THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

**WRIT PETITION No.2172 of 2012**

**ORDER:**

Petitioner has filed this Writ Petition seeking a Writ of Certiorari calling for the proceedings of the General Manager (HR), Bank of India in GCT:DA:315 dt.01-02-2010 as confirmed by the Executive Director, Bank of India (Head Office), Mumbai in proceedings No.10S:AA:035 dt.04-06-2011, which was further confirmed by the Chairman & Managing Director, Bank of India in his proceedings Ref.No.AKM:RA:15 dt.09-05-2012 and to quash the same.

2. The petitioner joined the services of the Bank of India (for short "the Bank) as Scale I Officer Probationary Officer on 28-12-1981. He was promoted to the Middle Manager Grade.II in 1996 and was later promoted as Senior Manager on 22-08-2002. He worked as Senior Manager in SVGM Complex Branch, Rajahmundry between 14-07-2003 to 26-04-2007.

**THE CHARGE MEMO**

3. On 30-12-2008, a charge memo was issued to him alleging that he committed certain misconduct while he was posted in the SVGM Complex Branch between 14-07-2003 and 26-04-2007. The said charge memo consists of 3 parts.

(a) Article-I of the Charge memo relates to sanction of loans by him between 03-02-2006 and 07-11-2006 of working capital limits/term loan to M/s. Vijaya Feeds, M/s. Satya Feeds and M/s. Satya Bio Products. It is alleged *inter alia* that M/s.Vijaya Feeds and M/s. Satya Bio Products were non-existent and includes allegation of preparation of false pre-sanction inspection reports, making disbursements without ensuring end use of funds and providing finance to M/s. Satya Feeds, whose machinery was already financed by UCO Bank.

(b) Article-II of the Charge memo relates to petitioner accommodating one V.Nagesh Babu between 13-01-2004 and 14-09-2004 by sanctioning loan/cash credit limit for wholesale distribution of medicines in the inter-related accounts of 4 units by name M/s.Manikanta Traders, M/s.Balaji Enterprises, M/s.Sai Laxmi Medical Enterprises and M/s.Sai Laxmi Medicals of which he was either a borrower or guarantor.

Inter alia it was alleged that as regards M/s.Manikanta Traders, the loan was secured by creation of equitable mortgage of six shops, which were already mortgaged to the branch for securing term loans sanctioned to 3 other borrowers; that details of collaterals to be mortgaged were not mentioned in the loan proposal and in recommendation column; that the Unit was not functioning at the time of second review on 21-03-2006 and third review on 21-03-2007; that without authority, he reviewed the account on 21-03-2007, changed the terms and released the 4 shops which were taken as collateral security thereby diluting the securities in the account, even though his lending powers were withdrawn by the Zonal office on 03-04-2006;

As regards M/s.Balaji Enterprises, it was alleged that he reviewed the account on 06-05-2006 without authority, released the guarantee of Smt.Karutusi Nagamani and inducted Sri Kotha Veerabhadra Rao as guarantor in her place without her knowledge in spite of the fact that his lending powers were withdrawn by the Zonal office on 03-04-2006.

As regards the account of M/s.Sai Lakshmi Medical Enterprises, it is alleged that he reviewed the account on 07-03-2007 without authority and released the term deposit of Rs.4 lakhs kept as collateral security by the borrower and accepted the new guarantor Smt.Karutusi Nagamani even though his lending powers withdrawn by the Zonal office on 03-04-2006 and the Unit was not in existence at the given address.

As regards the account of M/s.Sai Lakshmi Medicals, it was alleged inter alia that he reviewed the accounts on 07-06-2006, changing the terms, released existing guarantors and accepted new guarantors even though his lending power was withdrawn on 03-04-2006; that he made cash disbursements of Rs.27 lakhs in violation of banking guidelines; that he failed to extend the equitable mortgage of the property replaced vide proposal dt.07-06-2006 and did not take fresh property for mortgage for the enhanced limit of

Rs.45 lakhs + Bank Guarantee limit of Rs.10 lakhs sanctioned on 18-04-2007; falsely certified existence of stock woth rs.25 lakh while recommending the proposal when the borrower had only Rs.2.18 lakhs certified stock; released on 27-09-2004 equitable mortgage of 2 shops and F.D.R. of Rs.3 lakhs and assignment of LIC policy resulting in dilution of security; and that he did not obtain documents for the guarantee limits sanctioned in the account and did not get the equitable mortgage extended to the said limit.

