THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.28314 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner, who was a former employee of the 3rd respondent Bank, is directed against the order, dated 29.06.2007, of the Disciplinary Authority and the order dated, 26.10.2007, of the appellate authority, whereby, the order of the Disciplinary Authority was confirmed. In this writ petition, while seeking to set aside the said orders, the petitioner sought all the benefits to which he would be entitled to as a sequel to the setting aside of the said orders.

2. I have heard the submissions of *Smt. K.Udaya Sri*, learned counsel appearing for the petitioner. I have perused the written submissions filed on behalf of the petitioners. Despite giving a fair and sufficient opportunity, no submissions are made on behalf of the respondents 1 and 2 and impleaded respondents 3 and 4. Therefore, it is treated that the respondents have no submissions to make on their behalf.

3. The core facts, which are required to be stated as a preface to this order, in brief, are as follows:

The petitioner was appointed as an Officer of the respondent Bank on 12.04.1985. He was transferred to Katkur Branch in the year 1988. During his tenure of service at Katkur Branch, in the year 1990, term loans were sanctioned to Scheduled Caste and Scheduled Tribe beneficiaries belonging to various Thandas of Mirjapur village for purchase of 3 HP Electric Motors. The unit cost of 3 HP Electric Motor was Rs.6,000/-. But, under a scheme, a subsidy amount of Rs.3,000/- was given besides a margin money of Rs.1,200/-. The Bank released loan amount of Rs.1800/- to each beneficiary. While so, in the year 2004, as it was reported that the petitioner committed certain irregularities while working as Branch Manager, Katkur Branch, during the period from 29.11.1988 to 27.07.1992, a charge sheet with grounds for the basis of the charges was served upon the petitioner along with a letter, dated 06.10.2004. The management was of the view that the petitioner's statement of defence, dated 12.10.2004, was unsatisfactory. Hence, a departmental enquiry was ordered by appointing the Branch Manager, Dilsukhnagar Branch, as the enquiring authority. The said Enquiry Officer, after duly conducting an enquiry, submitted his report, dated 27.12.2005, stating that charges 1 to 6 are established; but, charges 7 and 8 are not established. A copy of the Enquiry report was served on the petitioner along with a show-cause notice, dated 22.02.2006. The receipt of the same was said to have been acknowledged by the petitioner on 01.03.2006. In the said letter, dated 22.02.2006, it is proposed to impose upon the petitioner the punishment of stoppage of three increments forever and the petitioner was called upon to give his explanation on or before 10.03.2006. The petitioner filed W.P.No.5486 of 2006 before this Court challenging the charge sheet as well as the show-cause notice, dated 22.02.2006. This Court, by order, dated 20.03.2006, disposed of the writ petition, directing the petitioner to submit his explanation to the show cause notice, dated 22.02.2006. However, according to the Bank, the petitioner did not furnish any explanation or objections to the findings in the enquiry report. Therefore, the petitioner was served with a final order, dated 18.03.2006. Nevertheless, as per the appellate authority's direction, a fresh show cause notice, dated 20.01.2007, was issued giving one more opportunity to the petitioner to make his submissions in response to the show-cause notice. The petitioner submitted his explanation, *vide* letter dated 03.02.2007. The Disciplinary Authority while agreeing with the findings of the Enquiry Officer that the charges 1 to 6 are proved, imposed the following punishment, by orders dated 29.06.2007.

> "Reduction of basic pay by 3 stages in the time scale for a period of 3 years. He will not earn any increment to his pay during the period of

> such reduction; and, on expiry of such period, the reduction will have the effect of postponement of his future increments."

The appeal of the petitioner against the order of the Disciplinary Authority was dismissed by order, dated 26.10.2007, passed by the Directors of the Board of the Bank. Aggrieved thereof, the petitioner filed this writ petition.

