of the respondent-bank and the bank alleges that the same resulted in loss of Rs.812 crores to the bank which may be very difficult to recover. The petitioner was served with a charge-sheet dated 23rd November, 1993 as regards irregularities and malpractices at Securities Division, Mumbai Main Branch, Mumbai. The petitioner while working as Assistant General Manager of PBD has committed certain serious irregularities in discharge of his duties which as per the Articles of Charge are as under :-

ARTICLE-I

Shri Harshad S. Mehta, a broker was maintaining his personal account Current A/c.No.4/87/10 in the Personal Banking Division of Bombay Main Branch. Debit/Credit vouchers

emanating from the Investment Cell of the Securities Division of the Branch were allowed to be put through the aforesaid account maintained in the Division of Sh. A.D. Padhye despite the following unsatisfactory features :

(a) If Shri H.S. Mehta or his firm was/were to sell or purchase securities and transactions were to be routed through his current account, for purchases, his account was to be debited and full particulars should have been noted/written on the vouchers and similarly for sales. The relative Bankers cheques were to be issued or received and these were to be dealt with by the Section of the Securities Department at Bombay Main Branch who were dealing with the sale and purchase transactions for the Bank's customers. Instead, debit/credit vouchers with incomplete details originated by the Bank's Investment Cell in the Securities Division (who were to deal with Bank's own purchase and sale of securities) representing payments made to counterparty Banks on account of purchase of securities from them or receipts from counterparty Banks on account of sale of securities to them were freely allowed to be routed through the said account. A few instances of such transactions are given in Annexure 'A' of the charge-sheet.

(b) The vouchers referred to above which were passed by Shri R. Sitaraman, Officer JMGS I (now under suspension) at the Investment Cell for debit of the said account maintained in his Division were put through without any verification and/or scrutiny by his Division.

(c) Shri R. Sitaraman, Officer JMGS I who was posted in the Investment Cell of the Securities Division was vested with passing powers upto Rs.25,000/- only. Sh. Padhye, however, allowed the debits passed by Shri Sitaraman, an official from another Department, much in excess of the passing powers delegated to him, to be debited to the Current Account of Shri H.S. Mehta, maintained in his Division. He thus abdicated the control expected to be exercised by him as Manager of P.B. Division over the transactions passing through his Department and he had allowed Shri R. Sitaraman to continue his nefarious activities without any check. A few instances of such transactions are given in Annexure 'A' of the charge-sheet.

ARTICLE-2

He failed to scrutinise daily the vouchers routed through

his Division as required in terms of paragraph 47 of Chapter II of the Bank's Book of Instructions, Vol.I. Had he done this, as expected of him, the fraudulent transactions put through by Shri R. Sitaraman could have been detected in time.

ARTICLE-3

He recommended to the Dy. General Manager, Bombay Main Branch on the letter dated 10.1.92 (a copy of which is enclosed at Annexure 'B' of the charge-sheet) addressed by Shri Pankaj V. Shah for Shri Harshad Mehta to the SBI Main Branch, Personal Banking Division (for attention of Mr. Padhye) requesting the facility of issuing Bankers Cheques against presentation by the broker of Bankers Cheques drawn in favour of SBI, as under :-

“DGM – This is one of the valued customers and the request of his is genuine. We recommend that the same may be accepted. The Co. is keeping good float funds with us. We have requested the Firm to start keeping some money in TDR with us.” Initialed/- 10.1.92. His further remarks as under with date and initials also appear on the letter.

“DGM – They have assured Rs.25 lacs in TDR this month out of which Rs.5 lacs received on 13.1.192”. Initialed 14.1.92.

(a) Before recommending the proposal, he failed and/or neglected to ascertain :-

(i) How the request was considered genuine by him ?