(c) Article-III of the Charge memo relates to sanction of term loan of Rs.2 lakhs each in 3 accounts relating to Reddy Appaji Rao, Thummalapudi Appa Rao and Thummalapudi Vidya Kiran Babu for purchase of shops at Akhil plaza and to set up a computer system, printer and peripherals. It is alleged that he did not verify the Encumbrance Certificate of the shops before creating equitable mortgage to the bank; that dues were sought to be recovered by invoking the provisions of the SARFAECI Act, 2002, and a third party gave a legal notice saying that she purchased the shop on 02-05-2001; and that he did not monitor the account and failed to ensure end use of funds by carrying out post-sanction inspections.

It is alleged in the charge memo that he failed to discharge his duty with utmost integrity, honesty, devotion and diligence and failed to take all possible steps to ensure and protect the interests of the Bank, which if provided amount of breach of Regulation 3(1) of the Bank of India Officer Employees' (Conduct) Regulations, 1976. A statement of allegations in respect of each of the charges was annexed to the charge memo. It was mentioned that by his action the Bank suffered monetary loss which was quantified under each sub-head of the Articles of charge.

**<u>THE EXPLANATION OF PETITIONER TO ARTICLES OF CHARGE</u>**

4. On 16-01-2009, petitioner submitted an explanation denying all the charges.

5. Petitioner contended in his reply that he did his job well and always acted to protect the interest of the Bank in terms of the profit.

( i) On Article-I of the Charge memo, he stated as under:

As regards the account of M/s.Vijaya Feeds and M/s.Satya Bio Products, he denied that he prepared false pre-sanction inspection reports or false post-sanction inspection report as alleged in the charge; that units M/s.Vijaya Feeds and M/s.Satya Bio Products were in existence and the present Manager visited the units late at night between 9 and 10 p.m. and that what is why he could not locate both the Units; and that the Bank had adequate collateral security and would not suffer any loss.

As regards M/s.Satya Feeds he denied that he failed to conduct proper pre-sanction inspection or that he failed to ensure end use of funds and stated that disbursement was made through pay orders in favour of the local machinery/equipment suppliers. He denied that the Unit was already financed by the UCO Bank and that he financed old machinery. He also denied preparing post-sanction inspection reports and contended that there is machinery and stock as primary stock and there is also 100% collateral security and the Bank would not lose any money.

As regards M/s.Satya Bio Products, he also contended that he did ensure end use of funds; since the borrower was to purchase necessary material and seed worms from Amalapuram where the Bank did not have branch and the seed worm suppliers had bank accounts there, he had acted properly. He denied preparation of false post-sanction inspection reports and contended that he inspected and confirmed the end use of funds, kept on record the verified the receipts and Unit photos along with entrepreneur training certificate of the borrower.

He alleged that when a team of 4 persons, whom the borrower had never seen before went to meet her at 10 p.m. and 11 p.m., it is natural for the borrower to say that she never borrowed anything from the bank or that she did not set up any Unit; that on the next date, the borrower gave a serious complaint to the Branch manager and personally met the Zonal Manager to narrate her harrowing experience of the previous night; and that the Unit was working when he was the Manager of the branch and bank records and the photographs of the Units will confirm its existence. He also stated that there was adequate security to protect the interest of the bank.

(ii) Coming to Article-II, it is stated by the petitioner that Mr. Nagesh Babu was doing business in Pharmaceuticals and he helped the petitioner in mobilizing a profitable business in the bank in the form of opening accounts (deposits on loans) by introducing other persons personally. It is stated that before any credit limit was considered to the said individual, there was approximately Rs.1.50 crores credit turnover in his C.D. account for 10 months and the petitioner, in his eagerness to secure credit business in all angles, insisted Mr.Nagesh Babu to sign as guarantor in most of the business accounts mobilized through him.

