



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2020
(Reserved on 10.02.2020)

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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W.P (MD) No.1404 of 2015

and

M.P (MD) No.1 of 2015

S.V.Mothilal

... Petitioner

vs.

1)The General Manager &
Reviewing Authority,
Canara Bank,
Human Resources Wing,
Head Office, 112, J.C. Road,
Bangalore-2.

2)The Deputy General Manager &
Appellate Authority,
Human Resources Wing,
Head Office, 112, J.C. Road,
Bangalore-2.

3)The Assistant General Manager &
Disciplinary Authority,
Circle Office, East Veli Street,
Madurai-625 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the order of dismissal dated 27.07.2013 passed by the 3rd respondent and the disciplinary authority as confirmed by the order dated 05.02.14 issued by the 2nd respondent and the appellate authority and as confirmed by the order dated 03.09.14 issued by the 1st respondent and the reviewing authority and quash the same as illegal.

For Petitioner : Mr.M.E.Ilango
For Respondents : Mr.M.Ganesan

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of dismissal dated 27.07.2013 passed by the 3rd respondent and the disciplinary authority as confirmed by the order dated 05.02.14



issued by the 2nd respondent and the appellate authority and as confirmed by the order dated 03.09.14 issued by the 1st respondent and the reviewing authority and quash the same as illegal.

2.The petitioner would submit that he joined the respondent bank as Agricultural Extension Officer on 19.07.1982 and since then, he has been discharging his duties without any complaint. Considering his unblemished service and seniority, he was given various promotions and finally, he was working as a Senior Manager in the Grade Scale III officer. He would state that while he was working as a Branch Manager at Madurai Pudur Branch between August 2007 and July 2009, Self Help Group(SHG) movement was flourishing with the backing of both the Central and the State Governments. Since the funding of SHG was found to be a lucrative and safe business, all the banks were vying with each other to tap the said business and the central office also directed the respondent bank to improve the said business by making huge advances to SHGs. The Pudur Branch had to service thousands of accounts with inadequate staff strength and there was also a transition in the usage of software of the bank which resulted in the overload of work with enormous work pressure. However, the Pudur Branch had steady growth and it had a rating of 'A' Grade/Low risk. In such situation, the petitioner was transferred and he left the Pudur Branch on 27.07.2009.

3.The petitioner would further state that after his transfer from Pudur Branch, three Managers had worked there and two regular inspections were also made, wherein, no adverse remark was reported against the petitioner and he was given a clean chit. However, to his shock and surprise, a charge memo dated 13.07.2013 was issued to the petitioner after a lapse of 4 years of transfer from Pudur Branch, alleging that he committed irregularities while he was working as Manager at Pudur Branch and the following charges were framed against he petitioner:-

''(i)You had failed to adhere to the Banks- in respect of SHG finance and you had considered the SHGs for linkage without verifying the records of SHG and the genuineness the records of the SHG submitted for linkage.

(ii)You failed to ensure that the membership was homogeneous, the load quantum was as per the guidelines and the KYC of the members were verified. You had sanctioned the SHG loans without involving other officers. There are no records to show that CR copies were submitted to the controlling office for review and exhibited a casual approach and failed to conduct proper pre-sanction inspection, proper identification of borrowers, documentation, disbursement and follow up of the loans.

(iii)It has come to light that the SHG members had visited the branch for loan documentation and signatures available in the loan document were made by third parties



by impersonation. The proceeds of the loans were also fraudulently withdrawn by the trustees of Peace Trust and the trustees have accepted to have perpetrated a fraud on the bank in 55 loan accounts sanctioned to the SHGs sponsored by them. You had failed to ensure that the loan documents were filled and signature of the borrowers were obtained in the loan documents in the presence of the branch officials at the branch. Your negligence and a casual approach has facilitated the above trustees to perpetrate a fraud and the Bank is exposed to a huge financial loss.

(iv) It has come to light that the authorized signatories of the SHG had not visited the branch for withdrawing the loan proceeds and the loan proceeds were parted with the NGOs on the basis of withdrawal order form obtained from the authorized signatories. The NGOs had pocketed a portion of the loan proceeds and distributed a portion of the proceeds among the members. You have failed to ensure that the loan proceeds credited to the SB account of the SHGs were withdrawn by the authorized signatories only and the loan proceeds were not misutilised by the NGOs.