4. In this setting of facts leading to filing of this writ petition, the case of the writ petitioner, in brief, is this:

The petitioner submitted his defence to the charge sheet, *vide* letter, dated 12.10.2004. The petitioner also submitted his explanation, dated 03.02.2007, to the show-cause notice. Thus, the petitioner denied the charges and submitted a valid defence. Though no valid and legal evidence of substantive nature was adduced to prove the charges, the Enquiry Officer, without considering the defence and the evidence in proper perspective, erroneously held that the charges 1 to 6 are proved. In the enquiry, the Special Auditor and a Branch Manager of the same Branch, who worked at a subsequent point of time, were examined as MWs 1 and 2. The petitioner also submitted written arguments as directed by the Enquiry Officer. Erroneous findings were recorded by the Enquiry Officer holding that the charges 1 to 6 are proved. The alleged irregularities related to a period prior to the years 1990-1992. After 12 long years after the said period, the charge sheet was issued in October 2004. The Disciplinary Proceedings were initiated on the basis of the alleged representation, dated 07.04.2003, addressed to the bank by one L.Roop Singh, Sarpanch, Mirjapur village. The said document bears the signatures of the said Sarpanch and also of MWs 1 and 2. His alleged complaint only shows that certain middlemen collected Rs.2,000/- and that the collected amounts were not deposited into the Bank and that the petitioner paid some amount in a sum of Rs.82,000/- to the said Roop Singh. Even the said allegations are wholly baseless and are not proved. The proceedings are initiated at the behest of disgruntled elements in the bank. When the petitioner was served with a final order, dated 18.03.2006, by registered post imposing the punishment proposed in the show-cause notice, dated 22.02.2006, an appeal has been filed by the petitioner. The appeal was considered. As per the appellate authority's direction, a fresh show cause notice, dated 20.01.2007, was issued giving one more opportunity to the petitioner to make his submissions. To the said show-cause notice, the petitioner submitted his explanation, dated 03.02.2007. The Disciplinary Authority, without properly considering the explanation of the petitioner imposed the punishment of reduction of basic pay by three stages in the time scale for a period of three years and further observed that the petitioner will not earn any increments to his pay during the period of such reduction and that on expiry of such period, the reduction will have the effect of postponing the petitioner's future increments. The appeal of the petitioner was mechanically dismissed confirming the findings of the Enquiry Officer and the Disciplinary Authority. The said order is illegal and arbitrary. The enquiry was conducted in gross violation of the principles of natural justice; and, no witnesses were examined to substantiate the charges. The Board, without properly examining the grounds of appeal, mechanically confirmed the orders of the Disciplinary Authority. It is apt to note that there is reference to a notice said to have been issued by the Branch Manager, Raghothama Reddy. The said notice was issued to the defaulting borrowers for repayment of the dues. On receipt of the said notice, the borrowers prayed the Branch Manager and the Chairman of the Bank for settlement of their grievances. It is to be further noted that as per the case of the management, (99) borrowers met the District Collector, Karimnagar, and submitted a representation, dated 22.06.1999. Despite the said alleged facts, the said Branch Manager, Raghothama Reddy, or the alleged complainant, Roop Singh, who was the Sarpanch, was not examined. No borrower amongst the 99 parties who were said to have submitted a representation to the District Collector was examined. Though one Velukula

Earaiah was said to have given the representation/complaint, he was not one of the 99 borrowers. He is not a borrower at all. At the time of submitting the alleged document, six of the borrowers have written their names and put their signatures; whereas the said six persons have put their thumb impressions in the complaint. Therefore, the said representation is a created document. Though in the enquiry report, it is further stated that the loan amounts of each borrower increased day-by-day and touched Rs.6,200/- as on 31.05.1998, no document is produced to show that the outstanding amount was Rs.6,200/- as on 31.05.1998. The case of the management is that the middlemen, namely, Ajmera Lalu @ Ajmera Ramulu, Islavath Bheema and Islavath Lumba (since died) collected Rs.2,600/- from each person (beneficiary). It is not the case of the management that the petitioner indulged in any acts of misconduct in respect of the amounts collected by the middlemen. Even the said Roop Singh, who was said to have given a complaint to the Special Auditor, was not examined. Though it is the obligation on the part of the management to substantiate the charges by examining the necessary witnesses, no material witness was examined and no evidence worth its name was adduced to substantiate the charges. The findings are not based on evidence, much less legal evidence. Since Roop Singh or any of the borrowers were not examined during the course of enquiry, there is no evidence to show that the amount is collected by Roop Singh from the petitioner to distribute among the 41 borrowers. There is no basis for the charge that Rs.600/- was collected towards miscellaneous expenditure as in the complaint as well as in the Auditor's report, it is not mentioned that Rs.600/- has been collected towards miscellaneous expenditure. Inspite of a request made by the defence representative to examine the material witnesses and give an opportunity to cross-examine them, such an opportunity was denied. MW1 clearly stated that the Sarpanch received the amount from the middlemen. Therefore, the petitioner is in no way concerned with the alleged charge of taking Rs.2000/-

