BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.11.2022

PRONOUNCED ON : 22.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos.10608 and 10609 of 2016
and
W.M.P.(MD)Nos.8229 to 8231 of 2016

P.Sampath Kumar ... Petitioner in both cases

vs.

1.The Chairman and Managing Director,
Corporate Office, Indian Bank,
Chennai.

2.General Manager (Reviewing Authority),
Corporate Office, HRM Department,
Indian Bank, Chennai-600 014.

3.Deputy General Manager / Appellate Authority,
Corporate Office, HRM Department,
Indian Bank, Chennai – 600 0014.

4.The Assistant General Manager/
Disciplinary Authority,
Indian Bank, Zonal Office,
Vigilance Department,

1/17, II New Floor, GRR Building,
Perumalpuram, Tirunelveli.

5.Branch Manager,
Indian Bank,
Kovilan Kulam Branch,
Virudhunagar District. ... Respondents in both cases

PRAYER in W.P.(MD)No.10608 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in impugned Order Z.O: TNY: VIG: Order 65:SR 19389:2014-15, dated 31.01.2015, passed by the 4th respondent and confirmed by the 3rd respondent by order No: 2520: VIG:TNY: 2015-16, dated 17.12.2015 and to quash the same and to direct the respondents to grant promotion notionally to the petitioner to the post of Assistant General Manager and grant all attainable service benefits thereto including loss of increments suffered by the impugned order.

PRAYER in W.P.(MD)No.10609 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in impugned Order in ZO:TNY:VIG:12-13, dated 19.06.2012, issued by the 4th respondent and modified on revision by the 2nd respondent vide his order No. CO/HRM/DPC/605/2012-13, dated 22.03.2013 and to quash the same and to direct the respondents 1 to 4 to pay the monetary benefits suffered by the petitioner due to the impugned order as arrears of salary.

In both cases:

For Petitioner : Mr.C.Dhanaseelan
For Respondents : Mr.S.Bala Subramanian

*****

COMMON ORDER

The Writ Petition in W.P.(MD)No.10608 of 2016 is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned Order Z.O: TNY: VIG: Order 65:SR 19389:2014-15, dated 31.01.2015, passed by the 4th respondent and confirmed by the 3rd respondent by order No: 2520: VIG:TNY: 2015-16, dated 17.12.2015 and to direct the respondents to grant promotion notionally to the petitioner to the post of Assistant General Manager and grant all attainable service benefits thereto including loss of increments suffered by the impugned order.

2.The Writ Petition in W.P.(MD)No.10609 of 2016 is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned Order in ZO:TNY:

VIG:12-13, dated 19.06.2012, issued by the 4th respondent and modified on revision by the 2nd respondent vide his order No. CO/HRM/DPC/605/2012-13, dated 22.03.2013 and to quash the same and to direct the respondents 1 to 4 to pay the monetary benefits suffered by the petitioner due to the impugned order as arrears of salary.

3. The brief facts of the cases are that the petitioner was working as Assistant Branch Manager in Indian Bank, Branch at K.Pudur, Madurai. During the period October 2008 to 23.09.2010, the petitioner was working as Branch Manager of Kovilankulam Branch in Virudhunagar District. The petitioner had granted many "Self Help Groups Loans" and "Differential Rate of Interest Loans" and then transferred to other branches. Articles of Charges, dated 29.02.2012, was issued alleging procedural lapses, while sanctioning SHG loans and DRI Loans in Kovilankulam Branch. Prior to the issuance of the Articles of charges, it was informed that one Kannan, a staff of the NGO namely "Pengal Membattu Maiyam" had preferred complaint to the Vigilance Department that one Mrs.J.G.Jeyalakshmi had misappropriated the loan obtained by the SHG who was

also the members of the said NGO. The copy of the complaint was not made available to the petitioner at any point of time. The Bank did not prefer any complaint to the police against the said Jayalakshmi. But the said complaint was taken by the higher officials to take vindictive actions against the petitioner.