(v) It has come to light that Sri R Subramanian (48470), who was working as a Clerk in the branch during that tenure had got sanctioned loans for 9 SHGs wherein his family members and close relatives were the members. He had misutilised the proceeds of the above loans to his personal requirements. The above loans were not falling under your delegated powers. You had failed to conduct proper pre-sanction inspection and ensure proper identification of the SHG members and facilitated the Sri R Subramanian to misutilise the SHG loans.

(vi) You had relied on the NGOs for arranging deposits for the branch. The proceeds of the loans misutilised by the NGOs were used to pay the middlemen who were arranging bulk deposits for the branch and it has also come to surface that you have received illegal gratification from the NGO towards sanction of the loan.

(vii) You had thus deliberately acted in utter deviation from the guidelines of the Bank and thereby exposing the Bank to a possible financial loss of Rs.1.66 crores. ''

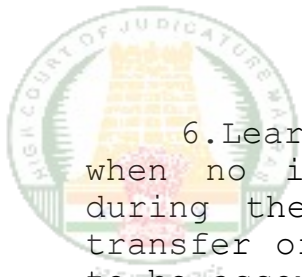
4. The petitioner would further submit that he was given 15 days time to submit his explanation to the above charges, but before expiry of the said 15 days time, an enquiry was ordered to be conducted on 17.07.2013 and it was completed on 18.07.2013 itself. Though 3 documents and 3 witnesses alone were shown in the list of documents and list of witnesses appended to the charge sheet, in the enquiry, as many as 96 documents were marked and 17 witnesses were



examined on the side of the respondent bank. The enquiry was conducted in a farce manner. As per Regulation 6(9) of the Central Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, if the officer does not plead guilty, the inquiring authority should adjourn the case to a later date not exceeding 30 days so as to enable the delinquent employee to complete the inspection of documents and to submit list of documents to be marked in the enquiry, but in this case, that has not been followed and within two days, enquiry was completed in blatant violation of principles of natural justice and within 5 days therefrom viz., on 23.07.2013, the enquiry officer submitted his report and the petitioner was forced to give his reply thereto on the same day and without considering his reply, the disciplinary authority dismissed the petitioner from service on 27.07.2013 while he was due to retire on 31.07.2013. The entire disciplinary proceedings is vitiated for want of good faith and the petitioner's 30 years of unblemished service was never taken into account while passing the impugned order of dismissal, against which, the petitioner filed appeal and the appellate also without properly considering the appeal, dismissed the same, thereagainst, the petitioner filed a review petition which was also dismissed. According to the petitioner, none of the grounds of appeal and review petition were considered by the appellate and reviewing authorities. Therefore, challenging the above three orders passed by the respondents, the petitioner has filed this writ petition.

5. Learned counsel for the petitioner would submit that the enquiry itself was conducted within two days in violation of Regulation 6(9) of the Central Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 and the findings of the enquiry officer are based on no evidence and are vitiated. He would further state that based on the stereo-typed statements prepared and signed under force by the members of SHGs, the charges were framed against the petitioner and the charges itself are vague, as no definite alleged financial loss has been quantified, whereas, it only says that there is a possibility of loss. When the witnesses have stated in the enquiry that if loan accounts had been renewed, recovery could have been completed, the enquiry officer held that the charges in that regard had been proved. Further, the enquiry officer held that the charges of illegal gratification and granting of loans to close relatives of the family of an employee are not proved and the charges that he had not directly disbursed loans to SHG and not issued withdrawal order forms to the authorised signatories were also held as not proved. The charges held to be proved and partly proved were only in the nature of procedural lapses and therefore, the same cannot be construed as misconduct warranting disciplinary action. Even assuming that the petitioner is responsible for such procedural lapses, imposition of the punishment of dismissal ignoring his blemishless service of 30 long years, is highly disproportionate and it clearly discloses total non application of mind.