(ii) Why the Bankers cheques in favour of other Banks were to be issued out of Bankers Cheques issued by other Banks in favour of State Bank when the transactions and the purpose for which the Bankers cheques were issued in the name of State Bank and the Bankers cheques to be issued in the name of the other Banks was not known ? He deliberately remained silent on the point and in addition misled the DGM about the so called genuine request of the firm as it by keeping some deposit with the Bank, the grave risks were covered.

(b) The letter dated 10.1.92 addressed to the SBI Main Branch, P.B. Division, marked for his attention, makes a reference to their

earlier letter of 19.8.91. "Ignoring this letter and making no efforts to know its contents, he recommended to accede to the request of Shri Harshad S. Mehta to the detriment of bank's interest.

(c) He did not enquire before or after recommending to the DGM that the practice of issuing Bankers Cheques against the Bankers Cheques brought in by Shri Harshad Mehta in favour of the Bank was already going on. Had he enquired that the actual position obtaining would have been avoided. For his negligence the Bank had to pay Rs.707,56,39,000/- to National Housing Bank and Rs.105,10,75,000/- to SBI Capital Market Ltd. These amounts are doubtful of recovery and the Bank may have to ultimately incur the loss.

He, therefore, displayed gross negligence throwing the safety of Bank's interest and its funds to the winds and also made recommendations to the DGM in order that Shri Harshad S. Mehta derived undue benefit at the cost of the Bank.

One or more of the charges listed in items 1 to 3 above or a part of one or more of the aforesaid charges would amply demonstrate that he failed to act with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of a Bank official. He also failed to protect the Bank's interest, thereby infringing Rule no.50(4) of SBI Officers Service Rules."

2. The petitioner submitted a detailed written statement of defence to the charge-sheet on 16th February, 1994. He denied the charges levelled against him. During the course of inquiry, the Presenting Officer introduced five prosecution documents which were marked and taken on record as Exh.S1 to Exh.S5. The petitioner introduced twenty five defence documents which were marked and taken on record as Exh.D-1

to D-25. The Presenting Officer did not examine any prosecution witness. The petitioner examined one defence witness whose evidence is recorded as DW-1. The petitioner was generally examined as he was not examined as a witness. The Presenting Officer submitted his written submission on 21st December, 1994 and that of the petitioner was submitted on 19th January, 1995.

3. The Inquiry Officer submitted his report and held that the charges levelled in the Articles of Charge are proved. The Disciplinary Authority upon considering the material on record and the inquiry report recommended that the petitioner failed to take all possible steps to ensure and protect the interest of the bank and discharge his duties with utmost devotion and diligence, thereby infringing Rule 50(4) of the State Bank of India Officers Service Rules. The Appointing Authority therefore imposed the penalty of compulsory retirement in terms of Rule 67(h) on the petitioner.

4. The petitioner filed an Appeal against the order

passed by the Appointing Authority. The Appellate Committee by the order dated 10th April, 2001 for reasons recorded rejected the Appeal. The petitioner filed a Review Petition dated 30th July, 2001 before the Reviewing Committee. The Reviewing Committee by an order dated 5th July, 2002 for the reasons recorded rejected the Review Petition. Learned Counsel for the petitioner assailed the impugned orders. In his submission the petitioner was In-charge of the Personal Banking Division. According to him, all the transactions pertained to the Securities Division of the Mumbai Main Branch. In his submission the charge against the petitioner is based on the vouchers and bare perusal of the vouchers would reveal that the same originated from the 'SDI' Section of the Securities Division. The petitioner has no connection with the Securities Division nor with the Bank Investment Cell and other Sections of Securities Division and thus the question of the petitioner being liable to verify or scrutinize the said vouchers does not arise. In the submission of the learned Counsel the charge-sheet itself has been framed on an incorrect premise. Learned Counsel for the petitioner further

contends that the debit vouchers originated by Mr. R. Sitaraman of the Securities Division was not passed by Mr. R. Sitaraman as the account of Shri H.S. Mehta was maintained in Personal Banking Division and he has no access to the ledger. It is the submission that the said vouchers were passed by Mr. Vijapurkar an Accountant in Personal Banking Division who had initialed the debit vouchers as well as in the ledger and the said Vijapurkar enjoyed full powers to pass the said debit vouchers and he was not required to refer individual debit vouchers to the petitioner in respect of accounts having adequate balance. In the submission of the learned Counsel the charge against the petitioner that he failed in his duty to detect excessive use of powers by the said R. Sitaraman is baseless.