4. On receipt of the said articles of charges, the petitioner submitted explanation and denied the charges. The 4th respondent issued final order, without any inquiry, in his office proceeding No:ZO:TNY:VIG:12-13, dated 19.06.2012, awarding the minor penalty of 'Reduction to a lower stage in the time scale of pay by 3 stages for a period of two years, without cumulative effect and not adversely affecting the pension as the petitioner have committed a misconduct warranting punishment under Regulation 4(e) of Indian Bank Officer Employees (Contact) Regulations, 1976, as amended from time to time. The petitioner preferred appeal, and the appellate authority confirmed the punishment. Aggrieved over the same, the petitioner preferred a review petition and the punishment was modified by the Reviewing authority by reducing the reduction of pay into two stages and limiting the period to one year, without any cumulative effect and not adversely affecting

the pension. While granting the modification, the 2nd respondent has observed that the SHG Loan portfolio is difficult portfolio to be handled by the Bank. The petitioner submitted that the SHG are unregistered association of persons, if it had been a registered society, the Registrar of Society will have power of superintendence about the Constitution, working and financial conditions of the SHG. The Branch Manager of the Bank had to assume the role of the Registrar of the Societies in addition to his regular duties in the Bank.

5. On 04.10.2013, the petitioner submitted a mercy petition to the 1st respondent to absolve the petitioner from the charge and punishment. Subsequently, the petitioner submitted a reminder letter during the pendency of the mercy petition. The punishment period of one year was over in April 2014. The regular promotional opportunities will be available to all staff of the Bank. The petitioner was also expecting the promotion to the post of Senior Manager, but the 4th respondent issued another charge memo, dated 19.04.2014, by reopening the very same earlier subject matter of SHG loans and DRI loans granted at Kovilankulam Branch. The charges are that the petitioner sanctioned

DRI loans to members of SHGs without proper appraisal and routed the loan proceeds through the SB accounts of the SHGs instead of individual SB accounts which is violation of guidelines and the payments were made by way of withdrawal slips by debiting the SB account. The petitioner had not ensured withdrawals duly backed by latest resolutions and observed that in 11 groups resolutions dates were altered from the earlier dates while allowing payments at later dates. The petitioner failed to verify the documentary evidences for formation and functioning of the SHGs. The petitioner had sanctioned / enhanced Term Loan limits for 33 SHGs immediately after closure of the earlier loans by lump sum payment. The petitioner has given free hand to Pengal Membattu Maiyam SHG, the repayments were collected by the staff of the NGO and not repaid to the bank properly and the petitioner failed to notice the misappropriation taken place in 29 existing accounts other than ARC accounts amounting to Rs.74.44 lakhs. The contention of the petitioner is that the enquiry officer had not conducted the enquiry in free and fair manner.

6. The inquiry officer has submitted his finding and has held as under:

Charge No.1	Part (i): Sanctioning of DRI loans to members of SHG without proper appraisal Part (ii): Routing the individual borrowers DRI loan proceeds through the SHG account	Not proved Proved
Charge No:2	Not ensuring that the withdrawals are packed by latest resolutions of SHG's and in the case of 11 group resolutions dates are allegedly altered	Proved
Charge No.3	Part (i) :Alleged failure to verify the documentary evidence for formation and functioning of SHGs at earlier dates before sanctioning the loans. Part (ii) : Alleged failure to ensure the obtention of info card from 11 groups, address proof and ID proof not verified and genuineness of party Photo in info card not verified.	Not proved Proved
Charge No:4	Sanctioning of enhanced term loans in the case of 33 SHGs immediately after closure of the earlier loans by payment of once in a month. Certain closure vouchers do not have the signature of the remitter	Proved
Charge No:5	Allegedly giving a free hand to Pengal Membattu maiyam and J.G.Lakshmi dealing with the SHGS and alleged misappropriation has been done by coordinators and NGOs.	Not Proved

As per the report, Charge 1 is partly proved, Charge 2 is proved, Charge 3 is partly proved, Charge 4 is proved, Charge 5 is not proved. The petitioner had raised various grounds and prayed to allow the writ petition with a consequential relief of promotion and benefits attached to the promotion post.