<https://hcservices.ecourts.gov.in/hcservices/>



6. Learned counsel for the petitioner would further submit that when no irregularities were pointed out against the petitioner during the two inspections conducted at Pudur Branch after the transfer of the petitioner therefrom, the petitioner cannot be held to be accountable for the alleged procedural lapses. Initiation and completion of disciplinary proceedings in a farce manner and passing of punishment order before 4 days of retirement, was only with an intention to punish the petitioner before his retirement thereby putting his post retirement life in peril by driving him from pillar to post to get his retirement benefits. The learned counsel would state that the petitioner who had served the bank meritoriously for 30 years and who had toiled for its growth had been unceremoniously shunted out which reflects total non application of mind. Further, one R.Subramaian, co-delinquent who was charge sheeted along with the petitioner, has been reinstated in service and therefore the impugned orders are liable to be set aside on the ground of disparity in punishment. It is further stated that none of the grounds raised by the petitioner in the appeal and review, had been dealt with by the appellate and reviewing authorities and without assigning any reason to justify the dismissal, mechanically, they passed non speaking orders confirming the dismissal order. Thus, he would pray for setting aside the impugned orders with consequential prayer. In support of his contentions, the learned counsel would reply upon various judgments.

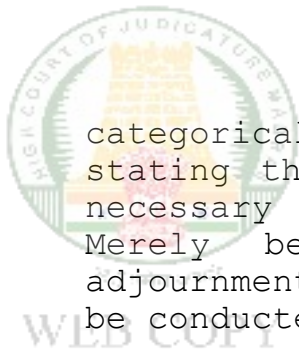
7. The respondents have filed counter affidavit. Learned counsel for the respondents would submit that while the petitioner was working as Branch Manager at Pudur Branch, without adhering to the Bank's guidelines, without verifying the records, not complying with KYC norms, not ensuring proper loan quantum, improper documentation, lapses in disbursement and follow-up of the loans, had sanctioned loans to various self help groups, thereby, exposing the bank to a loss of more than Rs.1.66 crores at the time of issuing charge sheet which has now been crystalised at Rs.4.22 crores. The members of SHGs had not received the loan proceeds sanctioned and they had no knowledge of loans granted to them casting doubt on the entire transaction of sanction of loan which came to light only before 3 to 4 months before the petitioner's retirement and therefore, the bank issued charge memo to the petitioner. In fact, prior to the issuance of charge memo, the bank had conducted an investigation in the matter and staff lapse was identified and based on the investigation report, explanation was called for from the concerned officers including the petitioner and being not satisfied with his reply, disciplinary proceedings were directed to be initiated against the petitioner and accordingly charge memo was issued.

8. He would further state that though 15 days time was given to submit reply to the charge memo dated 13.07.2013, the petitioner gave his reply immediately on 13.07.2013 itself and being not



satisfied with the same, an enquiry was ordered and it commenced with the mutual consent of both parties on 15.07.2013 and in the enquiry, the petitioner also accepted that he went through the charge sheet and list of witnesses documents appended thereto. It is further stated that the enquiry officer has complied with Regulations 6(8)(a) to (c) of the Central Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 and the petitioner had never requested extension of time for further reply or for adjourning the enquiry proceedings, whereas, he fully participated without any objection and the enquiry officer had given sufficient opportunity to the petitioner to examine/peruse the documents let in on the side of the bank and the petitioner or his defence representative had never made any requisition under Regulations 6(11) and 6(12) seeking for production of documents. After the closure of evidence on the side of the bank, when the enquiry officer called upon the petitioner to offer his say, the petitioner stated that his submission on defence would be along with defence representative's brief which was submitted on 20.07.2013. The proceedings of enquiry and its conclusion was with the consent of all the parties thereto and based on the evidence placed before him, the enquiry officer submitted his report. Thus, he submits that the enquiry was conducted in a free and fair manner and there is no violation of principles of natural justice in the conduct of enquiry. After considering the petitioner's reply to the enquiry report, the disciplinary authority keeping in mind the gravity of charges committed by the petitioner which were serious in nature touching upon his honesty and integrity, rightly imposed the major punishment of dismissal from service. Only at the appellate stage and in the subsequent review petition, the petitioner took up the plea that the enquiry was conducted in a farce manner. After affording full opportunity, the appeal and review filed by the petitioner against the dismissal were also dismissed finding that there was no reason to interfere.