5. Learned Counsel further submitted that the customer Shri H.S.Mehta has sought a facility by a letter dated 10th January, 1992 for single point clearance involving issue of bankers cheques by debit to his Current account and crediting bankers cheques to his account by Securities Division instead of

Personal Banking Division. It is pointed out that as the facility was running satisfactorily and the dealings of Mr. H.S. Mehta were good, the petitioner recommended the same to Deputy General Manager, Mumbai Main Branch his higher authority who did not approve it in writing and thus the said facility was not granted. The petitioner had in fact recommended to the Deputy General Manager that the customer was having large float funds in his account. Learned Counsel therefore contends that as Harshad Mehta was then prime broker and prominent client, recommendation was made by the petitioner in his favour. In the submission of the petitioner, therefore, the petitioner has exercised all due diligence in the exercise of his duty.

6. It is further contended that there were large number of vouchers which the petitioner had to scrutinize on every given date approximately 3000 to 4000 in numbers. The petitioner had to pass them in normal course unless some serious irregularities were noticed. The petitioner did not take any

voucher posted in the accounts of customers during random scrutiny of such vouchers while dealing with correspondence of the customers.

7. Learned Counsel for the petitioner, therefore, contends that the transactions in question had initiated from the Securities Division of the respondent-bank and the petitioner was employed with the Personal Banking Division and not with the Securities Division of the bank. In his submission there was no negligence or violation of his duties on his part. Learned Counsel also brought to our notice the Annual Report of 2002-03 pointing out the entire amount of Rs.812 crores was later recovered and no loss was caused to the bank.

8. Learned Counsel would further contend that as the petitioner is acquitted in criminal proceedings he would stand absolved of his liability in departmental proceedings.

9. Learned Counsel for the respondent-bank on the

other hand supported the order passed by the Appointing Authority, Appellate Authority and Reviewing Authority. In his submission, the Inquiry Officer has recorded the findings of fact while holding that the charges are proved. The petitioner was given ample opportunity to defend himself in the course of the inquiry. The inquiry has been conducted in due observance of the principles of natural justice. In the submission of the learned Counsel for the respondent there is adequate material and evidence on record on the basis of which the charges against the petitioner are held to be proved. Learned Counsel for the respondent invited our attention to the Inquiry Officer's report and the analysis of the evidence to contend that if the Inquiry Officer's findings are based on some evidence which reasonably supports the conclusion that the petitioner is guilty of the charge, it is not the function of High Court to review the evidence and to arrive at an independent finding. In his submission even the Appellate Authority and Reviewing Authority have confirmed the order passed by the Appointing Authority and therefore also as there are concurrent

findings recorded by fact finding authorities, no interference is warranted.

10. Having considered the submissions advanced by the learned Advocates for the respective parties, we are not inclined to interfere with the impugned orders. The Inquiry Officer has found that there was no scrutiny of said transactions/vouchers emanating from the Bank Investment Cell (BIC) to be put through the personal account of Shri Harshad S. Mehta maintained in the Personal Banking Division of which the petitioner was In-charge. The vouchers were all for the amount exceeding Rs.25,000/- had been passed by Shri R. Sitaraman, JMGS-I beyond his powers. The Inquiry Officer has recorded a finding that the indiscriminate manner in which the transactions have been permitted in the personal account at PBD indicates that the petitioner has abdicated the responsibility of monitoring the transactions put through in the current account of Shri Harshad S. Mehta thereby facilitating the perpetuation of a massive fraud.

