IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3411 OF 2007

Walmik s/o Devram Bagul
Age : 53 years, occu.: nil
R/o Gat No.101, Plot No.5,
Shivshakti Colony, Khote Nagar,
Jalgaon, District Jalgaon. Petitioner.

Versus

1. Bank of Baroda,
Through its Chariman,
Walchand Hirachand Marg,
Mumbai – 400001.

2. The Deputy General Manager
(Maharashtra & Goa),
Appellate Authority, Bank of
Baroda, Zonal Office, 2nd Floor,
Sharda Center, 11/1, Khilare
Path, Erandwana, Pune.

3. Regional Manager/
Disciplinary Authority,
Bank of Baroda,
Nagpur Regional Office,
West High Court, Dharampet,
Nagpur.

4. Union of India
(Copy to be served upon the
Standing Counsel, High Court,
Bench at Aurangabad). Respondents.

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Mr. K.C. Sant, Advocate for petitioner.

Mr. S.D. Karkare, Advocate holding for

Mr. D.K. Joshi, Advocate for respondent Nos.1 to 3.

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CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL,JJ.

DATED : 20th April, 2018.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. The petitioner, a dismissed employee of respondent No.1-Bank of Baroda, has filed this Writ Petition for quashment of the order of dismissal dated 19.08.2000 passed by respondent No.3-Disciplinary Authority of the said Bank and the order dated 02.12.2000 passed by respondent No.2-Appellate Authority. Respondent No.4 is the Union of India.

2. Undisputedly, the petitioner used to work as Head Cashier in the Bank of Baroda at Jalgaon (Main) Branch and after holding Departmental Enquiry against the petitioner as per the procedure laid down under the Bipartite Settlement, 1966 and amendment thereof, which governs the Service Rules of the Bank employees, the petitioner was held guilty for four charges levelled against him and after issuing show-cause notice and after giving personal hearing to the petitioner, ultimately he was dismissed as per the impugned order dated 19.08.2000. Though the petitioner had preferred an appeal before respondent No.2-Appellate Authority, the same was also dismissed on 02.12.2000 and the order of dismissal from service was upheld.

3. The four charges levelled against the petitioner are thus:-

(i) The petitioner entered into business relationship directly or indirectly (through his wife Mrs. S.W. Bagul) with bank's borrower Shri R.V. Thorat, for financial gain, without obtaining prior permission from the Bank, which is an act prejudicial to the interest of the Bank or gross negligence.

(ii) The petitioner instigated Shri R.V. Thorat to mislead the Bank by making him to write a letter dated 16.06.1998 to the Senior Branch Manager, Bank of Baroda Jalgaon (Main) Branch, informing the Bank about shifting the machinery and business to Shed No.13-C Sector, M.I.D.C. Dhulia, which act is prejudicial to the interest of the Bank or likely to involve the Bank in serious loss.

(iii) The petitioner removed the machinery from the Workshop of Shri R.V. Thorat, which was hypothecated to the Bank without bank's knowledge or likely to involve the Bank in serious loss.

(iv) The petitioner sold out machinery hypothecated with the Bank, to Shri B.H. Sonar for a consideration of Rs. 55,000/-, without Bank's knowledge and consent and committed an act prejudicial to the interest of the Bank or likely to involve the Bank in serious loss.

4. Heard Shri K.C. Sant, learned Counsel for the petitioner and Shri D.K. Joshi, learned Counsel for respondent Nos.1 to 3.

5. Learned Counsel for the petitioner submitted that though the petitioner had no concern with the partnership business of his wife with Shri R.V. Thorat, without availability of any evidence to substantiate such charge, the petitioner was held guilty.

6. Learned Counsel for the petitioner did not point out any illegality or irregularity alleged to be committed by the Bank while following procedure for holding Departmental Enquiry against the bank employees under the applicable Bank Service Rules. His only contention is that the case of the petitioner is "no evidence case", and therefore, dismissal of the petitioner is illegal.