9. According to the respondents, by contending that the proved charges are nothing but procedural lapses, the petitioner is indirectly admitting his guilt. Now the petitioner has come before this Court for re-appreciation of evidence which cannot be done when there is no violation of statutory or constitutional rights of the petitioner. The learned counsel would further state that the case of one R.Subramanian is having no co-relation to the case of the petitioner as the said person was a Clerk, whereas, the petitioner was the Branch Manager having a higher responsibility and therefore, the plea of disparity in punishment is baseless. Further, the SHGs are independent entities and they cannot be compelled for anything and the distortion expressed by the witnesses were also duly recorded in the enquiry proceedings and it was considered by the enquiry officer. As regards the contention that more number of witnesses were examined and documents marked, the learned counsel for the respondents would state in the charge sheet itself, it was



categorically mentioned below the list of documents and witnesses stating that any other documents or witnesses that may be deemed necessary during the course of enquiry, the same will be produced. Merely because Regulation 6(9) provides maximum period of adjournment as 30 days, it does not mean that the enquiry shall not be conducted before such 30 days.

10.It is further submitted that the contention of the petitioner that after his transfer, two inspections were conducted at Pudur Branch and no irregularities were found, is denied stating that though as per Clause 5(2) of the Policy on Staff Accountability, no disciplinary proceedings will ordinarily lie against any official for any lapse not detected within two successive internal regular inspections of the same account or 4 years from the date of event or occurrence of the lapse whichever is later, the said time limit will not apply to cases where the involvement of the employee is identified as (a)frauds, (b)cases where malafides are inferable and (c)other criminal offences as per the law of the land and the petitioner falls under category (b) and therefore, the limitation is not applicable. As regards the contention that junior below the rank of the petitioner was appointed as enquiry officer, it is submitted that any serving officer can be appointed as enquiry officer and in this case, the enquiry officer is one rank above the petitioner. As regards the proved charges which are only procedural lapses and not misconduct warranting disciplinary action, he would state that out of 13 charges, 9 charges were proved which are charges of illegal gratification, sanction of loans to close relatives, non disbursement of loan to SHGs, violating guidelines for sanctioning loans, non verification of records etc., touching his honesty and integrity and therefore, the same cannot be termed as procedural lapses.

11.Heard the learned counsel for the petitioner as well as the respondents.

12.Perusal of record shows that there is no definite alleged financial loss quantified and even on the face of it, the charge memo says that there is a possibility of loss and there was no dishonest motive attributed against the petitioner, but the whole reading of the charges would only says that there were procedural lapses on the part of the petitioner. When the charge itself allege only procedural lapses, then definitely initiation of proceedings after a period of 4 years will cause prejudice to the petitioner. Regulation 6(9) of the Central Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, reads as follows:-

'If the officer employee does not plead guilty, the inquiring authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the inquiring authority.'



13. Perusal of record shows that the charge sheet was issued on 13.07.2013 and 15 days time was granted for submitting written statement for defence to the charge sheet. In the enquiry, 96 documents were marked and 17 witnesses were examined, whereas, only 3 witnesses and 3 documents were referred in the charge memo. Regulation 6(3) of the Central Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, says that where it is proposed to hold an inquiry, the disciplinary authority shall frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge together with a statement of the allegations (list of documents relied on along with copy of such documents and list of witnesses along with copy of statement of witnesses, if any) on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit within such time as may be specified by the disciplinary authority (not exceeding 15 days) or within such extended time as may be granted by the said authority, a written statement of his defence.

14. Reading of Regulation 6(9) of the Central Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, says that if the officer employee does not plead guilty, the inquiring authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the inquiring authority. The above provision clearly says that it is mandatory on the part of the inquiring authority to grant time, but here, it is seen that though the charge memo was issued on 13.07.2013, even before completion of 15 days time for submitting reply, the enquiry was commenced on 15.07.2013 and concluded on 18.07.2013 and the petitioner has been dismissed from service 4 days before the date of his retirement and all the proceedings have been conducted in a farce manner. Therefore, in my opinion, it is a complete violation of the principles of natural justice. The petitioner has rendered 30 years of unblemished service that was never taken into account while imposing the major punishment of dismissal from service. Further, the enquiry officer has held the charges of illegal gratification and granting of loans to close relatives of the family of an employee were not proved. The allegation against one of the co-delinquents who was charge sheeted along with this petitioner on the allegation that he was said to have obtained loan in the name of his relative, held as not proved and he was reinstated in service.