7. The petitioner has also filed another writ petition in W.P.(MD)No. 10609 of 2016 to quash the impugned order dated 19.06.2012 and 22.03.2013 and to direct the respondents to pay the monetary benefits suffered by the petitioner. The petitioner has challenged the articles of charges, dated 29.02.2012, for the loan sanctioned to the SHG. The charges are that the petitioner sanctioned new term loans with increased amounts to four SHGs immediately upon repayment of lumpsum amounts in the existing term loan accounts, sanctioned terms loans to SHGs under direct linkage without ascertaining the quantum of loans sought / approved by the members, without ascertaining the sharing details and arbitrarily sanctioned loans, non observance of prescribed Head Office guidelines in pre sanction appraisal and post sanction follow up, which has resulted in 94 SHG (Agri) loan accounts amount to Rs.165.61 lakhs have turned NPA under quick mortality category and difficult of recovery. The 4th respondent has not appointed any enquiry officer but straight away passed the impugned order, dated 19.06.2012, awarding the minor penalty of reduction to the lower stage in the time scale of pay by 3 stages for a period of two years without cumulative effect and not adversely affecting the pension under Section 4E. The appeal was also

dismissed by a non-speaking order, dated 30.11.2012 and the petitioner filed a review petition and review authority has passed an order, dated 22.03.2013, modifying the punishment by minimizing the reduction of pay into two stages and limiting the period to one year. The petitioner filed a mercy petition, dated 04.10.2013, and the same is still pending. In the meantime, the 4th respondent reopened the very same subject matter and issued a fresh charge sheet in proceedings, dated 19.04.2014 and initiated disciplinary proceedings, conducted enquiry and inflicted a major punishment by reduction of pay by two stages with cumulative effect and postponing the future increments, vide letter, dated 31.01.2015. Aggrieved over the same this writ petition is filed.

8. The respondents have filed counter affidavit in W.P.(MD)No.10608 of 2016 stating that the earlier chare memo dated 29.02.2012 and the present charge memo dated 19.04.2014 have no nexus, transaction mentioned in both charges were different, accounts and parties were different, the stake involved is varied. Hence the basis of the case pleaded by the petitioner is totally baseless and misleading. The petitioner is bound to follow the rules, procedures, norms and

guidelines issued by the bank in strict compliance in lending loans to the SHG which involves public money for which the bank is liable to pay interest. The petitioner had not chosen to make proper appraisal of SHG which is mandatory before sanctioning loan to them. No recovery action can be taken since there was no business is conducted with the loan amount individual members or SHG. In order to conceal misappropriation and fraud by the SHG allowed the SHG to alter their earlier resolution instead of latest resolution which is against rules and procedures. The petitioner is bound to verify the documentary evidence for formation and previous functioning of the SHG's before sanctioning the loans, but failed to verify genuineness of nearly 31 groups address proof etc. and accepted the scanned photos in 14 SHG loan accounts and violated norms. In 29 SHG there were large scale misappropriation in collusion with NGO's and SHG by irregularities and illegalities committed by the petitioner. The petitioner has involved in all the above transactions by misuse and abuse of his official power resulting in misappropriation of more than Rs.74,44,000/- which cannot be recovered from the SHG for not disbursing the loan amount to the individual account but wholly into the account of SHG. Hence enquiry officer was appointed and 14 documents were marked and the petitioner had participated in the enquiry proceedings and a specific question was posed to the petitioner whether all the reasonable particulars were given to defend the petitioner. The petitioner has accepted that the enquiry was conducted in a free and fair manner and opportunity was granted to him. Now, the petitioner cannot raise a plea that the enquiry was not conducted and opportunity was not granted to the petitioner, the enquiry proceedings would reveal that the petitioner was given sufficient time to cross examine the management witness. The enquiry officer has held that part (i) in Charge 1, part (i) in Charge 3 and Charge 5 are not proved and hence the petitioner had committed fraud in 29 accounts. Total amount due to fraud as on 13.11.2015 is Rs.83.39 lakhs (balance outstanding Rs.69.10 lakhs and MOI Rs. 14.29 lakhs). The 4th respondent differed to the above findings in the enquiry report and called for explanation and after receiving the same, the disciplinary authority disproved the contentions of the petitioner and held all the charges are proved and imposed punishment. The petitioner filed appeals, revision, review and mercy petitions and all were dismissed. Since large scale of misappropriation had taken place by misuse and abuse of power by the petitioner by irregular and illegal grant of loan from the public money to ineligible persons without proof of income and without disbursing to the SB account of individual members of SHG but to the account of SHG SB account directly violating the rules and procedures. Therefore, respondents prayed to dismiss the writ petition.