towards deposit and Rs.600/- towards miscellaneous expenditure. The petitioner followed the procedure while sanctioning loans and obtaining relevant documents; and, he inspected the units after installation of electric motors in Wells by the borrowers. 180 motors were supplied by four different dealers as per the choice of the beneficiaries. 139 motors were supplied by Sri Laxmi Engineering & Electricals, Hasnabad; 27 motors were supplied by Venkateswara Engineering & Electricals, Hasnabad; 12 motors were supplied by Jayalaxmi Engineering & Electricals, Hasnabad; and, 2 motors were procured from C.V.Ramana Engineering & Electricals, Hasnabad. Therefore, the allegation that the supply order is only to one dealer is wholly illegal and unjust. On receipt of proper documents and after following the procedure, the loan amounts were released, that too, on supply of motors and submission of necessary bills by the suppliers. The dealers wrongly mentioned the dates as if the motors were released prior to execution of the documents. Subsidy was given by the Government under DRDA sanction proceedings only at the end of March, 1990. By wrong mention of the dates on the bills of the dealers, it cannot be assumed or said that irregularity has been committed by the petitioner. No monetary loss has been caused to the Bank during his tenure between 1990 and 1992 at the Branch. No complaint was given by any borrower that the motors were not released. After the borrowers acknowledged the receipt of the motors, the motors were installed in the Wells at a depth of 15 yards. For any lapses committed by the dealers, who supplied the motors, no imputation can be made against the petitioner. As on the date of inspection, i.e., 29.11.1990, all the borrowers have installed the motors in their respective Wells. The Audit Officer also stated that some loans are closed and some loans are partly repaid. The petitioner was transferred from Katkur to Ramavaram in the year 1992. The initiation of disciplinary proceedings after a gap of 14 years of the alleged transaction is wholly unjustified, illegal and unwarranted. The authorities of the Bank ought to have considered the long unblemished service rendered by the petitioner and ought to have considered the fact that he did not commit any acts of misconduct during his entire service. Though the charges are not proved, a harsh punishment was imposed. In any view of the matter, the punishment imposed is grossly disproportionate to the charges allegedly proved. Most of the borrowers have repaid the loans and hence, no loss has been caused to the Bank. The punishment is not commensurate to the charge allegedly proved and shocks one's conscience. The two witnesses examined have no personal knowledge of the transactions of a period prior to the year 1992. The Branch Manager who issued notice in June 1999 to the defaulters was not examined though it is stated that the defaulters approached him and the Chairman of the Bank and expressed their grievances. Though it is stated that when MWs 1 and 2 met the Sarpanch in the year 2003 and that at that time, he made an oral statement before them and gave ME3, written complaint, the said witness was not examined to prove the gravaman of the charges. Similarly, none of the signatories to ME6 were examined to prove the contents thereof. Thus, no legal evidence was brought on record during the course of enquiry to prove the charges. Yet, the officers of the Bank held that the charges are proved. Hence, the writ petition may be allowed, as prayed for.

5. As already noted, no submissions were made on behalf of the respondents-Bank.

6. However, in the counter, a detailed reference was made to each charge and the findings of the Enquiry Officer in respect of each charge. Thus, in the counter of the Bank, the findings of the Enquiry Officer are reiterated and the counter is accordingly filed supporting the findings of the Enquiry Officer and the proceedings of the Disciplinary Authority & the appellate authority and it is reiterated in the counter that the Bank not only sustained monetary loss but also loss of reputation in the District owing to the misconduct of the petitioner

and that therefore, the punishment imposed is sufficiently proportionate to the gravity of the charges proved and the misconduct established and hence, there is no merit in the writ petition and the writ petition is liable to be dismissed.