As regards the account of M/s.Manikanta Traders, he contended that, after commencement of the business, due to absence of electricity and access, on account debris of demolished buildings being thrown adjacent to it due to road widening by the Municipal Corporation, the borrowers got affected and could not sustain themselves and repay the loan installments. He stated that the borrowers then migrated to distant places in search of employment. According to petitioner, since no buyers were coming forward to buy the property, he requested the Zonal office to make the big borrowers to help the small borrowers; that the offer of M/s.Nagesh Babu was reasonable and he requested 3 months time to close the existing loans; and the buyer paid all the installments of the existing loans, but took more time than was agreed. It is stated that he provided all the necessary information in the proposal including the indicative figures of collateral securities to be mortgaged and no adverse remarks were made by the Internal Auditors or the Zonal office in the post–sanction scrutiny of the proposal.

He claimed to have reviewed the accounts regularly without fail and while reducing the sanction limits with the knowledge of the Zonal Office, he released the proportionate securities. He denied that he did not conduct timely stock inspections.

As regards the account of M/s.Balaji Enterprises, he stated that he reviewed the account with replacement of property with the knowledge of the Zonal office; that previously extension of mortgage used to be the collateral security and after review independent urban property was taken; that many borrowers/guarantors in both cases normally take stand that they did not visit the Bank or never take any loan as a common practice; that the guarantor paid some amounts into the loan account; and that it was not correct to say that the borrower was absconding.

As regards the account of M/s.Sai Lakshmi Medicals, he stated that he reviewed the account with maturity on 07-02-2005 and released cash deposit from security and obtained Rs.37 lakhs worth collateral in the account and the account was running well.

As regards account of M/s.Sai Lakshmi Medicals, he stated that a 5 page proposal i.e. pre-sanction report was submitted to the Zonal office by him, that the Senior Officer from the Zonal Office inspected the properties and gave a report, which was on record; that he did not suppress any information; since there were huge cash discounts from

31-03-2007, the borrower requested cash disbursement to avail discounts; and that it is not correct to state that he reviewed the account without authority.

He denied that the guarantors were released and contended that Mrs.Karuturi Nagamani has nothing to do with the account. He denied that he did not obtain the borrower's signature in the Mortgage Register to secure loan or that he falsely certified the mortgage.

He denied about the release of equitable mortgage on the 2 shops of Sri Nagesh Babu and contended that since the borrower wanted to pay some company security deposit for securing dealership, he obliged him to avoid over draft and allowed encashment of the F.D.R. and LIC policy. He denied that he did not ensure post-sanction inspection to ensure safety of the Bank funds and contended that there were several stock inspection reports on record. He disputed the allegation that the limits were used to liquidate other limits.

(iii) Coming to charge-III, he alleged that for the loan given to M/s.Reddy Appaji Rao, no Credit Officer was provided in the branch; that title deeds were verified and a diligent search was conducted by Branch Advocate and only on verification of the possession of the property, loan was sanctioned. He contended that the borrower was the son of a Circle Inspector in the State Excise Department and younger brother of a Builder and no *mala fide* can be alleged in the said transaction. He alleged that the borrower is still in possession of the property and that the sale under SARFAESI Act, 2002 was mishandled by the Branch Manager and the buyer went back after the auction was conducted. He alleged that he ensured the end use of funds and that many post-sanction inspection reports were kept on record. He blamed the present Manager for not handling the recovery in proper way and contended that the account would not be Non Performing Account otherwise.

6. Not satisfied with the petitioner's explanation, an Inquiry Officer was appointed on 03-02-2009. The departmental enquiry was conducted in 2009.

7. The Presenting Officer examined M.Ws.1 to 4 and marked Exs.M-1 to M-114. The petitioner examined D.Ws.1 to 3 and marked Exs.D-1 to D-26 in the enquiry.

