

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.08.2019	Delivered on: 23.10.2019
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.57 of 2012
and
W.M.P.No.15678 of 2017

N.Palanisamy

.. Petitioner

Vs.

- 1.State Bank of India,
Represented by its Chairman & Managing Director,
Corporate Centre, Post Box No.12,
Mumbai - 400 021.
- 2.The Reviewing Committee,
Appeals & Review Department,
Corporate Centre, Post Box No.12,
Mumbai - 400 021.
- 3.The Chief General Manager,
State Bank of India,
Local Head Office, Circle Top House,
Aparna complex, 16, College Lane,
Chennai - 600 006.
- 4.The General Manager-I,
State Bank of India,
Local Head Office, Circle Top House,
Aparna complex, 16, College Lane,
Chennai - 600 006.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus, to call for the records from the files of the Respondents 2 to 4 pertaining to order passed by the 4th Respondent dated 05.01.2005 dismissing the Petitioner from service and the order of the 3rd Respondent dated 02.07.2005 rejecting the Petitioner's appeal and confirming the order of the 4th Respondent and the order of the 2nd Respondent dated 20.04.2009 rejecting the review petition and consequently direct

the Respondents herein to reinstate the Petitioner in service, with continuity of service, with back wages and with all other attendant benefits.

For Petitioner : Mr.K.M.Ramesh
for M/s.Row and Reddy

For RR1, 3 & 4 : Mr.K.Chandrasekaran

For R2 : No appearance

O R D E R

The petitioner has come out with the present Writ Petition challenging the order of the fourth respondent dated 05.01.2005 dismissing the petitioner from service and the order of the third respondent dated 02.07.2005 rejecting the petitioner's appeal and confirming the order of the fourth respondent and the order of the second respondent dated 20.04.2009 rejecting the review petition and directing the respondents herein to reinstate the petitioner in service, with continuity of service, back wages and all other attendant benefits.

2.The petitioner was appointed as Clerk on 15.09.1978. He was promoted on 01.08.1988 as Junior Management Grade-I. Again by the order dated 21.08.2001, he was promoted as Middle Management Grade-II with effect from 01.11.1996. He was posted as Branch Manager of Swamynathapuram Branch, Palani Taluk, Dindigul District on 30.06.1995 and worked up to 25.02.2002. He was then transferred to Commercial Branch, Tirupur as Deputy Manager and he joined duty on 26.02.2002. While he was working in the said branch, he was suspended from service by the order dated 03.02.2003. A charge memo dated 16.09.2003 was issued to the petitioner based on the preliminary report. After domestic enquiry, the Enquiry Officer submitted his report and the fourth respondent by the order dated 05.01.2005 terminated the petitioner from service. The petitioner preferred an appeal before the third respondent and the same was rejected by the order 02.07.2005. The review petition filed by the petitioner was also rejected by the second respondent by the order dated 20.04.2009. Challenging the same, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that the petitioner was suspended from service with effect from 03.02.2003 and he was terminated by the order of the fourth respondent dated 05.01.2005. The petitioner is entitled for subsistence allowance as per Rule 67 A (7) (i) of the State Bank of India Officers Service Rules. The respondents inspite of repeated requests and remainders, failed to pay the subsistence

allowance to the petitioner. In view of the same, the petitioner could not effectively put forth his case in the domestic enquiry as he was not in a position to maintain his family and educate his children. As per the judgment of this Court and Hon'ble Apex Court, non-payment of subsistence allowance is a gross violation of principles of natural justice and entire proceedings are liable to be set aside.

3(a).The charges leveled against the petitioner is that he created/adjusted loan amounts in savings bank account without Authority of borrowers and wrongly utilized the amounts for his personal benefits. None of the borrowers gave complaints to the respondents that petitioner created and adjusted the loan amounts without their Authority. The depositors deposed before the Enquiry Officer that they personally came to the Bank and created the documents and they have signed the receipt of the loan amounts. The petitioner brought 63 witnesses who are depositors and none of the witnesses were allowed by the Enquiry Officer to be examined. The Enquiry Officer informed the petitioner that it is sufficient to examine few witnesses on petitioner's side to prove his innocence and that he has not committed any irregularity. The documents produced on the side of the respondents were marked by the Enquiry Officer himself. The witnesses examined on behalf of the respondents failed to prove the documents and contents of the documents. The petitioner was unable to examine the witnesses as to the veracity of the documents, especially P-Ex.39 and it was not marked through the witnesses examined by the respondents. The learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court reported in (2009) 2 SCC 570 [Roop Singh Negi Vs. Punjab National Bank and Others], wherein it has been held as follows:

"14.Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

In the domestic enquiry, no witness was examined to prove the said confession statement. The petitioner, on 20.12.2012 was asked to come to Swamynathapuram Branch and he was questioned till evening. The petitioner was taken to Assistant General Manager Office, Madurai, at 10.30 P.M. The Assistant General Manager along with other officials threatened the petitioner that he would be handed over to the police and asked him to write a letter in a line with pre-printed letter produced by Assistant General Manager. The petitioner was tired and due to coercive and intimidating act of the Assistant General Manager, due to fear of losing job copied the pre-printed version of letter shown to him. In the domestic enquiry, no witness was examined to prove the said confession statement, which was marked as P-Ex.39. The Branch Manager or any other witness was not examined to prove the said P-Ex.39. The petitioner has not executed P-Ex.39. The petitioner was transferred from Swamynathapuram Branch on 22.05.2002. The alleged confession was obtained from the petitioner on 20.12.2012 in Madurai Office. The petitioner was taken to Madurai Office without any prior intimation. A reading of P-Ex.39 would show that the petitioner would not have remembered such minute details of Account numbers, etc,. The respondents have prepared P-Ex.39 at Swamynathapuram Branch and threatened the petitioner to copy the said letter in his own hand writing. The respondents are relying on the P-Ex.39, the alleged confession made by the petitioner. The said document was obtained by the respondents in threat and coercion. The respondents threatened the petitioner that unless he execute the said letter as per the printed form they had, the petitioner will be handed over to Police. Based on such threatening and coerce, the petitioner has executed P-Ex.39. The respondents have not given any complaint to the Police against the petitioner alleging creation of documents and misappropriation of funds.

3(b).The Petitioner and his wife, in order to get Visa for their son's studies in abroad, had borrowed money from relatives and friends, including depositors who borrowed money, based on their deposit and received the loan amount. After receiving the loan amount, they deposited the sum in the joint account of petitioner and his wife. Within a week of such deposit, the amounts were re-paid to them with interest. The petitioner has not created any document of loan without knowledge of depositors and did not misappropriate the amounts. The respondents have not examined the depositors to prove that without their knowledge and Authority, the petitioner had created documents and misappropriated the amounts. The respondents have not given any complaint to the Police against the petitioner alleging creation of documents and misappropriation of funds. The respondents suspended the petitioner and framed the charges based on the preliminary enquiry. The report of the preliminary enquiry is

the basic document and respondents failed to furnish the said document to the petitioner inspite of repeated request. Due to non-furnishing of the said report, the petitioner was unable to effectively defend his case during cross-examination. The non-supplying of basic report will render the entire disciplinary proceeding as null and void.

3(c).Relying on the judgment of the Hon'ble Apex Court reported in 2009 2 SCC 570 (referred to above), the learned counsel appearing for the petitioner further contended that the petitioner brought 63 witnesses to be examined on his behalf to prove that he has not created any document without knowledge of customers/depositors and misappropriated the amounts. The Enquiry Officer did not allow the petitioner to examine all the witnesses produced by the petitioner. This amounts to denial of opportunity in proving the case of the petitioner. The depositors who were examined had stated that they came to Bank, created the document and borrowed monies and received the amounts. There is no complaint from customers or depositors that without their knowledge, the petitioner created the document and misappropriated the funds.

3(d).The first three charges leveled against the petitioner is with regard to money transaction. The Enquiry Officer rendered his finding on presumption and assumption and not based on the evidence available on record. There was no complaint from any of the customer of the Bank and on the other hand, the witnesses examined by the respondents in the enquiry have stated that the transactions were done by them and they only authorized transfer of loan amount of joint account of the petitioner and his wife. Such transfer are not denied or disputed by any customer. The Disciplinary Authority or Enquiry Officer are discharging quasi judicial function. In a domestic enquiry, serious charges of creation of documents and misappropriation of funds are leveled against the petitioner. It is to be strictly proved and theory of preponderance of probability cannot be applied. In support of his contentions, the learned counsel for the petitioner relied on the following judgments:

(i) 2009 (12) SCC 78 [Union of India and others v. Gyan Chand Chattar]

"21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the concerned employee. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities."

(ii) 2011 (6) SCC 376 [Commissioner of Police, Delhi and others v. Jai Bhagwan]

"17. In the absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence."