7. I have given detailed and thoughtful consideration to the facts and the submissions.

8. Dealing with the charges and the allied aspects in seriatim, it is to be recalled that the Enquiry Officer held that charges 7 and 8 are not proved. Charge No.7 deals with negligence in releasing ATL advances to the borrowers of the Thandas of Mirzapur and Mallampally villages and acts of serious irregularities and failure to ensure creation of assets out of Bank's finances. The Enquiry Officer noted from the record that the electric motor numbers are mentioned in four, five and six digits and that there are no guidelines regarding numbers of electric motors and that they should be in a particular number of digits and that the same was confirmed by MW2 in the enquiry proceedings. Having noted thus, the Enquiry Officer gave credence to the defence and held that no evidence was brought on record to show that the electric motor number should be in same number of digits. He finally held that the imputation in charge No.7 is not proved. Therefore, it follows that there was no negligence on the part of the petitioner in releasing the ATL advances to the borrowers of the Thandas and no serious irregularities are committed and the petitioner has not failed to ensure creation of assets out of bank's finances. Charge No.8 relates to commission of serious irregularities while releasing/conducting ATL advances to the borrowers of the Thandas. In the ground of imputation related to this charge it was specifically alleged that the petitioner was negligent in discharging his duties and obtaining documents and that on the document executed by one person, photo of another person was affixed and loan was released to a third person; and therefore, there are irregularities in releasing and conducting the ATL-5/C5 accounting. The

finding of the Enquiry Officer also is that this charge is not proved. This finding to the effect that the imputations in charge no.8 are not proved also makes it manifest that no serious irregularities are committed by the petitioner while releasing/conducting of ATL advances.

9. Now, it is necessary to turn to the charges 1 and 2, which are held established. The said charges and the imputations relevant to the said charges, read verbatim as under:

> Charge-I: He has entertained middlemen while releasing Electric Motor loans to Bhallunaik, Mothukupally and other Thandas borrowers and acted against the interest of the Bank and borrowers.
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> IMPUTATION: When special audit of the branch was conducted by Sponsor Bank official, it was revealed that before sanction/release of loans, three middlemen were engaged namely (i) Sri Ajmera Lalu alias Ajmera Ramulu, S/o Hanmiya, (ii) Islavath Bheema, S/o Hoonya and (iii) Islavath Lumba S/o Bodiya (expired later) to collect Rs.2,600/- towards a) Term Deposit in Bank: Rs.2,000/- and b) Rs.600/- towards miscellaneous expenditure, but not deposited into Bank. Ninety Nine (99) borrowers reported the matter to District Collector and endorsed a copy to the Bank during 1999. The borrowers, from whom the amount was collected were under the impression that Rs.2,000/- collected towards deposit will take care of the Bank loan of Rs.1,800/-. Thus, the official by entertaining middlemen acted against the interests of the Bank and borrowers.
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> Charge-II: When the borrowers complained towards collection of Rs.2,000/- towards deposit and Rs.600/- towards miscellaneous expenditure, the CSO came to an understanding with complainants and paid Rs.82,000/- in 41 cases. This is gross violation of service conditions and against the interest of the Bank.
>
> IMPUTATION: During Special Audit of the branch, Sri L. Roop Singh, the Sarpanch of Mirzapur Village informed to the Auditor Sri C.R.V. Prasad and the Branch Manager Sri K. Prabhakar, that he has paid Rs.82,000/- to him towards refund of collected amount in case of 41 borrowers. Sri Roop Singh could not credit the amount to the respective ATL accounts in the Bank as the borrowers were reluctant and refused the repayment to the Bank, hence he distributed the

amount to the borrowers. Thus, the CSO has violated the Service conditions and also acted against the interest of the Bank.