**THE ENQUIRY REPORT**

8. The Enquiry Officer gave a report on 12-08-2009.

9. The Enquiry Officer held that charge-1(1)(a)(b)(c) as regards account of M/s.Vijaya Feeds , charge-1(2)(a) to (e) regarding account of M/s Satya Feeds and charge-1(3)(a),(b) and (c) stood proved in the account of M/s.Satya Bio Products stood proved except the part of charge that the bank suffered monetary loss which was not proved as no evidence was led in the inquiry to quantify the likely loss.

He also held that charge-II (1)(a) to (h) stood proved as regards the account of M/s.Manikanta Traders; charge –II(3) was not proved, charge-II(4)(a) to (d), (f) to (i) and (l) to (n) stood proved; charge-II (4)(e) and charge-II (4)(j) and (k) were partly proved. He held that charge-III(1)(a) was not proved, but charge-III(1)(b) & (c) proved. However, charge-III(2)(a) is not proved and charge-III(2)(b) and (c) stood proved except the last part of the charge that the Bank would suffer some financial loss.

10. The copy of the Inquiry report was submitted to the petitioner for his remarks thereon and on 14-11-2009, petitioner submitted his explanation thereto to the Disciplinary Authority i.e. the General Manager (H.R.).

**THE ORDER OF THE DISCIPLINARY AUTHORITY**

11. After considering the enquiry report as well as the remarks of the petitioner thereon, on 01-02-2010, the Disciplinary Authority imposed major penalty of compulsory retirement in terms of Regulation 4(h) of the above Regulations after agreeing with the findings of the Enquiry Officer.

(A) On Article-I, the Disciplinary Authority held with regard to account of M/s.Vijaya Feeds that, the Joint Inspection Report dt.13-07-2007 of the Bank officials states that the representative of the unit M/s.Rama Krishna Reddy accepted that though full disbursement of the account was availed an year back, no activity commenced; M.W.1 confirmed that poultry feed mixture unit was not seen at the address at the time of their joint inspection on 16-12-2007; and that the release of margin money in the KVIC account in itself is not proof of existence of the unit.

As regards M/s.Satya Feeds, he held that the physical verification report Ex.M-19 showed that the inspecting official remarked that the unit was 5 to 6 years old and with reference to this report, D.W.1, the borrower, stated that he did not recollect anything about the said inspection by the said officer; that the evidence on record showed that the borrower had borrowing facilities from UCO bank for his poultry business, that he was the person behind arranging loan facility in different names by showing units/sheds which are adjacent to his poultry complex and Ex.M-114, the joint inspection report dt.13-07-2007, recorded that no machinery was found in the portion of the site which belonged to the proprietrix and this evidence was not displaced by petitioner. It was observed that release of margin money in the account in itself is not proof of existence of the unit.

As regards the account of M/s.Satya Bio Products, it was held that payment directly to the borrower cannot be justified by the petitioner; that petitioner did not explain in his report of the utilization of the disbursed amount which was withdrawn and found credited to unaccounted accounts of M/s.Sai Lakshmi Medical Enterprises, M/s.Manikanta Traders and to the account of KVIC employee. He relied on Ex.M-114, the Joint Inspection report dt.13.7.2007 which noted that the proprietrix denied her connection with the units/its existence and also claimed to be cheated by the Bank for sanctioning loan in her name and using the money to benefit others. He stated that M.W.1 deposed that the Unit was not available at the given address.

(B) Coming to charge-II, as regards the account of M/s.Manikanta Traders, the Disciplinary Authority held that no prudent man would take property as mortgage when it was already mortgaged to the Bank in some other loan account of some other borrowers and there was no record of confirmation of such actions by the Zonal authorities as claimed by the petitioner. It is stated that the limits could not have been reduced releasing security and in any event drawing limits in the account remained unchanged, that there was no record about adequacy of stock, and the petitioner should have obtained status reports from UCO bank when the borrower was having banking relationship with the said bank. He held that details of the property mortgaged were required to be mentioned in the loan proposal and that the details of the specific property were not mentioned therein. It was pointed out that stock inspection reports and review proposals are not evidence that Unit was functioning and that the petitioner himself failed to identify the location of the property and cannot now blame a typographical error made by the Valuer. The Disciplinary Authority held that petitioner's version that the identification of the property is done by the Bank first and then by the legal Advisor and thereafter by the Valuer is meaningless.