(iii) 2007 Writ Law Reporter 69 (Madras Division Bench) [D.Vincent v. The Director of Government Examinations, Nungambakkam]

"11..... Where charge is made against a teacher that has produced a bogus certificate meaning thereby that he has fabricated the marks which he has obtained to show that he has passed the examination, it is in effect a criminal charge of fabrication of a document and forgery though in a departmental proceeding strict standard of proof necessary in a criminal prosecution cannot be insisted upon at the same time, it would be wholly improper to hold a person guilty, of such a charge except on sufficient and reliable material to prove that the marks actually obtained were different from those shown in the marks list....."

3(e).The Appellate Authority has rejected the appeal filed by the petitioner in a mechanical manner, relying on the Enquiry Officer and has not considered the witnesses produced by the petitioner and evidences let in before him. The orders passed by the Appellate Authority is not a speaking order and the same is passed without independently applying his mind. In support of his contentions, the learned counsel relied on the judgment reported in 1986 [3] SCC 103 [Ram Chander Vs. Union of India and others], wherein it has been held as follows:

"25.....We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and give a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay

and justice also require that such a personal hearing should be given."

The petitioner has rendered unblemished service and has been awarded by many trophies. He has increased business of Swamynathapuram Branch and reduced (NPA) Non-Performing Asset from 58% to 8%. He has increased day-to-day transaction from Rs.20 Lakhs to Rs.50 Lakhs. The respondents, without considering the past record of the petitioner, imposed punishment of dismissal from service, which is disproportionate to the nature of charges leveled against the petitioner which at its best could be termed as irregularity in sanctioning the loan and punishment of dismissal from service is shockingly disproportionate. When punishment is shockingly disproportionate to the charges leveled against the petitioner, this Court has power to interfere with the said punishment. In support of his contentions, the learned counsel appearing for the petitioner relied on judgment of the Hon'ble Apex Court reported in (2003) 8 SCC 9, [Dev Singh Vs. Punjab Tourism Development Corporation Ltd and another], wherein it has been held as follows:

"6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation its may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the above noted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."

3(f).The petitioner has attained the age of superannuation on 31.03.2013. The petitioner is entitled to terminal benefits including pensionary benefits. The petitioner has been deprived of services from 05.02.2009 for more than 8 years which itself is harsh punishment and prayed for allowing the Writ Petition.

4.The respondents filed counter affidavit and denied all the averments made by the petitioner.

5.The learned counsel appearing for the respondents contended that the petitioner has committed misconduct of serious nature and violated Rule 50 (4) of State Bank of India Officer's Rules, as he failed to protect the interest of the Bank and discharged his duty with utmost devotion and diligent. The respondents initiated disciplinary proceedings against the petitioner and the petitioner was issued charge memo. The petitioner sent explanation on 20.10.2003. Not being satisfied with the explanation, a departmental enquiry was ordered. The respondents marked 141 documents and examined 4 witnesses to prove the charges. The petitioner referred 6 documents and examined 14 witnesses. The Enquiry Officer, on detailed examination of materials on record, gave a report holding that the charges 9 and 14 had been partly proved and all the other charges had been proved. The enquiry report was furnished to the petitioner. The petitioner submitted his explanation on 21.08.2004. The 4th respondent, the Appointing Authority, after considering the entire materials on record and explanation of the petitioner, by an order dated 05.01.2005, dismissed the petitioner from services and treated the suspension period as suspension. The Appeal and Review filed by the petitioner were rejected and confirmed the order of dismissal passed by the 4th respondent.

6.The learned counsel appearing for the respondents further contended that the enquiry was conducted in a fair and proper manner and opportunity was given to the petitioner to put forth his case. The petitioner was represented by a member of the Officer's Association, who regularly defend delinquent employees. The petitioner during enquiry did not allege that he was not paid subsistence allowance. In the affidavit filed in the present Writ Petition, the petitioner has alleged that he was not paid subsistence allowance. In the written arguments, the petitioner has stated that subsistence allowance payable to the petitioner was adjusted towards loans borrowed by the petitioner. After 10 years, the petitioner claims that he was not paid subsistence allowance. The eligible subsistence allowance was paid to the petitioner.

6(a).The documents produced before the Enquiry Officer were marked as Exs.PX1 to X122. The petitioner or his defense representative did not dispute the veracity of any of the documents. The petitioner has only stated in the written statement that petitioner is unable to cross-examine the witnesses as to the veracity and truthfulness of the documents through witnesses, especially P-Ex.39. The said document was written by the petitioner only out of his own violation and without any compulsion. The petitioner after lapse of 5 months,

submitted a letter dated 22.05.2003 alleging that he was ill-treated and threatened with dire consequences which compelled him to give letter, P-Ex.39. The Enquiry Officer considered P-Ex.39 as well as letter dated 22.05.2003 marked as P-Ex.5 by giving valid reasons, has held that petitioner has volunteered and admitted all the lapses committed by him at Swamynathapuram Branch. The Enquiry Officer after relying on the evidence of 5 witnesses examined by the petitioner, gave a finding that the petitioner abused his official position and utilized the loan for his personal project. The Enquiry Officer has given valid reason for such conclusion.