Dealing with these charges, it is to be noted that it appears from the case of the management that the Branch Manager, Raghothama Rao, after taking charge of Katkur Branch in June, 1999 served notices on the defaulters for repayment of dues. It also appears from the case of the management that on receipt of notices, all the defaulters met the said Branch Manager and also the Chairman for settlement of their grievances and that 99 borrowers reported the matter to the District Collector, Karimnagar, by submitting a representation, dated 22.06.1999 (ME6). However, neither the said Branch Manager nor the then Chairman was examined as a witness to speak about the alleged grievances of the borrowers. According to the management, thereafter, C.R.V.Prasad, the Special Auditor-MW1; and, the Branch Manager, Prabhakar-MW2, visited the Thandas, on 07.04.2003, and met some of the beneficiaries and also the then Sarpanch, Roop Singh, and came to know about the irregularities allegedly committed by the petitioner in sanctioning and releasing of loans. Even this visit by the said witnesses (MWs 1 and 2) was long after the alleged representation given by some of the borrowers to the District Collector and the alleged meeting between the borrowers on one hand and Raghothama Rao, the then Branch Manager, and the then Chairman of the Bank on the other hand. According to the said Auditor and the subsequent Branch Manager (MWs 1 and 2), the Sarpanch informed them that before sanction and release of loans, three middlemen, namely, Sri Ajmera Lalu alias Ajmera Ramulu, S/o Hanmiya,; (ii) Islavath Bheema, S/o Hoonya; and, (iii) Islavath Lumba S/o Bodiya (since died); have collected Rs.2,600/- from each person identified by the Bank for sanction of loan for electric motors, i.e., Rs.2,000/- towards term deposit to be made into Bank and Rs.600/- towards miscellaneous expenditure and that the term deposit amounts collected from the beneficiaries or the borrowers were not deposited into the Bank by the middlemen and that in most of the cases, most of the borrowers were under the impression that Rs.2,000/- collected from them would take care of the bank loan of Rs.1,800/- being the loan component and that for non-deposit of Rs.2,000/- with the bank, the loan amount increased day-by-day to the extent of Rs.6,200/- as on 31.05.1998 and therefore, the said 99 borrowers lodged a representation, dated 26.02.1999, before the Collector. Further, there was also a reference to a representation, dated 07.04.2003-ME3, said to have been submitted by Roop Singh, the then Sarpanch of Mirzapur, to the Bank which was signed by MWs 1 and 2 as witnesses. The Sarpanch who made such representation to MWs 1 and 2 was not examined. Therefore, the basis for the charges and the imputations is obviously the information orally received from the Sarpanch by MWs 1 and 2 during their visit to the Thandas, on 07.04.2003, and also the representation, dated 22.06.1999-ME6, submitted by (99) borrowers to the Collector and the representation, dated 07.04.2003-ME3, submitted by the Sarpanch, Roop Singh, to the Bank. The two witnesses examined namely the Auditor and the Branch Manager, who subsequently worked in Katkur Branch, have no personal knowledge of the matters in regard to collection of monies by the named middlemen towards term deposits and miscellaneous expenditure and non-deposit of the allegedly collected amount of Rs.2000/- from each beneficiary or borrower. The imputation and the basis for the imputation is that the middlemen collected the amounts but not the petitioner and that the amounts collected by the middlemen were not deposited with the bank. The copy of the representation submitted to the Collector was endorsed by the District Collector to the Bank. The Sarpanch of Mirjapur, Roop Singh, or any one of the middlemen was not examined as a witness, during the course of enquiry. In ME6, dated 22.06.1999, which was said to be a representation submitted by (99) borrowers to the Collector, it was stated that when notices of attachment were issued to the borrowers by the Bank, they confronted the petitioner at Jammikunta village and questioned him about non-deposit of the term deposit money into the Bank and that on that the petitioner stated that he used the said amount for his personal needs and that he would close the bank loan accounts within three days and that he failed to close the loan accounts and that subsequently, they questioned him again in the presence of the Sarpanch, Roop Singh, and that on that he stated that he would close 30 loan accounts related to 30 electric motors and further gave an irresponsible reply that the borrowers can complain to whomsoever they wanted. None of the signatories to this representation-ME6 were examined and it is not even the imputation that the petitioner collected the monies from the borrowers and failed to deposit the same with the Bank. Coming to the contents of ME3, dated 07.04.2003, which is stated to be a complaint issued by Roop Singh, Sarpanch of Mirjapur village, to the Bank, it is to be noted that it reflects that even before the loans are released, the middlemen (pairavikars) collected Rs.2,000/- each from the borrowers, but failed to deposit the same into Bank and that the loan accounts are not closed. The said ME3 further discloses that when the petitioner was questioned, he agreed to deposit Rs.2,000/- to the credit of loan accounts of 41 borrowers and paid Rs.82,000/- to the borrowers through the said Sarpanch, but, the borrowers did not close the loan accounts. The said ME3 further reflects that to avoid disputes, the Sarpanch later gave a statement in writing that the amounts are collected from the middlemen/mediators and that when he offered to deposit the amounts to the credit of the respective loan accounts of the borrowers, they refused for the said course and therefore, he has returned the respective monies to the respective borrowers. Therefore, ME3, plainly makes it manifest that the Sarpanch-Roop Singh gave a statement in writing that the amounts were collected by the borrowers from the middlemen and that he suggested that the same shall be deposited to the credit of the respective loan accounts of the borrowers; but, the borrowers refused to accept the said suggestion and that thereafter they received back their respective amounts and failed to close the loan accounts having received back the loan amounts from the Sarpanch. In this backdrop, Roop Singh, is admittedly a material and crucial witness and he should have been examined as a witness during the enquiry and an opportunity should have been afforded to the petitioner to cross examine him, in case the management of the Bank wanted to place implicit reliance on the version of the Sarpanch and the contents of ME3. But, as already noted, the said Sarpanch was not examined. ME3 and ME6, on a perusal, only disclose that the middlemen collected the amounts and ultimately, the money reached back the borrowers through the Sarpanch after the said amounts were collected back from the middlemen; but, the loans were not closed by the borrowers in spite of a suggestion accordingly made by the Sarpanch of Mirjapur. On account of non-examination of the Sarpanch, who is the author of ME3, and any of the borrowers who are the alleged signatories to ME6, representation, the contents of the said documents are not proved. Therefore, by placing reliance on ME3 and ME6 and the oral statement said to have been made to MWs 1 and 2 by the Sarpanch-Roop Singh, who was not examined as a witness, it is not possible to come to a safe conclusion that the constituents of charges 1 and 2 are proved. Without proving ME3 and ME6 and without examining material witnesses, the management of the Bank cannot be heard to say that there is legal evidence to establish charges 1 and 2.