9. The respondents have filed a counter affidavit in W.P.(MD)No.10609 of 2016 stating that the writ petitions are hit by principles of delay and laches. The writ petitions are filed after a delay of 4 years and challenging the order of minor punishment, dated 22.03.2013. There is no explanation in the affidavit which prevented the petitioner from filing the above writ petitions. It is an afterthought with a view to maintain another writ petition in W.P.(MD)No.10608 of 2016 filed and to avoid drawing any adverse inference by this Court. The petitioner has not made out any *prima facie* case and the charges were proved beyond reasonable on the basis of documentary evidence. The above writ petition was filed on the sole ground that the punishment imposed was without any enquiry into the charges framed in the charge memo, dated 19.04.2014 and the charges were modified and he is not liable for any lapse and the same is denied as

false. The petitioner is bound to follow the rules, procedures, norms and guidelines issued by the bank in strict compliance while lending loans to the women SHGs which involves public money for which the bank is liable to repay the principal with interest from the public depositors and investors. But the petitioner has violated all the procedures as given under the norms and guidelines. The petitioner had hastily issued enhanced loan to four SHGs to the tune of Rs.3,00,000/- each immediately pre-closure of small loan amount without proper appraisal of eligibility of SHG. There is no record of appraisal done, details of unit inspection, saving details of the groups which are mandatory before granting the loan. Accordingly, there was no repayment in the said loan account by the 4 SHGs. The petitioner at his whims and fancies had wrongly fixed the half yearly repayments meant for Agriculture Sector and the petitioner has acted against the interest of the Bank. When the petitioner is not supposed to sanction term loan to his SHG under direct linkage, but the petitioner indulged in such irregularity to the tune of Rs.2,00,000/- each for 5 SHG violating the procedure that too immediately after opening of savings bank account by the groups and without monitoring the transactions in the savings bank account for a minimum period of six months as required in the pre-prescribed guidelines. The sanction of term loan to the SHG under direct linkage and the quantum of loans to the members of the SHG is not found in the resolution submitted by the groups and not tailed with the proposed loans finalized to the various members of the group. The petitioner had lent Rs.165.61 lakhs to the 94 SHGs during his tenure without appraisal of the genuineness and eligibility of the group which resulted in total revenue loss, the recovery is highly impossible, since there was no source of recovery. Thus, nearly Rs.2 crores of bank funds have been lent by way of loan without proper documents and verification. The explanation submitted by the petitioner was to the effect that after transfer of the petitioner to different place and without resorting recovery action issuance of framing charge is motivated, then there is no specific rule or procedure issued by the Head Office in the grant of term loan to the SHG. After considering the explanation, the petitioner was given minor punishment on 19.06.2012 treating the charge as minor charge in the nature of lack of supervision. The said punishment was modified on appeal, as per the regulation, no enquiry is necessary for minor misconduct. Despite minor punishment for the huge loss caused by the lack of supervision, the petitioner is emboldened to knock the doors of the Court. There is no provision or need or necessity for conducting enquiry when the charge itself is self-explanatory. The petitioner had involved in all the above transactions by misuse of power and huge money granted as loan to SHG cannot be recovered from them for no source. The charges on irregularities, illegalities, abuse of power and misappropriation in collusion were proved based on the documentary evidence and prayed to dismiss the writ petition W.P.(MD)No.10609 of 2016.

10. Heard Mr.C.Dhanaseelan, learned Counsel appearing for the petitioner and Mr.S.Bala Subramanian, learned Counsel appearing for the respondents in both cases and perused the records placed before this Court.

11. The charge memo, dated 19.04.2014, is challenged in W.P.(MD)No. 10608 of 2016, wherein 5 charges were levelled against the petitioner. Charge 1 is partly proved, Charge 2 is proved, Charge 3 is partly proved, Charge 4 is proved, Charge 5 is not proved. However, the disciplinary authority has deviated

from the enquiry officer's finding and has held that the charges are proved as has stated reasons also.

12.The contention of the petitioner is that the respondents relied on 11 documents before the inquiry officer, but none of the documents were furnished to the petitioner and the inquiry was proceeded out of compulsion and it was completed in unfair manner. The petitioner also contended that in the articles of charges, it was mentioned that 11 documents would be produced before the enquiry officer. The respondents have not given any copies of the said 11 documents, especially, the documents referred under Serial No.10, which is the copy of resolution and the genuineness of the group copies duly signed by the Project Officer and the Branch Manager along with the group representations of various dates. This document is the only proof to show that there is no lapse on the part of the petitioner. But the management failed to produce the said document before the enquiry authority. When the document would prove the innocence of the petitioner, then the management is bound to provide a copy of the same. Especially when the delinquent demanded the copy of the same, then the management and the enquiry officer ought to have furnished the copy. Moreover, it indicates that the allegation that the petitioner has not ascertained the genuineness of the group is incorrect. Therefore, this Court is of the considered opinion that the non-furnishing of document is fatal to the enquiry proceedings and the petitioner is on an advantageous position.