6(b).The petitioner was furnished with copies of all the documents marked in the enquiry and the petitioner was given full opportunity to cross-examine all the Management witnesses. The contention of the learned counsel appearing for the petitioner that Enquiry Officer did not permit the petitioner to examine 63 witnesses brought by the petitioner is not correct. The Enquiry Officer did not inform the petitioner that examination of few witnesses is sufficient to prove the case. The defence witness representative is well aware of the consequences relating to non-examination of relevant witnesses. The petitioner had not brought 63 witnesses as alleged by him.

6(c).In the enquiry, the petitioner failed to prove that parties gave mandate for crediting the loan proceeds to joint account maintained in his name and in the name of his wife. All the loans were sanctioned by the petitioner and all the debit and credit voucher were also prepared and passed by the petitioner. Out of 10 parties, only two were examined and Enquiry Officer has held that their deposition is not reliable. In the enquiry, it is proved that the petitioner had credited the loan proceeds of depositors to his account without Authority or mandate of depositors.

6(d).The respondents have given a complaint to the Police with regard to various act done by the petitioner. There is no provision in State Bank of India Officers Service Rules to provide personal hearing before the Appellate Authority. The misconduct committed by the petitioner is grave in nature and punishment of dismissal from service is proportionate to the proven charges. In view of the gross serious misconduct committed by the petitioner, the appropriation letter given to the petitioner is not a ground for reducing the punishment. The learned counsel appearing for the respondents relied on the following judgments and contended that the punishment of dismissal is proportionate to the proven charges and prayed for dismissal of the Writ Petition.

(i) AIR 1963 SC 779 [State of Orissa v. Bidyabhushan Mohapatra]

"11. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal Prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question."

(ii) AIR 1963 SC 1723 [State of Andhra Pradesh v. Sree Rama Rao]

"8. The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence."

(iii) 1972 (4) SCC 618 [Union of India v. Sardar Bahadur]

"16. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Art. 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the

evidence cannot 'be canvassed before the High Court."

(iv) AIR 1996 SC 320 [State Bank of Bikaner & Jaipur v. Prabhu Dayal Grover]

"14. That brings us to the order of the Appellate Authority. Under Regulation 70(2), the Appellate Authority is required to consider whether the findings recorded against the concerned officer are justified and/or whether the penalty is excessive or inadequate and pass appropriate orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in the circumstances of the case. This Regulation also does not obligate the Appellate Authority to give any reasons for its order. Assuming, that by necessary implication this Regulation also requires the Appellate Authority to give the reasons, still its order cannot be invalidated, as we find that it has discharged its obligation by considering the records and proceedings pertaining to the disciplinary action and the submissions made by Grover. In other words, the order clearly demonstrates that the Appellate Authority had applied its mind not only to the proceedings of the enquiry, but also the grounds raised by Grover in his appeal and on such application found that there was no substance in the appeal."

(v) AIR 1996 SC 484 [B.C. Chaturvedi v. Union of India]

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other

penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(vi) 1996 IV AD SC 41 [Disciplinary Authority cum Regional Manager v. Nikunja Bihari Patnaik]

"7. In the case of a Bank - for that matter, in the case of any other organization - every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the Bank would become chaotic and unmanageable. Each officer of the Bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organization, more particularly, a Bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organization and more particularly, a Bank is dependent upon each of its employees and

officers acting and operating within their allotted sphere.

8. We must mention that Sri V.A.Mohta, learned counsel For the respondent, stated fairly before us that it is not possible for him to sustain the reasoning and approach of the High Court in this case. His only submission was that having regard to the age of the respondent [37 years] and the facts and circumstances of the case, this Court may substitute the punishment awarded to the respondent by a lesser punishment. The learned counsel suggested that any punishment other than dismissal may be imposed by this Court. We considered this request with the care it deserves, but we regret that we are unable to accede to it. Learned counsel for the Bank, Sri V.R.Reddy, Additional Solicitor General, also stated, on instructions of the Bank, that it is not possible for the Bank to accommodate the respondent in its service in view of his conduct."