As regards the account of M/s.Balaji Enterprises and M/s.Sai Lakshmi Enterprises, the Disciplinary Authority held that depositing cash in the account of M/s.Balaji Enterprises will not negate the charge that the borrower is absconding.

As regards the account of M/s.Sai Lakshmi Medicals, the Disciplinary Authority held that preparing proposal in consultation with the officials from the Zonal Office, is no excuse for the specific lapses mentioned in the charge sheet. He stated that looking to the activity of running medical stores, there was no justification in allowing cash withdrawal in the account for lifting stock with huge discounts; that the enquiry revealed that the proposal was reviewed by the petitioner with change in terms, despite withdrawal of his sanctioning powers by the Zonal Manager, and that the petitioner should have taken care to see whenever limits are enhanced, that the existing security must be extended to cover the enhanced limits.

(C) Coming to charge-III regarding the account of Reddy Appaji Rao, it was held that the petitioner's defence that that the title deeds were verified diligently is not supported by documentary evidence, that the said account has become NPA and the petitioner did not contradict the third party's claim about ownership over the property. Regarding 2 other borrowers, whose shops 11 and 12 were mortgaged to UCO bank in 2003, the Disciplinary Authority noted that Joint Inspection Report and the evidence of M.Ws.1 and 4 showed that the borrowers informed that the said bank forced them to vacate the shops as they were purchased by them in 2003 under finance from the said Bank.

**PETITIONER'S APPEAL AND IT'S REJECTION**

12. Petitioner then preferred appeal to the Executive Director (2nd respondent), Bank of India against the findings of the General Manager, Bank of India. The appellate authority passed separate order on 04-06-2011 confirming the findings of the Disciplinary Authority after reviewing the evidence on record and considering the submissions of the petitioner. The appellate authority held that no *mala fides* could be found, lapses committed by the petitioner were specific and they were proved in the Inquiry and the Disciplinary Authority had considered all the evidence and passed the impugned order. It was also pointed out that the Bank would suffer loss on account of petitioner's misconduct and in fact the loan accounts of M/s.Sai Lakshmi Medicals, M/s.Manikanta Traders, Reddy Appaji Rao, T.Appa Rao and T.Vidya Balu had already become NPA. He also held that petitioner cannot blame his successor for failure to do follow up action and nothing is placed by the petitioner to prove the same.

13. The petitioner then preferred a Review before the 1st respondent, which was also rejected on 09-05-2012

14. Assailing the same, this Writ Petition is filed.

15. Heard Sri M. Surender Rao, Senior Counsel appearing on behalf of petitioner, and Sri K. Lakshminarayana, counsel for respondents.

16. The counsel for petitioner sought to contend that the findings given by the enquiry officer, which were affirmed by the disciplinary, appellate and reviewing authority cannot be sustained and that they had not properly appreciated the evidence on record. He also contended that the findings of the enquiry officer / disciplinary authority are perverse and no prudent man can arrive at these findings and that even otherwise, the punishment of compulsory retirement imposed on the petitioner is disproportionate to the misconduct found proved. He filed three paper books containing the various documents relied upon by both sides in the disciplinary proceedings in support of his submissions.

17. The counsel for respondents refuted the above contentions and sought to contend that this Court, while exercising jurisdiction under Article 226 of the Constitution of India, cannot act as an appellate authority and review the evidence on record unless perversity is established or if findings are given without any evidence in support thereof. He contended that the allegations leveled against the petitioner and which have been found proved are very serious in nature and that the petitioner did not discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of a Bank Officer. Therefore, the

punishment of compulsory retirement imposed on him is proportionate and warranted and this Court should not interfere with the same. He relied upon the decisions in **High Court of Judicature at Bombay through its Registrar v. Uday Singh**[1], **Government of Andhra Pradesh and others v. Mohd. Nasrullah Khan**[2], **Union of India and others v. Manab Kumar Guha**[3], **Bank of India and another v. M. Jagga Rao**[4], and **B.C. Chaturvedi v. Union of India and others**[5].