15. Learned counsel for the petitioner would state that no disciplinary proceedings will ordinarily lie against any official for any lapse not detected within two successive internal regular inspections of the same account or 4 years from the date of event or occurrence of the lapse whichever is later, but the learned counsel for the respondents would state that the above time limit will not apply to cases of where the involvement of the employee is identified as (a) frauds, (b) cases where malafides are inferable and (c) other criminal offences as per the law of the land. Here in the



present case, no such frauds or malafides were attributed against the petitioner and as stated earlier, it is the specific finding of the enquiry officer that the charges of illegal gratification and granting of loans to close relatives of the family of an employee is not proved. Even other criminal offences has not been attributed. The entire reading of the charge memo would allege only procedural lapses and therefore, the above contention of the learned counsel for the respondents cannot stand to legal scrutiny. The appellate and the reviewing authorities have passed non speaking orders and none of the grounds raised by the petitioner was dealt by them and no reason has been assigned to justify the dismissal as held in the judgment reported in **(2009) 4 SCC 240, Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and others**, wherein, it has been held as follows:-

'An order of affirmation need not contain as elaborate reasons as an order of reversal but that does not meant the order of affirmation need not contain any reasons at all. Whether there was an application of mind or not, can only be disclosed by reasons, at least in brief, mentioned in the order of appellate authority. An affirmation order must contain some reasons, at least in brief.

The purpose of disclosure of reasons is that people must have confidence in judicial and quasi-judicial authorities. Unless reasons are disclosed, a person cannot know whether or not the authority concerned has applied its mind. Also, giving reasons minimises the chances of arbitrariness. It is also an essential requirement of the rule of law.'

16.The petitioner has put in 30 years of blemishless service which had been never considered by the authorities as held in the judgment reported in **(2009) 13 SCC 102, Union of India and others vs. Bishamber Das Dogra**, wherein, it has been held as follows:-

'... it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for 'adding the weight to the decision of imposing the punishment if the fact of the case so required.'

17.In my opinion, the charges against the petitioner can be construed only as procedural lapses, for which, the petitioner has been given major punishment. Moreover, the employee charge sheeted along with the petitioner, has been reinstated in service and therefore, it could be construed only as disparity in punishment as held in the judgment **(2012) 4 LLJ 459, Managing Director, Dheeran**



Chinnamalai Transport Corporation Tiruchirappalli-1 and others vs. R.Rajendran relied on by the petitioner:-

''26. The judgments relied on by the learned counsel for the management are not applicable to the facts of the present case for the reason that in the case on hand, while major punishment of dismissal has been inflicted on the writ petitioner, not even any action has been initiated against the other driver, whose role in the accident was pointed out by the enquiry officer. No explanation of whatsoever emanated from the appellants/Management as to what made them to treat equals inequally. While such a glaring discrimination is available in the case, we are not in a position to appreciate the contention of the appellants/Corporation that no parity could be claimed by the writ petitioner. When the finding of the Enquiry Officer is that the entire blame cannot be thrown on the writ petitioner, the punishment of dismissal from service slapped on the writ petitioner is, shockingly disproportionate to the alleged and proved charges.''

18.All the more, the petitioner has been dismissed from service on the eve of his superannuation that is, 4 days before the date of his superannuation which is highly arbitrary and would definitely shock the conscience. The Apex Court in the judgment reported in **(2001) 2 SCC 386, Om Kumar and others vs. Union of India**, relied on by the petitioner, has held as follows:-

''70.In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India, [1987] 4 SCC 611, this Court referred to 'proportionality' in the quantum of punishment but the Court observed that the punishment was 'shockingly' disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India, [1995] 6 SCC 749, this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in Ganayutham.

71.Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a



fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.''