(vii) AIR 1998 SC 2311 [Union Bank of India v. Vishwa Mohan]

"11. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non supply of the Inquiry Authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non furnishing of the inquiry report/findings to him."

(viii) AIR 2003 SC 1462 [Regional Manaer UPSRTC, Etawah v. Hoti Lal]

"11. A mere statement that it is disproportionate would not suffice. A party appearing before a Court, as to what it is that the Court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable."

(ix) AIR 2003 SC 1571 [Chairman & Managing Director, United Commercial Bank v. P.C.Kakkar]

"12. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996 (9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct."

(x) AIR 2005 SC 314 [Ganesh Santa Ram Sirur v. State Bank of India]

"34. The Bank Manager/Officer and employees and any Bank nationalised/or non-nationalised are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge No. 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant do not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule 34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case."

(xi) AIR 2005 SC 584 [Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain]

"17. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996 (9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting

beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

(xii) AIR 2017 SC 4145 [Mihir Kumar Hazara Choudhury v. Life Insurance Co.]

"27) An employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interest of his employer. He must, therefore, discharge his duties with utmost sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Indeed, good conduct and discipline are inseparable from the functioning of every employee/officer of any Institution and more when the institution deals with money of the customers. Any dereliction in discharge of duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on the part of such employee/officer. (See some observations in Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain, (2005) 10 SCC 84).

28) There is no defense available to a delinquent to say that there was no loss or profit resulting in a case when officer/employee is found to have acted without authority. The very discipline of an organization and especially financial institution where money is deposited of several depositors for their benefit is dependent upon each of its employee, who acts/operates within the allotted sphere as custodian of such deposit. Acting beyond one's authority by itself is a breach of discipline and thus constitutes a misconduct rendering the delinquent to suffer the adverse orders (see some observations in Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik, 1996(9) SCC 69).

29) In our opinion, having regard to the seriousness of the charges coupled with virtually no defense taken by the appellant in answer to the charges and lastly, the findings of the Enquiry Officer, the punishment of dismissal was appropriate as provided in the service regulations and hence does not call for any leniency in awarding such punishment."

(xiii) 2018 (156) FLR 408 [State Bank of India v. B.R.Saini]

"9. In State Bank of India v. Ranjit Kumar Chakraborty (supra) which is the basis of the judgment of the High Court, it was held that the Appointing Authority could not pass an order imposing a major penalty. In that case, the Disciplinary Authority sent the Records to the Appointing Authority who passed order of "dismissal from service". It is not clear from the judgment as to whether the delinquent officer in that case was given a notice by the Disciplinary Authority before the records were sent to the Appointing Authority. This Court held that even in the absence of any Rule requiring a notice to be given, the principles of natural justice would require an opportunity to the delinquent employee. It was not held in the said judgment that even if the Inquiry Report was furnished and an opportunity was given to the delinquent there is a further requirement of another opportunity before imposing the penalty. This Court found that before imposition of a major penalty the delinquent was entitled for an opportunity of being heard. The High Court was wrong in holding that the delinquent employee is entitled for a notice before the penalty is imposed.

10. Though Article 311 (2) of the Constitution of India, 1951 is not applicable to the Officers of the Appellant-Bank; in Managing Director, ECIL v. B. Karunakar, this Court held that Government servants as well as others are governed by their service rules and that whenever an Inquiry is conducted and a punishment is awarded, a delinquent employee is entitled to a copy of Report of the Inquiring Authority and an opportunity to submit his explanation. The absence of any rule providing for an opportunity to be given to a delinquent employee before imposition

of a penalty cannot be taken advantage of by the employer. However, there is no requirement of a second show cause notice before imposition of a penalty."

7. Heard the learned counsel appearing for the petitioner as well as the respondents and perused the materials available on record.

8. From the materials on record, it is seen that the petitioner was issued a charge memo containing 14 charges. The said charges can be categorized into four. The first three charges come under 1st category, where the allegation against the petitioner is with regard to Sundry Loan amounting to Rs.29 Lakhs. The 2nd category of charges is from charge Nos.4 to 12. It relates to sanction of agricultural loan to its customers. The 3rd category of charges is charge No.13, i.e., cash remittance disproportionate to the known sources of income of the petitioner. The 4th category is charge no.14 relating to failure on the part of the petitioner for accounting to the sum of Rs.23,730/- on 07.01.2002 in the Bank's book.