13. The petitioner further submitted that the enquiry was initiated based on the complaint of one Mr.Kannan. In the enquiry the management produced 14 documents marked as M.Ex. 1 to M.Ex. 14 and examined 3 witnesses. However, in the articles of charges, the management had cited 2 witnesses namely J.G.Lakshmi, Secretary, Pengal Membattu Maiyam (NGO) and Ms.Jaya, Coordinator, PMM (NGO), Aruppukottai, but they were not examined. Moreover, the complainant Kannan was neither cited nor produced as witness. The very basis of the disciplinary proceeding is the complaint of the said Kannan, not summoning of the said Kannan is vitiating the enquiry proceedings. Moreover, as rightly pointed out by the petitioner the allegation against the petitioner is he had allowed the NGO and SHG to misappropriate the amount, but none of the said

groups were examined as witness. Hence this Court is of the considered opinion that the enquiry is biased. Moreover the said J.G.Lakshmi, Secretary, Pengal Membattu Maiyam (NGO) and Ms.Jaya, Coordinator, PMM (NGO), Aruppukottai was not examined, who would be the independent evidence to prove the charges. Therefore, not summoning of the aforesaid witness to prove the charges also would be fatal to the enquiry and the petitioner is in advantageous position.

14. The contention of the petitioner is that the inquiry officer has held that some of the charges are proved and some are not proved but the disciplinary authority has taken a different view and has held that the charges 1 to 5 were fully proved. Thereafter, the respondents, vide letter, dated 17.12.2014, called upon the petitioner to submit his explanation, based on the inquiry report, the petitioner submitted his explanation on 10.01.2015 contending that the framing of charges of the disciplinary proceedings are ill-conceived with malafide intention and none of the charges were proved. The petitioner has also objected the disciplinary authority taking a different view and deviating from the enquiry officer's report

inspite of charges on part 1 of charge no.1 and part 3 of charge no.3 are held as not proved. The 4th respondent without considering the detailed explanations and objections given by the petitioner had imposed major punishment of reduction of pay by two stages in the time scale of pay for a period of 2 years with further direction that the petitioner will not earn increments of pay during the period of punishment and the reduction will have effect of postponing the future increment of pay under Regulation 4(f) of Indian Bank Officer Employees (Discipline and Appeal) Regulation, 1976. On perusal of the documents, it is seen that the respondent had not stated any proper reasons for deviating from the enquiry report. The respondents simply stated in the counter that “the petitioner has not verified the income certificate, has not verified the formation and function of the NGO/ SHG, has granted the loan and hence the petitioner has committed fraud in 29 accounts.” Therefore, this Court is of the considered opinion that the respondents may be empowered to deviate from the enquiry report, but ought to have stated proper reasons to deviate and there is no proper reason to deviate from the report.

15. Moreover on seeing the contents of the counter, this Court is of the considered opinion that the counter alleges the petitioner committed fraud and misappropriation by misusing and abusing of power, thereby there was loss to the bank. Initially on seeing the contents it may give an impression as if the petitioner had committed serious fraud and misappropriation, but on further scrutiny it would reveal that the complaint is that the said NGO / SHG had committed fraud and misappropriation among themselves and it has nothing to do with the bank. Even the complaint of the said Kannan is that the NGO / SHG had committed misappropriation. The allegation against the petitioner is that he ought to have disbursed the amount to the NGO/SHG account, but the petitioner had disbursed the amount to the individual account, which had led to misappropriation by the individuals belonging to the said NGO/SHG. Even if the allegation of the respondents is accepted as it is, then it would not mean that the petitioner had misappropriated. Therefore, this Court is of the considered opinion that the basis of the allegation itself is erroneous.