18. From the rival contentions, the following points arise for consideration :

(a) whether the findings of the enquiry officer and disciplinary authority against the petitioner, which are confirmed by the appellate and reviewing authority, warrant any interference in the exercise of jurisdiction by this Court under Article 226 of the Constitution of India ?

(b) if not, whether the punishment imposed on the petitioner of compulsory retirement is disproportionate to the proved misconduct ?

**<u>Point (a) :</u>**

[1] AIR 1997 SC 2286
[2] AIR 2006 SC 1214
[3] (2011) 11 SCC 535
[4] Order dt.27.01.2017 in WA.No.986 of 2015
[5] AIR 1996 SC 484

19. I have already set out in detail the charges framed against the petitioner as well as the findings of the enquiry officer and the disciplinary authority.

20. The enquiry officer as well as the disciplinary authority have considered the contentions of the petitioner with reference to the evidence on record, and on appreciation of evidence, recorded findings against the petitioner.

21. As regards Article I of the charge, they have relied upon the joint inspection report dt.13.07.2007 (Ex.M.114) wherein it was recorded that the representative of the Firm M/s. Vijaya Feeds accepted that though full disbursement of the loan was made a year back, no activity commenced; that M.W.1 stated that the poultry feed mixing unit was not seen at the given address at the time of their joint inspection of the unit on 16.12.2007; and release of margin money in the KVIC Account in itself is not a proof of existence of the unit. In regard to M/s. Satya Feeds, it was found that Ex.M.19 which is report of physical verification of REPG Unit noted that the unit was 5 to 6 years old; that the said unit already had borrowing facility from UCO Bank; Ex.M.114 joint inspection report showed that no machinery was found in the portion or site belonging to the proprietrix; and that release of margin money in the account in itself is not proof of existence of the unit. In regard to M/s.Satya Bio Products, the disciplinary authority held that the petitioner had no explanation in regard to utilization of the amounts

disbursed by the Bank to the unit which found their way in the un-connected accounts of M/s. Sai Laxmi Medical Enterprises, M/s.Manikanta Traders and to the account of a KVIC employee; that Ex.M.114, the joint inspection report recorded that no unit was in existence at the site and the unit's proprietrix denied her connection with the unit / its existence and claimed to have been cheated by the Bank by sanctioning loan in her name and using the money to benefit others; and that M.W.1 stated that the unit was not available at the given address. It is therefore clear from the above findings that false pre-sanction and post-sanction reports were prepared when the units themselves did not exist and disbursements were made without ensuring the end use of funds.

22. The disciplinary authority further held on Article II that petitioner sanctioned cash credit loan to M/s.Manikanta Traders by accepting a security property which was already mortgaged to the branch to secure term loans from three borrowers and that this was against banking loans. Even though his lending powers were withdrawn on 03.04.2006 he still reviewed the account on 21.03.2007, changed the terms of security and released four shops taken as collateral security even though the unit was not found functioning at the time of the second review on 21.03.2006 and the third review on 21.03.2007. It also held that he failed to properly identify the location and did not conduct timely stock inspections in the account to verify the stock position and that the account came to be classified as an non-performing asset with effect from

01.06.2007. The contentions of the petitioner in this regard were taken into account and rejected by giving cogent reasons.

23. It was further held that without authority, he reviewed the account of M/s. Balaji Enterprises on 06.05.2006 and M/s. Sai Laxmi Medical Enterprises on 07.03.2007 and released the guarantee of Smt.K. Nagamani and inducted Sri Kotha Veerabhadra Rao as guarantor in her place without his knowledge and that subsequently the shop in which M/s. Balaji Enterprises was doing business got closed and the borrower is absconding and the unit M/s. Sai Laxmi Medical Enterprises was not in existence in the given address.