Category I - Charges 1 to 3 :

9(i). These charges relate to loan transaction of Rs.29 Lakhs. These three charges are leveled against the petitioner alleging that he has sanctioned loans against Bank deposit to the persons mentioned in the said charges numbering 10, 5 and 11 in the said charges. According to the respondents, the petitioner created documents without knowledge and Authority of holders of bank deposit as though they have borrowed money based on bank deposit. After creating such documents, without mandate of such deposit holders, credited the said amount to the joint Savings Bank Account No.18/2546 standing in the names of petitioner and his wife. In the enquiry, the respondents examined only one Nagaraj, who was shown in Serial No.6 in Charge No.13. The said Nagaraj had denied having availed the KCC loan No.75 on 07.11.2000 for Rs.15,000/-. Except this witness, the prosecution has not examined any other 27 parties in respect of which the petitioner has created documents and credited the loan amount to the joint Savings Bank Account. On the other hand, the petitioner has examined some of the deposit holders who have admitted before the Enquiry Officer that they only came to the bank, borrowed money and executed the document and received the money and lend the same to the Marathal, wife of petitioner.

9(ii). The Enquiry Officer did not accept their evidence and held that their evidence are unreliable in view of the fact that normally people do not lend such huge amount without obtaining any security. Similarly, the Enquiry Officer did not accept the contention of the petitioner that his wife Marathal took the loan for their son's education. The Enquiry Officer without giving any reason, has held that petitioner's wife Marathal has not obtained any loan for her son's education is untenable. The reasons given by the Enquiry Officer for not accepting the evidence of persons having Bank deposit is not acceptable. The Enquiry Officer failed to see that the respondents did not examine the Bank depositors to prove the allegation that they did not authorize the petitioner or give mandate to the petitioner to credit the loan amount to joint Savings Bank Account. The respondents have not produced any materials or evidence to prove that the depositors mentioned in charges 1 to 3 did not borrow and execute the documents. In the absence of any evidence, the finding of the Enquiry Officer that abusing the petitioner's official position, the petitioner sanctioned Sundry Loan and credited to his joint account and wrongfully utilized the amount for his personal benefit is perverse. The contention of the petitioner that entire loan amount was repaid to the deposit holders within one week with interest was not contravened/contradicted by the respondents by producing any acceptable evidence. On the other hand, the transaction sheet R.Ex.113 was before the Enquiry Officer with regard to joint Savings Bank Account of the petitioner and his wife. The Enquiry Officer could have easily verified the said document and could have give a finding that contention of the petitioner is correct or not. Based on the above materials, I hold that respondents have not proved the charges 1 to 3 leveled against the petitioner.

Category II - Charges 4 to 12:

10.All these charges relate to sanction of KCC loan to the constituents. The allegation leveled against the petitioner in respect of all these charges is that he has sanctioned the KCC loan above Rs.25,000/-. When KCC loan/agricultural loan is granted, the petitioner ought to have obtained equitable mortgage of the loan or secured 3rd party guarantee, as per the existing instructions of the Bank. The petitioner granting such loan above Rs.25,000/-, failed to obtain equitable mortgage or 3rd party guarantee. When the petitioner extended the said loan and granted additional loan, he failed to obtain equitable mark or 3rd party security. A reading of evidence let in before the Enquiry Officer and document filed and relied on by the parties, it is seen that none of the borrowers defaulted in repayment of loan obtained by them. It is not the case of the respondents

that the petitioner was benefited in sanctioning the said loan without following the rules for sanctioning the said loan. Further, it is not the case of the respondents that Bank suffered loss by the action of the petitioner. Considering the nature of charges and the evidence on record, it can be said that petitioner has not followed the procedure and action of the petitioner is only procedural lapse. It is also pertinent to note that Bank has not suffered any financial loss due to procedural lapses on the part of the petitioner.

Category III - Charge 13:

11.It is alleged that cash remittance in the Savings Bank Account of the petitioner and his wife is disproportionate to the known sources of income of the petitioner. The petitioner has admitted the amounts credited to the said account. According to the petitioner, in order to obtain a Visa for his son to go to USA for higher studies, petitioner's wife borrowed monies from relatives and friends and Bank deposit holders in order to show sizeable balance in the account. According to the petitioner, all the amounts were repaid within a week together with interest by his wife. Admittedly, the amounts were borrowed which are evidenced by the documents. The persons who lend money by taking loan on their Bank account did not complain against the petitioner against any irregularity. In such circumstances, the findings of the Enquiry Officer that petitioner indulged in different dubious transactions, especially when he was dealing with public money is perverse. The amounts borrowed by the petitioner's wife will not amount to disproportionate remittance to the known sources of income of the petitioner. This charges is contradictory to the charges 1 to 3. For the above reasons, the petitioner cannot be penalized for the amounts borrowed by his wife.