10. Now, it is necessary to deal with Charges III, IV, V & VI, which read verbatim as follows:

> <u>Charge-III:</u> He has not followed the systems and procedures while releasing the Electric Motor loans to Bhallunaik and Mothkupally Thanda borrowers. Thus, committed serious irregularities while releasing ATL loans to the borrowers.
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> <u>IMPUTATION:</u> 119 (One hundred and nineteen) Electric Motor loans (ATLS) are in live ledgers as on April, 2003, which were sanctioned/released the official on 30.07.1990 and 31.07.1990 (47 + 72), while releasing these loans he has not observed the systems and procedures;

i) Quotations were not called for from the 2 or 3 manufactures/suppliers in all the cases;
ii) Supply orders were not placed after selecting the suppliers;
iii) Delivery orders were not obtained;
iv) Motor manual-cum-guarantee card were not obtained and placed along with documents even in a single case out of 119 cases.
v) No evidence of having conducted pre-sanction and post sanction inspections.
vi) Loan pass books were not issued to borrowers.

Thus he has violated the systems and procedures while releasing ATL advances to Bhallunaik and Mothkupally Thanda borrowers.

Charge-IV: He was negligent in releasing of ATL advances to borrowers of Bhallunaik and Mothkupally Thandas, he gave scope for mis-utilisation and non-creation of assets out of Bank Finance, thereby assets were not created. Committed serious irregularities in release/conduct of ATL advances.

IMPUTATION:

For the following ATL accounts, loan documents were executed on 12.06.1990, loans released on 30.07.1990, and 31.07.1990 as below: DRDA subsidy proceedings are dated 31.03.1990. Whereas the bills were on earlier dates than the dates of release of advance, execution of documents, DRDA subsidy proceedings, showing clearly the loans were not released as per systems and procedure, indicating the misutilization of Bank's funds and not ensured the creation of assets out of Bank's finance:

Sl. No	ATL A/c No.	Date of loan released	Date of execution of documents	Bill No.	Bill Date
a)	10 c/26	30.07.1990	12.06.1990	784	08.03.1990
b)	10 c/13	30.07.1990	12.06.1990	786	10.03.1990
c)	10 c/46	31.07.1990	12.06.1990	788	08.03.1990
d)	10 c/52	31.07.1990	12.06.1990	787	10.03.1990
e)	10 d/2	31.07.1990	12.06.1990	811	10.03.1990