11. The Inquiry Officer has also taken into consideration the evidence in the form of vouchers on record while returning the finding that charges are proved. The document at Exh.S-3 is a credit voucher for Rs.40,76,39,000/- while other three are debit vouchers representing debits to the account of Shri Harshad Mehta maintained at PBD. The Inquiry Officer has found that all the vouchers have emanated from the BIC in the Securities Division and they have been passed by Shri R. Sitaraman, JMGS-I. The Inquiry Officer found that the narration on the vouchers is very sketchy. In his view an ordinary glance at the vouchers would raise doubts in the mind of the Manager as to why should a voucher raising debit to a customer's account in the PBD emanate from the Securities Division and that too from the BIC which deals exclusively with the bank's own investment operations. It is further observed that when a debit is raised to a personal account of a customer, it is always backed by some authority and such authority is invariably quoted in the voucher itself. Thus, in the opinion of the Inquiry Officer suspicion

should have aroused in the mind of the Manager as to how the vouchers for these large amounts have been passed by an officer in JMGS-I who had no authority to pass such vouchers.

12. Before the Inquiry Officer the petitioner submitted that Shri Harshad Mehta was a leading broker/dealer in securities, his account used to be debited for the cost of securities sold to him by the bank as it involved recovery of legitimate dues payable to the bank and therefore, it was not possible for him as a Manager of Personal Banking Division to know that the debits/credits in the account of Shri Harshad Mehta represented purchase/sale of securities done in BIC. This plea was not accepted by the Inquiry Officer. The Inquiry Officer has recorded a finding that the petitioner has permitted routing of the transactions done in BIC through the current account of Shri Harshad Mehta in PBD without any justification whatsoever. He further found that when the transactions were routed through the PBD, it was the prime responsibility of the PBD Manager to scrutinise/clear the vouchers before

debits/credits were allowed to be made in the current account of Shri Harshad Mehta. The Inquiry Officer noticed that the personal account of Shri Harshad Mehta was allowed to be debited without any authority. The plea of the petitioner that Mumbai Main Branch consisted of three divisions and eleven sections which were working independent of each other and therefore it was not possible for the PBD to know the persons and the power structure in each division, was duly considered by the Inquiry Officer. Inquiry Officer found that in the PBD Division the accountant has full passing powers and he has passed all the vouchers in the ledger (Exh.D-7). It is observed that inter-divisional transactions were done through the divisional heads, the PBD Manager should have ensured that they were reflected in the relevant account only and not in the personal account of the broker. The Inquiry Officer based on the materials on record has recorded a finding that the petitioner was himself to be faulted for allowing Shri Sitaraman, JMGS-I to route the transactions through the personal account of Shri Harshad Mehta in PBD without any question and without even

bringing this fact to the notice of Manager/Deputy Manager of the Securities Division who failed to supervise and control the working in BIC. In our opinion, we do not find any perversity in the finding recorded by the Inquiry Officer holding the first charges as proved.

13. The Inquiry Officer's findings while considering the second charge can be summed up as under :-

That it was incumbent on the part of the PBD Manager to know what exactly was the nature of the transactions passing through his division. Shri Harshad Mehta's account was being monitored at highest level and it was thus expected that the head of the PBD Division would personally monitor the transactions routed through the account of this particular broker. The letter dated 10/1/1992 written by Shri Pankaj Shah on behalf of Shri Harshad Mehta was addressed to the PBD Manager where a request was made for availing facility of issuance of banker's cheques against bankers cheques of some other banks brought by him. This itself was an unusual request

which should have aroused suspicion in the mind of the PBD Manager (petitioner) who should have taken immediate action to personally look into the individual transactions in the account of the broker. The petitioner treated the matter casually as can be seen from his remarks on this letter recommending this facility to the broker. The plea of the petitioner that he had delegated the work of scrutiny of current account vouchers to his Deputy Manager was not accepted by the Inquiry Officer on the ground that as head of a very important division of the bank's business and being well aware that this account was being monitored at top most level, it amounted to total abdication of responsibility on his part in not giving personal attention to the scrutiny of the vouchers put through the account of the broker. It is held that primarily the responsibility for scrutiny of the vouchers lies with the Manager and had the petitioner been cautious and vigilant, the fraudulent nature of the transactions would have come to light well within time. The petitioner's contention is that a new account is monitored for large value credits for six months only. In this case however

regular report was sent to the DGM every month. Although the petitioner himself has agreed that in this particular case monthly reporting was being done but it did not occur to him to scrutinise the vouchers though large sums were being credited and debited to the account on daily basis without proper authorisation. We do not find any perversity in the findings recorded.