Category IV - Charge 14:

12(i). As far as charge 14 is concerned, it is alleged that one S.Venkatachalam has remitted a sum of Rs.23,730/- on 07.01.2002, but the same had not been accounted in Bank's book on 07.01.2002. The petitioner explained that said S.Venkatachalam wanted fresh Cash Credit Loan to save standing crops. When the said S.Venkatachalam was informed that unless existing loan is closed, no new loan can be granted, the said S.Venkatachalam agreed to close the existing loan. After Banking hours, he came to the Bank and informed the petitioner that he would close the existing loan. He was directed to pay the amounts in cash counter. Thinking that the said S.Venkatachalam had remitted the amount in cash counter, the petitioner made entries in the pass book of said S.Venkatachalam showing that

said S.Venkatachalam has paid a sum of Rs.23,730/- on 07.01.2002. Subsequently, the petitioner came to know that said S.Venkatachalam did not deposit the sum of Rs.23,730/- on 07.01.2002 and the petitioner scored off all the entry made by him crediting a sum of Rs.23,730/- on 08.01.2002. The said S.Venkatachalam as P.W.2 has deposed that he paid only interest and he did not pay the principal amount. The Enquiry Officer considering the evidence of S.Venkatachalam as P.W.2 and document produced by the respondents, has held that the arguments of both the respondents and petitioner are not acceptable. Having held so, the Enquiry Officer without any basis has given a finding that there is strong evidence that the said account would have also been used by the petitioner for his clandestine operations. The said finding of the Enquiry Officer is not supported by any evidence and the same is perverse. The respondents have failed to prove the said charge against the petitioner.

12(ii).Considering the entire proceedings of the Enquiry Officer, it is seen that the document relied on by the respondents were marked without examining the concerned person to prove the contents of the document. The witness examined by the respondents did not prove the contents of the document even though he has produced the document and the same were marked as Exhibits. The respondents have not examined the deposit holders to prove the charges leveled against the petitioner. The contention of the learned counsel appearing for the petitioner that respondents having leveled serious charges of creating the document and misappropriation, ought to have proved the same by acceptable evidence has considerable force and the judgment of the Hon'ble Apex Court relied on by the learned counsel appearing for the petitioner reported in (2009) 2 SCC 570, [Roop Singh Negi Vs. Punjab National Bank], cited supra, is squarely applicable to the facts of the present case.

12(iii).The finding of the Enquiry Officer must be based on some acceptable evidence to come to the conclusion that charges leveled against the petitioner are proved. The departmental proceedings is quasi judicial proceedings and Enquiry Officer is discharging quasi judicial function. In the present case, the Enquiry Officer without any evidence has come to the conclusion that charges leveled against the petitioner are proved. The respondents 1 to 3 have also failed to properly appreciate the nature of charges and evidence let in before the Enquiry Officer and in a mechanical manner, accepted the finding of the Enquiry Officer and passed the impugned order. The judgment reported in (2009) 12 SCC 78, (2011) 6 SCC 376, 2007 Writ Law Reporter 69 (Madras DB) = CDJ 1985 MHC 160 - D is squarely applicable to the facts of the present case.

13(i).The learned counsel appearing for the petitioner mainly contended that the respondents obtained letter dated 20.12.2002 by threat and coercion. The contention of the learned counsel appearing for the petitioner that on the threat of handing over the petitioner to the Police, the petitioner has given such a letter is acceptable as the petitioner has retracted the said statement by his letter dated 22.05.2003. The Enquiry Officer rejected the letter dated 22.05.2003 on the ground that the same was given after five months and petitioner has not given such a letter within a reasonable time. During arguments, the learned counsel appearing for the respondents has stated that Police complaint has been given against the petitioner. The Enquiry Officer has given the following findings with regard to P-Ex.39:

"From the records, it is ascertained that fearing Police Station, CSO had volunteered and admitted all the lapses committed by him at Swaminathapuram Branch by means of a written brief"

13(ii).The Enquiry Officer has given a clear finding that fearing Police Station, the petitioner has given P-Ex.39. This clearly proves that P-Ex.39 was not given voluntarily by the petitioner, but it was given under threat and coercion. When such is the case, it is not open to the respondents to rely on the said document to contend that petitioner himself has confessed having committed such lapses. Further, the misconduct alleged against the petitioner is that he has committed 14 misconduct while he was working as Branch Manager of Swamynathapuram Branch. It is an admitted case of the petitioner that the petitioner was transferred to Commercial Branch, Tiruppur, on 25.02.2002 and he joined in the new Branch on 26.02.2002 itself. It is unbelievable that after 10 months, the petitioner remembers each and every minute details and has written P-Ex.39 in the office of Assistant General Manager, Madurai. The respondents have not denied that P-Ex.39 was executed by the petitioner in the office of Assistant General Manager at Madurai after he was questioned for the whole day in the Swamynathapuram Branch and he was taken to office of Assistant General Manager at Madurai at 10.30 p.m.