DRDA Proceedings:

1. C2/540, dated 31.03.1990
2. DTG/1989-90, II, Dated 31.03.1990
3. C2/539, dated 31.03.1990
4. C2/538, dated 31.03.1990
5. C2/537, dated 31.03.1990

Bills 784 and 788 are dated 08.03.1990, whereas Bills 786 and 787 are dated 10.03.1990. All the above indicate its irregular nature and indicating its fictitious nature of bills and that no assets were created out of Bank's finance.

Charge-V: He was negligent in releasing ATL advances to borrowers of Bhallunaik and Mothkupally thandas, and committed serious irregularities and not ensured the creation of assets out of Bank's finance.

IMPUTATION:

He has accepted the bills from the supplier of the Electric Motors, M/s. Sri Lakshmi Engineering and Electricals, Husnabad with the same motor serial number of same make mentioned in two bills as below, indicating that no assets were created out of Bank's finance.

Sl. No.	ATL No.	Name of the borrower	Bill No. and Dates	3 HP Motor	Motor Company Name
1.	10 c/6	L.Junka	125/20.06.1990	57059	3 HP "SELECT"
2.	10 B/13	V.Bondaiah	84/20.06.1990	57059	3 HP "SELECT"
3.	10 C/56	A.Maliya	938/20.06.1990	57027	3 HP "SELECT"
4.	10C/57	L.Balu	944/20.06.1990	57027	3 HP "SELECT"
5.	10C/20	L.Kisan	124/20.06.1990	57061	3 HP "SELECT"
6.	10C/35	K.Makhya	941/20.06.1990	57061	3 HP "SELECT"

Charge-VI: He was negligent in releasing ATL advances to borrower of Bhallunaik and Mothkupally Thandas of Mirzapur and Mallampally villages and committed serious irregularities and not ensured the creation of assets out of Bank's finance.

IMPUTATION:

He has accepted the Bills from the supplier of the Electric Motors, M/s. Sri Lakshmi Engineering and Electricals, Husnabad as below: Bills are not serially numbered even when issued on the same date and the bill numbers are with vast difference, show that they are fictitious in nature, thereby indicating that no assets were created out of Bank's financé.

Sl.No.	ATL No.	Bill No.	Bill date
1.	10 C/46	788	08.03.1990
2.	10C/26	784	08.03.1990
3.	10C/13	786	10.03.1990
4.	10C/52	787	10.03.1990
5.	10D/2	811	10.03.1990
6.	10C/39	953	26.05.1990
7.	10C/44	954	02.06.1990
8.	10C/49	949	10.06.1990
9.	10C/24	73 Printed (subsequently altered as 684)	20.06.1990
10.	10C/38	913	20.06.1990
11.	10 D/1	108	20.06.1990
12.	10D/13	310	20.06.1990
13.	10C/51	948	21.06.1990
14.	10C/40	780	28.06.1990

In view of the findings on charges 7 and 8 that the said charges are not proved, it is manifest that the findings of the Enquiry Officer that the charges 3 to 6, which deal with the same imputations and constituents, are proved are self contradictory and therefore, the findings to the effect that the charges 3 to 6 are proved are unsustainable. Moreover, when there is no legal and substantive evidence and when the Auditor and the subsequent Branch Manager (MWs 1 and 2) have no personal knowledge about collection of amount by the middlemen etcetera and when they are incompetent to speak about the entertainment or the involvement of the middlemen, it follows that there is no evidence worth the name to hold that the charges 1 to 6 are established. As rightly contended by the learned counsel for the petitioner, the findings of the Enquiry Officer are based on no evidence. Further, the non-examination of the crucial/material witness, Roop Singh, or any one of the borrowers, who allegedly gave ME6, representation to the Collector, coupled with the non-examination of R.Raghothama Reddy, the then Branch Manager, are fatal to the disciplinary proceedings. Therefore, the findings that are recorded without any evidence worth the name suffer from fatal defects and are hence, liable to be set aside.