16. The further contention of the petitioner is that the basis of the initiation of the enquiry is the inspection and the report of one Easwaramoorthy, which is the basic document of the initiation of the disciplinary proceedings. In the concluding page of the inspection report, the inspection officer has recorded that the petitioner had not attained any unlawful gain in those loan transactions. Further the report had not stated anything against the petitioner of any undue monetary benefits for granting the SHGs or DRI loans. The petitioner further contended that the two disciplinary proceedings which is challenged in these two writ petitions are tainted with mala fide with a sole intention to punish the petitioner, since the petitioner had questioned the correctness of the higher official's direction wherein they have ordered the petitioner to close fake and fraudulent deposits by appropriating it against fake loan on deposits granted to unknown 3 parties.

17. The petitioner narrated the background of *mala fide* against the petitioner arose on account of some events happened in Virudhunagar Branch, after petitioner's transfer in Virudhunagar Branch, the petitioner was instructed by

the Chief Manager of the Branch in hi order No.4 & 5/ 2010-2011, dated. 4.11.2010, to close some fraudulent loan on deposits (LOD) by appropriating some benami/fraudulent deposit but both were found in different names. The person concerned did not come to the bank or sent a consent letter. Therefore, the petitioner felt that it is wrong to do so and expressed his objection to do so. Therefore, the petitioner informed the Vigilance Department at the office of the 4th respondent, for guidance and to clarify the correct procedure. The Chief Vigilance Officer in his letter, dated 04.11.2010, refused to intervene stating that it would be beyond the functional purview of the Vigilance department, vide letter, dated 12.11.2010. The petitioner had written a letter to the 3rd respondent also informing him about the procedural violations in closing the loans as directed by the Chief Manager. In spite of it, the Chief Manager of the Branch directed the petitioner to close the account, vide office orders, dated 04.11.2010. This has earned the wrath of the 4th respondent and the petitioner was accused of disobedience and was directed to give explanation. On 24.01.2011, the petitioner gave explanation that he protected the interest of the Bank and did not commit any disobedience. In furtherance of this explanation no further action was taken against the petitioner, but instead of being appreciated, for his alertness and honesty, in this background a re-inspection into the loan transactions at Kovilankulam Branch was made once again by a Senior manager by name Mr.Easwaramoorthy and it is an incomplete report marked as M.Ex.5 and the said copy was not furnished to the petitioner.

18. On perusal it is seen that the charges states that there are only procedural lapse and there is no misappropriation as alleged in the impugned order and the counter. In the impugned order the disciplinary authority states that he had observed the deficiencies in the sanction and disbursement of large number of SHG loans that the petitioner sanctioned new term loans with higher amounts to four SHGs immediately upon repayment of lumpsum amounts in the existing term loan accounts, sanctioned terms loans to SHGs under direct linkage without ascertaining the quantum of loans sought / approved by the members, sanctioned loans without watching the transactions in the SB accounts, without ascertaining the sharing details and arbitrarily sanctioned loans, non-observance of prescribed Head Office guidelines in pre sanction appraisal and post sanction

follow up and thus resulted in financial loss of Rs.195.58 lakhs. But the petitioner relied on the audit report submitted during those periods. It has been specifically recorded that the petitioner has not committed any misappropriation. On considering the rival submissions this Court is of the considered opinion that the reasons stated in the impugned order is only procedural lapses. The reason gives an impression that it is an “audit report”, only in audit report such mistakes would be pointed out. But taking disciplinary action to such procedural lapses is unwarranted. More so when the appellate authority had modified the punishment by observing the SHG Loan portfolio is difficult portfolio to be handled by the Bank. Therefore, this Court is of the considered opinion that the very basis of the charge is unwarranted.

19.The contention of the respondent is that the petitioner was granted opportunity and the same was accepted by the petitioner which was recorded by the enquiry officer that sufficient opportunity and reasonable time was granted to the petitioner during the enquiry. The contention of the petitioner is that the petitioner submitted that the copies of the documents were not served to the petitioner before the enquiry officer and the petitioner is not alleging that sufficient opportunity was not granted. The petitioner's allegation is that the copies of said 11 documents were not produced to the petitioner by the respondents. Therefore, this Court is of the considered opinion that the non-production of documents to the petitioner is fatal to the enquiry proceedings, especially, the documents which is in favour of the petitioner was not granted to the petitioner is fatal.