13(iii).The petitioner in the affidavit had stated that he was not paid subsistence allowance from the date of suspension and he could not efficiently participate in the domestic enquiry. In the written arguments, the learned counsel appearing for the petitioner has stated that subsistence allowance payable

to the petitioner was adjusted towards loan borrowed by the petitioner and no subsistence allowance was paid to the petitioner. The learned counsel appearing for the respondents stated that averments in the affidavit and written arguments are contradictory. The learned counsel appearing for the respondents submitted that subsistence allowance was paid to the petitioner and petitioner did not raise this issue before the Enquiry Officer or before the respondents 1 and 2. For the first time, after 10 years, the petitioner is raising this issue. The learned counsel appearing for the respondents has not denied the contention of the learned counsel appearing for the petitioner that subsistence allowance was adjusted only towards loan taken by the petitioner and was not paid to him. The learned counsel appearing for the respondents has not furnished any details of payment of subsistence allowance to the petitioner. The respondents have failed to prove that subsistence allowance was paid to the petitioner and therefore, the domestic enquiry conducted by the respondents is vitiated. (1986) 3 SCC 103, [Ram Chander Vs. Union of India], (1999) 3 SCC 679, [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another] the judgments relied on by the learned counsel appearing for the petitioner are squarely applicable to the facts of the present case.

14. The contention of the learned counsel appearing for the petitioner that when order of dismissal is shockingly disproportionate, this Court has power to interfere with the said finding and this Court can modify the order of dismissal is well founded. The judgments of the Hon'ble Apex Court relied on by the learned counsel appearing for the petitioner reported in (2003) 8 SCC 9, [Dev Singh Vs. Punjab Tourism Development Corporation Ltd. And another] and 2019 SCC OnLine SC 570, [Naresh Chandra Bhardwaj Vs. Bank of India and others] are squarely applicable to the facts of the present case.

15. As discussed above, the respondents have not proved the charges leveled against the petitioner and at best, the charges 4 to 12 and 14 can be termed as procedural lapses. For the above reason, the order of dismissal imposed on the petitioner is not valid and in any event, it is shockingly disproportionate to the charges leveled against the petitioner. In view of the above, the judgments relied on by the learned counsel appearing for the respondents that this Court is not a Court of appeal and has no power to interfere with punishment imposed by the respondents is not applicable to the facts of the present case.

16. For the above reason, the order of dismissal passed by the 4th respondent confirmed by the respondents 2 and 1 are set

aside. The petitioner attained the age of superannuation and therefore, the question of reinstatement does not arise even though the respondents have not proved the charges leveled against the petitioner. The charges 4 to 12 and 14 amounts to procedural lapses on behalf of the petitioner. For the said reason, the petitioner is not entitled to any salary from the date of dismissal till the date of superannuation. The period from 03.02.2003 to 31.03.2013 the date of superannuation shall be counted for terminal benefits as well as for pensionary benefits. The petitioner is not entitled to any salary from the date of dismissal till the date of superannuation, but he is entitled to terminal benefits and pensionary benefits treating the period from 03.02.2003, the date of suspension to 31.03.2013, the date of superannuation as duty period.

17. With the above direction, the Writ Petition is allowed. The respondents are directed to pay all the terminal benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gsa/krk

To

1. The Chairman & Managing Director,
State Bank of India,
Corporate Centre,
Post Box No.12,
Mumbai - 400 021.
2. The Reviewing Committee,
Appeals & Review Department,
Corporate Centre, Post Box No.12,
Mumbai - 400 021.
3. The Chief General Manager,
State Bank of India,
Local Head Office, Circle Top House,
Aparna complex, 16, College Lane,
Chennai - 600 006.

4. The General Manager-I,
State Bank of India,
Local Head Office, Circle Top House,
Aparna complex, 16, College Lane,
Chennai - 600 006.

+1 cc to Mr.K.M.Ramesh, Advocate, S.R.No.88523

+1 cc to Mr.K.Chandrasekaran, Advocate, S.R.No.88472

W.P.No.57 of 2012

SVI (CO)
SSM(04/11/2019).



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