11. Before proceeding further, it is trite to note that the law is well settled that in matters arising out of disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal and that the High Court shall not venture into re-appreciation of the evidence unless the conclusions on the very face of the record are wholly arbitrary and capricious and no reasonable person could ever have arrived at such conclusion. It is also fairly well settled that interference is permissible only when the Disciplinary authority as well as the appellate authority have allowed themselves to be influenced by irrelevant or extraneous considerations and when their findings are influenced by inadmissible evidence. In this regard, it is necessary to refer to a decision in

Union of India v. P. Gunasekaran[1], wherein the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

> In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:
>
> (a) the enquiry is held by a competent authority;
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> (b) the enquiry is held according to the procedure prescribed in that behalf;
>
> (c) there is violation of the principles of natural justice in conducting the proceedings;
>
> (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
>
> (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
>
> (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
>
> (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
>
> (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
>
> (i) the finding of fact is based on no evidence.
>
> Under Article 226/227 of the Constitution of India, the High Court shall not:
>
> (i). re-appreciate the evidence;
>
> (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
>
> (iii). go into the adequacy of the evidence;
>
> (iv). go into the reliability of the evidence;
>
> (v). interfere, if there be some legal evidence on which findings can be based.
>
> (vi). correct the error of fact however grave it may appear to be;
>
> (vii). go into the proportionality of punishment unless it shocks its conscience.

12. In the case on hand, the Enquiry Officer and the appellate authority placed reliance on ME3 and ME6 though no person connected with the said documents was examined and the contents thereof are not proved. Therefore, it can safely be held that the findings that the charges 1 to 6 are proved are influenced by irrelevant and extraneous considerations and that the said findings based on inadmissible evidence or no evidence are unsustainable under

[1] (2015) 2 SCC 610

facts and in law. Further, as per the fairly well settled legal position, when the findings are perverse and are influenced by inadmissible evidence, this Court can re-appreciate the evidence to remedy the injustice.

13. There is one more aspect to be considered. In the case on hand, the loan transactions relate to the period prior to the year 1992, during which the petitioner worked as Branch Manager, Katkur Branch. Fourteen years subsequent to the said transaction, on the grounds of negligence and irregularity in releasing and sanctioning the loans for purchase of motors by the beneficiaries of Thandas, the charges were formulated. While holding that charges 7 and 8 are not proved, the Enquiry Officer exonerated the petitioner in regard to imputations concerning negligence and irregularity in releasing and sanctioning of loans. Insofar as the imputation that the petitioner entertained some middlemen and that the said middlemen collected some amounts from such borrowers even before the loans are released by the Bank and that the said amounts were not deposited to the credit of the loan accounts of the borrowers with the Bank, neither the Sarpanch nor even a single borrower was examined. Further, the documents ME3 shows that the Sarpanch, to avoid disputes, gave a written statement that the amounts that were collected were received back from the middlemen and not from the petitioner. There are also contradictory versions in ME3. Be that as it may, in regard to loan transactions of the year 1990, the charge sheet was issued and disciplinary proceedings were initiated 14 years thereafter imputing negligence, irregularities and misconduct. No explanation is forthcoming from the respondent bank for the inordinate delay in initiating the disciplinary action even though the accounting system of the bank is subject to annual audit, both internal and external. No accusing finger was pointed out against the petitioner during all these fourteen years period of time. Only because some of the loans were not closed and the defaulting borrowers, who felt aggrieved by the attachment proceedings initiated against them, raised an issue of collection of amounts by the

middlemen, the charges were formulated that too basing on a representation, ME6, given by some of the borrowers to the Collector and the representation, ME3, given to the Bank by Roop Singh, the Sarpanch; and, eventually, neither the Sarpanch, Roop Singh, who gave ME3-representation, nor any one from amongst the borrowers, who gave the representation-ME6, to the District Collector were examined to prove the constituents of any of the charges. On the above analysis, this Court finds that there is merit in the contentions of the writ petitioner that the findings to the effect that the charges formulated against him are proved are unsustainable under facts and in law and resultantly, the writ petition deserves to be allowed. In that view of the matter, this Court finds that the writ petition deserves to be allowed.

14. In the result, the Writ Petition is allowed, as prayed for.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01.06.2017
RAR