20.The petitioner’s submission is that the SHG are unregistered association of persons, if it had been a registered society, the Registrar of Society will have power of superintendence about the Constitution, working and financial conditions of the SHG. The Branch Manager of the Bank had to assume the role of the Registrar of the Societies in addition to his regular duties in the Bank and hence submitted that there is reason to punish the petitioner. This Court is of the considered opinion that the claim of the petitioner is supported by the observation of the appellate authority while modifing the punishment by observing the SHG Loan portfolio is difficult portfolio to be handled by the Bank.

21.The petitioner further submitted that the petitioner had served with great honesty and earnest appreciation of the higher officials for mobilizing fixed deposits and has been awarded with best performance award and this punishment is a stigma to the petitioner carrier and prayed to allow the writ petition.

22.The allegations in both the writ petitions are similar and only the amount varies. As rightly pointed out by the Learned Counsel appearing for the petitioner the allegations as such will not amount to misconduct. Even according to the audit report and the report of the said Eswaramoorthy there is no allegations of misappropriation against the petitioner. To constitute misconduct there ought to be intention to defraud the bank and no such ingredient is stated in the enquiry report, in the audit report or in the report of the said Eswaramoorthy. The case of charges in disciplinary proceedings was dealt in W.P.No.29030 of 2015 in N. Saravanakumar Vs. the Government of Tamil Nadu and others, the Hon'ble Court vide order dated 30.09.2015 has held as under:

> *"16. It is very pertinent to point out at this juncture that the allegation merely pertains to loss of revenue to the State and no ill-will or motive or corrupt practice has been levelled against the petitioner except the general*

charge, namely Charge No.8 which speaks about Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973. In the considered opinion of the Court, the charges framed against the petitioner are vague and admittedly, Annexure-II to the charge memo would also indicate that even prior to the tenure of the petitioner also, such alleged lapses took place, for which, the concerned officials have not been proceeded with and the said fact was also brought to the knowledge of the Disciplinary Authority by the petitioner in his interim reply, for which also, no response is forthcoming. Thus, on account of vague and indefinite charges framed against the petitioner, he is put to grave prejudice and hardship in 16 defending the charges framed against him.

17. It is also the submission of the learned Senior Counsel appearing for the petitioner that in the absence of any specific or definite allegation that discharge of official duty was with dishonest motive or exercise of official position for personal gain, charges under Rule 17(b) of the TNCS (D&A) Rules cannot be framed. The guidelines framed in this regard is referred to in the Division Bench Judgment of Madurai Bench of this Court in W.P.(MD).No.6809 of 2004 and it is relevant to extract the same:

> *“32....The instructions were quoted as follows:*
> *"Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption, etc., Charges under Rule 17(b) has to be framed in the following types of cases for imposing any one of the major penalties"-*
>
> *1.Cases in which there is reasonable ground to believe that a particular offence has been committed by a Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g., [a]Possession of assets disproportionate to the known source of income; [b]Obtaining or attempting to obtain illegal gratification; [c]Misappropriation of Government property, money or shares; [d]Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration, which is not adequate, etc.*

> *2.Falsification of Government Records.*
> *3.Irregularity or negligence in the discharge of official duties with a dishonest motive.*
> *4.Misuse of official position for personal gain.*
> *5.Disclosure of secret or confidential information even 17 though it does not fall strictly within the scope of the official secrets act.*
> *6.Misappropriation of Government Funds, false claims of travelling allowance reimbursement of false medical bills etc.,"*
>
> *As already pointed out, on account of vagueness of charges and in the absence of any specific allegation that negligence on the part of the petitioner in discharging his official duty was actuated with dishonest motive or he exercised his official position with personal gain, charges under Rule 17(b) of the TNCS (D&A) Rules, cannot be framed."*

In the present case also there is no allegation that the petitioner while discharging his official duty had committed with dishonest motive or he exercises his official position with personal gain, hence the charges cannot be sustained at all.

23. Therefore this Court is of the considered opinion the impugned orders ought to be quashed. Hence the writ petitions W.P.(MD)No.10608 of 2016 and W.P.(MD)No. 10609 of 2016 are allowed. The impugned orders in both the writ petitions are quashed and the respondents are directed to confer all monetary benefits, service benefits including notional promotion to the petitioner. The said

exercise shall be completed within a period of six weeks from the date of receipt of the copy of the order.

24.With the above said observation, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No **22.11.2022**
Internet : Yes

Tmg

S.SRIMATHY, J

Tmg

Note:
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

W.P.(MD)Nos.10608 and 10609 of 2016

22.11.2022