24. His defence that cash was deposited in the loan account of M/s. Balaji Enterprises did not negate that the borrower was absconding and his contention that the proposal being regard to M/s. Sai Laxmi Medical Enterprises was prepared in consultation with the officials of Zonal Office was considered and rejected by the disciplinary authority and it was held that there is no justification in allowing cash withdrawals in the account for lifting stock with huge discounts.

25. In regard to Article III, admittedly petitioner sanctioned three term loans, each of Rs.2.00 lakhs, for purchase of shops at Akhil Plaza in favour of Reddy Appaji Rao, Thummalapudi Appa Rao and Thummalapudi Vidya Kiran Babu and for setting up of computer system, printer and peripherals and admittedly shops 11 and 12

purchased by Thummalapudi Vidya Kiran Babu were mortgaged to UCO Bank in 2003 and shop 20 for which loan was granted to Reddy Appaji Rao on 23-01-2004 was purchased by Smt. Pilladi Vagheswari under registered sale deed on 02-05-2001. Petitioner did not verify the encumbrance certificates before sanctioning these loans. The Joint Inspection Report dt.17-05-2001 stated that the UCO Bank officials forced the borrowers to vacate the shops financed by the said bank.

26. Having regard to the said findings of the disciplinary authority on the basis of appreciation of evidence, it has to be held that the petitioner is guilty of not discharging his duties with utmost integrity, honesty and devotion and also failed to take all possible steps to ensure and protect the interests of the bank.

27. Learned counsel for the petitioner sought to contend that one witness C.Nageswara Rao who was Officer (Credit) was not examined by the respondents; 114 documents were marked by the management without mentioning the same in the list of documents and without producing the same through witnesses; that management witnesses were merely asked to identify their signatures in the Joint Inspection Report by the Presenting Officer and this procedure is unknown to law.

28. Merely because one witness cited by the management is not examined, the enquiry cannot get vitiated if the evidence of the other witnesses proves the charges. Also strict rules of evidence do not

apply to disciplinary proceedings. The evidence of management witnesses filed by the petitioner shows that the documents were marked through them and they identified their signatures on the said documents since some of them were authored by them. Petitioner's defence representative elaborately cross examined them. The petitioner also examined his witnesses though he did not enter the witness box himself. The proceedings of the enquiry filed by the petitioner does not show that the petitioner at any point of time complained of non-supply of any documents to him or that he was denied reasonable opportunity to defend himself. Therefore the above contentions of the counsel for the petitioner are rejected.

29. Learned counsel for the petitioner contended that the alleged false pre-sanction and post sanction reports were not produced through any witness and that there was no mention in respect of M/s.Vijaya Feeds, M/s.Satya Feeds and M/s.Satya Bio Products in the Joint Inspection Report. The latter contention is not correct since copy of the Joint Inspection Report dt.13-07-2007 filed by the petitioner and it refers to all three firms. The officers who were party to the Joint Inspection Report were examined as management witnesses and they were also cross examined by the defence representative with regard to contents of the said report. In the light of the findings in the said report which are supported by the said witnesses, it is obvious that the pre sanction and post sanction reports given by the petitioner would be false.

30. Though learned counsel for the petitioner contended that petitioner's witnesses stated that the units were in existence and that photos were also filed by the petitioner to prove their existence at the time of sanction of the loan and also thereafter, none of the management witnesses were confronted with this material during their cross examination by the defence representative. Without doing so, the petitioner cannot expect the evidence of his witnesses or the material filed by them to be believed.

31. The mere fact that the charge memo was issued to him in 2008 and not in 2004 does not in any way exonerate the petitioner from any blame since the evidence on record established his misconduct.

32. The further contention of the petitioner that the bank did not suffer loss is not correct since admittedly some of the units i.e. M/s.Manikanta Traders, M/s.Sai Lakshmi Medicals, Sri Reddy Appaji Rao, Thummalapudi Appa Rao and Thummalapudi Vidya Babu became Non Performing Assets (NPAs) as noted by the appellate authority. Merely because the enquiry officer noted that the quantum of loss mentioned in the charge memo was not established in view of the fact that specific evidence in that regard was not adduced, it cannot be denied that once the units became NPAs, there is no loss to the Bank.