7. The next contention of learned Counsel for the petitioner is that no charge of mis-appropriation of money of the Bank was framed against the petitioner. Even he was not named in F.I.R. lodged by the Bank to Police Station. According to learned Counsel for the petitioner, in view of the nature of charges levelled against the petitioner, punishment of dismissal from the service is shockingly disproportionate. He prayed for remand of the matter to the Disciplinary Authority for reconsideration of the quantum of punishment. He placed reliance on the cases of **"Chairman-cum-Managing Director, Coal India Ltd and Anr Vs. Mukul Kumar Choudhari and Ors" (AIR 2010 SC 75)** and **"Managing Director, State Bank of Hyderabad and Anr Vs P. Kata Rao" (AIR 2008 SC**

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8. In reply, learned Counsel for respondent Nos.1 to 3 submitted that after going through the Enquiry Report as well as final orders passed by the Disciplinary Authority and the Appellate Authority, it becomes clear that there was ample evidence against the petitioner to establish the four charges levelled against him. He fairly conceded that one of the charge regarding disproportionate turn over in the Bank account of the petitioner was not established, as per Enquiry Report. He submitted that this is not the case of lack of evidence against the petitioner. He pointed out that while exercising writ jurisdiction, re-appreciation of evidence is not permissible and finding of fact arrived at by the Disciplinary Authority cannot be disturbed.

9. Learned Counsel for respondent Nos.1 to 3 has drawn our attention to Para 19.5 of Bipartite Settlement i.e. Service Rules applicable to the petitioner and every bank employee.

10. Para 19.5 (a) of the Service Rules makes it clear that engaging in any trade or business outside the scope of the duties of the employee except with the written permission of the bank; (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in

serious loss, is "gross misconduct" under the Service Rules for which under Para 19.6 of the Service Rules, even punishment of dismissal without notice is prescribed. Therefore, if the evidence is available against the petitioner to establish the four charges levelled against him, the Departmental can establish gross misconduct committed by the petitioner for which punishment of dismissal is prescribed under the Service Rules.

11. As observed above, in the case at hand, after completion of enquiry, when the final Enquiry Report was submitted to the Disciplinary Authority, while issuing show-cause notice to the petitioner the copy of Enquiry Report was supplied to the petitioner and his say on the Enquiry Report was called. Even the petitioner was personally heard before issuing punishment against him. Thus, obviously there is no violation of the principle of natural justice in the case at hand.

12. Before analyzing the material placed on record by the petitioner, we must make it clear as to what are the powers of this Court while exercising writ jurisdiction in the matters of Departmental Enquiries. In the case of **Bank of India & another Vs Degala Suryanaravana (AIR 1999 SC 2407)**, the Apex Court considered these powers of the High Court and observed that:

> "*The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity i.e. whether there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon re-appreciating the evidence of weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained*".

13. So also, recently in the case of **"Chief Executive Officer, Krishna District Central Co-operative Bank Ltd and another Vs. K. Hanumanthrao and another"** reported in **[2017 (4) Mh.L.J. 484]**, the Apex Court made it clear that while exercising the powers of judicial review over the disciplinary proceedings, the Courts cannot sit as an Appellate Authority. The Court cannot substitute its own opinion in reappraisal of facts.

14. Therefore, the legal position is absolutely clear that re-appreciation of evidence placed before the Disciplinary Authority is not permissible while exercising writ jurisdiction. However, this Court can definitely interfere if it is the case of punishment without

availability of any evidence on record.

15. After going through the Departmental Enquiry Report dated 19.04.2000 submitted by Enquiry Officer Shri M.M. Bhadange and final order dated 19.08.2000 passed by the Disciplinary Authority as well as the order passed by Appellate Authority dated 02.12.2000, it becomes clear that all these Authorities have carefully considered the evidence placed on record by the Bank as well as by the petitioner / delinquent. After careful consideration of this evidence on record, all these Authorities have reached to the conclusion that the four serious charges are established against the petitioner which amounts to gross misconduct and thereafter the Disciplinary Authority took decision of awarding punishment of dismissal without notice. The same punishment was upheld by the Appellate Authority assigning cogent reasons and after considering each and every objection raised by the petitioner in his appeal memo.