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19.As far as misconduct is concerned, even the charges against the petitioner with regard to illegal gratification and granting of loans to close relatives of the family of an employee is not proved and if at all it can be construed as procedural lapses and the same cannot be held as misconduct as held in the judgment reported in **1979 II LLJ 14, Union of India vs. J.Ahamed**, relied on by the petitioner:-

''10.It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

11.Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct [see *Pierce v. Foster*(1)]. A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle .(Indicator Newspapers) (2)*]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur*(1), and *Satubha K. Vaghela v. Moosa Raza* (2). The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik*, in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India*, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P. H. Kalyani v. Air France, Calcutta*,



wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand shah v. Manager, Ahmedabad Co- op. Department Stores Ltd.]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

12.The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.

13.Having cleared the ground of what would constitute misconduct for the purpose of disciplinary proceeding, a look at the charges framed against the respondent would affirmatively show that the charge inter alia alleged failure to take any effective preventive measures meaning thereby error in judgment in evaluating developing situation. Similarly, failure to visit the scenes of disturbance is another failure to perform the duty in a



certain manner. Charges Nos. 2 and 5 clearly indicate the shortcomings in the personal capacity or degree of efficiency of the respondent. It is alleged that respondent showed complete lack of leadership when disturbances broke out and he disclosed complete inaptitude, lack of foresight, lack of firmness and capacity to take firm decision. These are personal qualities which a man holding a post of Deputy Commissioner would be expected to possess. They may be relevant considerations on the question of retaining him in the post or for promotion, but such lack of personal quality cannot constitute misconduct for the purpose of disciplinary proceedings. In fact, charges 2, 5 and 6 are clear surmises on account of the failure of the respondent to take effective preventive measures to arrest or to nip in the bud the ensuing disturbances. We do not take any notice of charge No. 4 because even the Enquiry officer has noted that there are number of extenuating circumstances which may exonerate the respondent in respect of that charge. What was styled as charge No. 6 is the conclusion, viz., because of what transpired in the inquiry, the Enquiry Officer was of the view that the respondent was unfit to hold any responsible position. Somehow or other, the Enquiry Officer completely failed to take note of what was alleged in charges 2, 5 and 6 which was neither misconduct nor even negligence but conclusions about the absence or lack of personal qualities in the respondent. It would thus transpire that the allegations made against the respondent may indicate that he is not fit to hold the post of Deputy Commissioner and that if it was possible he may be reverted or he may be compulsorily retired, not by way of punishment. But when the respondent is sought to be removed as a disciplinary measure and by way of penalty, there should have been clear case of misconduct, viz., such acts and omissions which would render him liable for any of the punishments set out in rule 3 of the Discipline & Appeal Rules, 1955. No such case has been made out.

14. Mr. Naunit Lal for the appellant contended that the word 'misconduct' is nowhere used either in the Conduct Rules or in the Discipline and Appeal Rules and the Court should not import any concept of misconduct in this inquiry. The word 'misconduct' has relevance here because the respondent in due course would have retired from service on 1st February 1962 on attaining the age of 55 years. The inquiry could not be completed before the relevant date and it became necessary for the Government to retain the respondent in service beyond the normal period of retirement on superannuation for continuing the inquiry. Rule 16(1) of the Retirement Rules 1955 as it stood at the relevant time provided for retirement on superannuation on



attaining the age of 55 years. There is a proviso to rule 16(1) which enables the State Government to postpone the period of retirement and retain the Government servant in service for an aggregate period not exceeding six months and if the retention in service beyond that period is required, the same will have to be with the sanction of the Central Government.''

20.The judgments relied on by the learned counsel for the respondents are not applicable to the facts of the present case. For the reasons stated above, I am inclined to interfere with the impugned orders. Accordingly, the order of dismissal dated 27.07.2013 passed by the 3rd respondent and the disciplinary authority as confirmed by the order dated 05.02.14 issued by the 2nd respondent and the appellate authority and as confirmed by the order dated 03.09.14 issued by the 1st respondent and the reviewing authority, are quashed. 21.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

bala

To

The General Manager &
Reviewing Authority,
Canara Bank,
Human Resources Wing,
Head Office, 112, J.C. Road,
Bangalore-2.

+1 CC to Mr.M.E. ILANGO, Advocate (SR-23703[F] dated 02/12/2020)

ORDER MADE IN
W.P(MD)No.1404 of 2015
DATED : 01.12.2020

SJ(CO)
CS(22.12.2020) 14P 3C