33. The further allegation that in the charge sheet there was no mention of Joint Inspection Report and that the same was allowed to

be produced in the enquiry is without any merit because evidence in support of a charge will not be mentioned in the charge memo.

34. In any event, it is settled law that in exercise of jurisdiction under Article 226 of the Constitution of India, this Court will not review like an appellate authority, the evidence adduced in the disciplinary enquiry.

35. In **High Court of Judicature at Bombay (1 supra),** the Supreme court declared:

> *"......It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."*

36. This principle was reiterated in **Govt. of A.P. v. Mohd. Nasrullah Khan** (2 supra) and the Supreme Court held:

> *"From the finding recorded by the High Court it clearly appears that the High Court reappreciated the evidence as an appellate*

*authority. Apart from reappreciating the evidence, which is not permissible in law, the High Court also fell in grave error by directing the Government Pleader and the learned counsel for the respondent herein to again view the cassettes. It is on record that the inquiry officer relied on the video cassettes displayed during the inquiry as part of additional evidence. The finding has been clearly recorded by the inquiry officer on the basis of the evidence adduced by PWs 1, 2, 3 and 4 during the inquiry.*

*By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.*

*We may now notice a few decisions of this Court on this aspect avoiding multiplicity. In* ***Union of India v. Parma Nanda***[6]*, K. Jagannatha Shetty, J., speaking for the Bench, observed at SCC p. 189, para 27 as under:*

> *"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also*

[6] (1989) 2 S.C.C. 177

*cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."*

*Again, the same principle has been reiterated by this Court in* ***B.C. Chaturvedi v. Union of India*** (5 supra)*. K. Ramaswamy, J., speaking for the Court, observed at SCC p. 759, para 12 as under:*

*"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."*

37. Similar view has been expressed in **Union of India v. Manab Kumar Guha**(3 supra) where the Court stated:

> *"It is well settled that the High Court while exercising the power of judicial review from the order of the disciplinary authority does not act as a court of appeal and appraise evidence. It interferes with the finding of the enquiry officer only when the finding is found to be perverse."*

38. After carefully considering the material on record including the enquiry report and the order of the disciplinary authority, I am satisfied that their findings are not perverse or based on no evidence or given on the basis of conjunctures and surmises. They have considered the evidence on record and their findings are supported by material on record and do not warrant any interference by this Court under Article 226 of the Constitution of India. Point (a) is answered accordingly against the petitioner.

**Point (b):**

39. Under this point, I will consider whether the petitioner is right in his contention that punishment of compulsory retirement imposed on him by the respondents is valid and proportionate to the proved misconduct.

40. Even in this regard, the legal position is well settled that unless the punishment imposed by the disciplinary authority shocks the conscious of the Court, in the sense that it was in defiance of logic or moral standards, the Court will not interfere with the

quantum of punishment. (**M.Jagga Rao** (4 supra), **V.Ramana Vs. A.P.S.R.T.C. & Others**[7] and **State of Meghalaya & Others Vs. Mecken Singh N. Marak**[8]**).**

41. The disciplinary authority has found that the petitioner has put public money to grave risk, by sanctioning loans to non-existent units; granted sanction in violation of the procedure prescribed; allowed securities to be diluted; accepted as security, property already mortgaged to another bank or ownership of which is not with the borrower; and reviewed the loan accounts even though his authority to do so has been withdrawn. These are grave charges. Therefore there cannot be any leniency shown to him. Thus punishment of compulsory retirement imposed on him cannot be said to be shocking the conscience of the Court. Point (b) is also accordingly answered against the petitioner.

42. I therefore do not find any merit in the Writ Petition and it is accordingly dismissed. No costs.

43. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

**JUSTICE M.S.RAMACHANDRA RAO**

Date: 24-08-2017
Vsv/kvr

[7] AIR 2005 S.C. 3417
[8] AIR 2008 S.C. 2862