16. The material placed on record shows that sufficient evidence was brought before the Enquiry Officer to establish that though the wife of petitioner had entered into partnership with Shri R.V. Thorat in the firm M/s. Siddharth Engineering Work, in fact through his wife the petitioner entered into that business relationship with Shri R.V. Thorat who was the borrower of the Bank. It is also

admitted fact that before entering into that partnership business, the petitioner did not obtain permission of the Bank and even he did not inform the Bank. By examining the witnesses like Shri R.V. Thorat, Shri B.H. Sonar, Shri S.R. Vispute, Shri R.S. Desai and Shri J.S.Narkhede, sufficient material is placed on record by the Bank which shows that though the wife of petitioner was partner of Shri R.V. Thorat on papers, actually it was the petitioner who used to look after the partnership accounts and it was the petitioner who had removed the machinery hypothecated to the Bank from its original address to the new location for consideration paid to him by Shri Vispute subsequently. Thus, all transactions were done by the petitioner without consent and knowledge of the Bank.

17. The Authorities have also taken into consideration the evidence placed on record by defence. Enquiry Officer has assigned cogent reasons for not accepting the evidence of defence witnesses. Even in the appeal memo the petitioner has fairly admitted that for one or two occasions he issued cheques of his bank account in respect of the partnership business transactions. Thus, after careful consideration of the material placed on record and the orders passed by the Disciplinary Authority, Appellate Authority as well as after consideration of the Enquiry Report, we are fully satisfied that this is not a case of total lack of evidence

against the petitioner. Definitely there is evidence available against the petitioner. As observed above, this Court cannot re-appreciate that evidence to ascertain its sufficiency. Therefore, we have no hesitation to hold that this is not a proper case for interference on the ground of absolute lack of evidence in disciplinary proceeding.

18. During the course of arguments, main reliance was placed on the quantum of punishment. No doubt, in the case at hand, charge of mis-appropriation of bank money is not framed against the petitioner. However, as per the Service Rules applicable to the petitioner, entering into the business transactions without permission of the bank amounts to gross misconduct. In addition to this, the petitioner has actually removed the hypothecated property without consent of the Bank and subsequently sold out it to the third person. This conduct of the petitioner clearly indicates his dishonesty towards the Bank which is certainly prejudicial to the interest of the Bank and likely to involve the Bank in serious loss. The conduct of the petitioner is not less than mis-appropriation of the property of Bank. While examining quantum of punishment, the Appellate Authority has taken into consideration past misconducts of the petitioner on three occasions for which he was punished on two occasions and cautioned on one occasion. Despite three opportunities to the petitioner to show improvement, he did not

change his attitude and again committed gross misconducts. So, no more leniency is to be shown to the petitioner. Therefore, it cannot be said that the punishment of dismissal without notice imposed by the Bank is shockingly disproportionate to the conscience of this Court.

19. The Apex Court in the case of **Chief Officer, Krishna District Central Co-operative Bank Ltd and another Vs. K. Hanumanthrao** (cited supra) ruled that it is not function of the High Court to decide nature and quantum of punishment imposed by Disciplinary Authority. Only in exceptional circumstances where it is found that penalty awarded by the Disciplinary Authority is wholly disproportionate, that too to an extent that it shakes the conscience of the Court. Only then the Court can interfere.

20. Therefore, considering seriousness of the misconduct committed by the petitioner, we have no hesitation to hold that the punishment of dismissal from service without notice is not disproportionate, which shakes the conscience of this Court.

21. The judgments in the cases of **Chairman-cum-Managing Director, Coal India Ltd and Anr Vs. Mukul Kumar Choudhari and Ors”** and **“Managing Director, State Bank of**

Hyderabad and Anr Vs P. Kata Rao” (cited supra) are distinguishable on facts.

22. Accordingly, our conclusion is that, no case of interference is made out by the petitioner, and therefore, this petition being devoid of merit deserves to be dismissed.

23. Hence, the following order.

ORDER

1. Writ Petition No. 3411 of 2007 is dismissed.
2. Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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