14. In so far as the third charge is concerned the Inquiry Officer has found that there was substantial increase in the amounts deposited in the account of the broker from Rs.43 crores from August, 1990 to March 1991 to Rs.2989 crores from April, 1991 to March, 1992, while the float funds had remained in the range of a few lacs/thousands only. The Inquiry Officer duly considered the letter written by Shri Pankaj Shah on behalf of Shri Harshad Mehta containing a recommendation made by the petitioner to grant the facility. The contention of the petitioner that the facility was recommended to Shri Harshad Mehta as he was the biggest depositor in the PBD and the

facilities were sought by him so as to avail the facility of withdrawal from their account on the date of the clearing, was not accepted by the Inquiry Officer. On this basis it is inferred that the facilities were recommended by the petitioner without looking into the genuineness of the request of the party and the purpose thereof though the request made was quite unusual and the specific details of the transactions were not disclosed by the broker. It is further found that the petitioner misled the DGM by furnishing selective information on deposits thereby projecting as if by a small increase in deposits, the grave risks to which bank shall be exposed will be covered. The Inquiry Officer observed that had the petitioner examined the request of the broker properly after making necessary inquiries, he would have found out that the broker was already availing of this facility in BIC unauthorisedly. It is found that because of the negligence on the part of the petitioner in this regard, the bank had to pay a sum of Rs.707,56,39,000/- to National Housing Bank and Rs.105,10,75,000/- to SBI Capital Markets Ltd. and that it would be ultimately difficult to recover these amounts. The

Inquiry Officer thus found that had the petitioner been vigilant, he could have alerted the DGM, Securities Division as well as SBICAP and the fraud on the bank could have been prevented. The money has been released to the broker against these transactions through his current account which was maintained in PBD only. It is in this view of the matter the Inquiry Officer held that the petitioner failed to act with utmost integrity, honesty, devotion and diligence. It was proved that the petitioner acted in the manner unbecoming of a bank officer and that he failed to protect the interest of the bank and the bank has been put to the risk of huge loss of nearly Rs.812 crores.

15. We do not find any merit in the contention of the learned Counsel that merely because the amount of Rs.812 crores was later recovered and no loss was caused to the bank would absolve the petitioner of the charges levelled against him. This defence is not available to the petitioner. 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".

16. On the basis of the Inquiry Officer's report, the Appointing Authority dismissed the petitioner from the service by an order dated 8th March, 2000. The criminal proceedings initiated against the petitioner resulted in his acquittal by the judgment and order passed by the Special Court on 12th April, 2006. We also do not find any merit in the submission made by the learned Counsel that as the petitioner is acquitted in the criminal case he may be exonerated of the charges in the department proceedings. 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 acquitted by a criminal Court, the impugned order dismissing him from service deserves to be quashed and set aside.

17. We therefore find that the charges against the petitioner were not casual in nature but were serious. The Disciplinary Authority has taken all these aspects into consideration and the findings of the Inquiry Officer are based on the evidence on record. We do not find any perversity in the findings so recorded. The inquiry has been conducted in due

observance of the principles of natural justice. Even the Appellate Authority has dealt with the Appeals on merits and concurred with the view of the Disciplinary Authority. In these circumstances, therefore, we do not find any infirmity or perversity with the view taken by the Authorities. We find no merit in the Petition and the same is accordingly dismissed with no order as to costs.

18. Rule is discharged.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)