IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO.7536 OF 2015

Mr. Bipin Shamrao Patil,	)
Age : 55 years, Occu. - Nil	)
R/o. Flat No.7, Subodh Shilp Aptt.	)
Ramnagar, Gangapur Road,	)
B/H Kaka-Ka Hotel,	)
Nashik (M.S.) 422 013.	)… Petitioner

VERSUS

The Bank of India	)
Through Chairman	)
A nationalized bank having	)
its Head office at BANK OF INDIA	)
STAR HOUSE, C-5, 'G' Block,	)
Bandra-Kurla Complex,	)
Bandra (East), Mumbai-400 051	)
and	)
Zonal office at	)
1162/6, Shivajinagar,	)
Ganeshkhind Road, Pune-411 005.	)... Respondents

Appearances

Mr. Ashutosh R. Gole, *for Petitioner.*

Mr. Lancy D'Souza *a/w. Ms. Deepika Agarwal i/b. V. M. Parkar for Respondent .*

CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.

DATE : 19th April 2023.

JUDGMENT : (*Per - Sandeep V. Marne, J.*)

1. **Rule**. Rule made returnable forthwith. With the consent of the parties, petitions are taken up for final hearing.

2. By this petition, petitioner challenges order dated 4th June 2014 passed by the Disciplinary Authority imposing penalty of compulsory retirement as well as order dated 21st April 2015 passed by the Appellate Authority rejecting the appeal.

3. Brief facts of the case are that petitioner was working at the relevant time as Branch Manager in the Bank of India, Chimthane Branch, District Dhule. On completion of his tenure on 3rd January 2011, he came to be transferred to Pimpalgaon (Baswant) District Nashik. On 13th May 2011, he was further transferred to Ghatkopar Branch in Mumbai. Petitioner was issued a Memorandum dated 8th September 2011 calling him upon to submit explanation with regard to various allegations relating to credit facilities advanced to Mrs. Vaishali Dharmendra Chaudhari and Mr. Dharmendra Chaudhari. Petitioner submitted his reply on 8th October 2011. By another Memorandum dated 5th June 2012 he was called upon to submit explanation with regard to some more alleged irregularities. Petitioner submitted his reply on 10th July 2012.

4. The respondent-Bank thereafter initiated Departmental proceedings against petitioner by issuing Memorandum of charge sheet

dated 20th April 2013. Four articles of charge were levelled against him as under.

ARTICLES OF CHARGE

Acts of misconduct, as hereinafter mentioned, are alleged to have been committed by you during your tenure as Branch Manager at Bank's Chimthane Branch from 16.06.2007 to 03.01.2011:

ARTICLE-1

You have grossly violated the systems and procedures and lending norms of the Bank while sanctioning different credit facilities for Agriculture purpose to Smt. Vaishali D. Choudhari, Wife of Shri Dharmendra Choudhari. You have sanctioned a Term Loan of Rs.8.00-Lacs on 18.08.2010 and a Cash Credit limit of Rs.1.00-Lac for improvement of Agricultural Land and Irrigation facilities and for cultivation purpose. While doing so -

a) You have, on your own, obtained a Quotation No.53 dated NIL from M/s. Sai Agro Agency, Amalner, who is the dealer of machinery for drip irrigation purpose, without the knowledge of the borrower.

b) You failed to notice that though the Quotation was made for Cotton Crop, there was plantation and cultivation of Pomegranates in the land in question.

c) Both the Pre-sanction Inspection Reports submitted by you as well as the proposal do not contain the details of the expenditure and project cost.

d) Though the quantities regarding actual consumption of laterals and other consumables including placement of pipelines as shown in the field map on record do not tally with the Quotations of materials supplied by M/s. Sai Agro Agency, you have accepted the same.

e) You have falsely mentioned in the sanctioned note of the Proposal as well as Pre-sanction Inspection Report that the Borrower has dug a well of 15 Ft. depth with 5 Ft. water level, whereas it was revealed that the well was maximum 8 Ft. deep and that too without any water.

Both the Term Loan and Cash Credit Accounts have been turned into NPA since 31.08.2012, as no end use of funds was ensured.

ARTICLE — Il

You have extended undue accommodation to one Shri P.H. Patil, i.e. Contractor who was under Agreement dated 17.08.2010 with the Borrower Smt. Vaishali D. Choudhari for the purpose of implementation of infrastructure activities like digging of well, leveling of land, leveling of black soil and pipeline in the field etc. While accepting such Agreement:

a) You failed to verify the exact experience of Shri P.H. Patil in the field, inasmuch as, he was neither a Contractor nor having any experience in such area.

b) You have prevailed upon the Borrower to sign such Agreement with Shri P.H. Patil and the Borrower has complained to the Bank that no Contractor was required for carrying out any work in the field, in question.

c) You have failed to ensure that the Term Loan is disbursed to the said Contractor Shri Patil, upon completion of the job periodically.

d) It is revealed that there was 16 mm lateral pipeline of 6000 Mtrs., instead of 40000 Mtrs. as mentioned in the Quotation.

Despite the same, you released loan amount of Rs.3,34,360/on 24.08.2010 and: Rs.60,830/on 25.09.2010 to Shri P.H. Patil, towards the work done by him in utter disregard to the rules of the Bank.

You have not ensured that the margin money amount is deposited in the Branch before issuance of the Pay slip to the Contractor. You have only accepted a Stamped Receipt of Rs.4,93,990/for the margin money, which was reportedly paid to the Contractor.

ARTICLE - Ill

You have entered into unethical practice -

a) By way of demanding illegal gratification of Rs.72,000/on 25.08.2010 from the Borrower Smt. Vaishali D. Choudhari. . For that purpose, you collected two Cheques of Rs.40,000/and Rs.32,000/from the-Borrower in advance and these two Cheques were returnes upon receipt of cash from her.

b) On 16.06.2011, you offered Rs.2.00-Lakhs to said Smt. Vaishali D. Choudhari towards withdrawing her complaint.

ARTICLE - IV

You have entered into financial dealings with the Customers of the Bank, in as much as:

a) Shri Vinod H. Bagad was sanctioned car loan of Rs.1.80-Lacs by the Branch. You borrowed Rs.75,000/on 18.05.2009 from him without permission of the Bank and the same was repaid by you on 27.05.2009 through your OD A/c.

b) You have borrowed Rs.1,00,000/from Shri Eknath B. Bhambre on 18.02.2008 without taking permission from the Bank.

In the aforesaid manner, you have failed to discharge your duties with utmost devotion and diligence and have also failed to ensure and protect the interests of the Bank, which, if proved, would amount to breach of Regulation 3 (1) of Bank of India Officer Employees' (Conduct) Regulations, 1976.

2. Breach of any of the provisions of Bank of India Officer Employees' (Conduct) Regulations, 1976 shall be deemed to be a misconduct in terms of Regulation 24 of the aforesaid Regulations and is punishable under the Bank of india Officer Employees' (Discipline and Appeal) Regulations, 1976. Regulation 3 (1) alleged to have been breached by you and Regulation 24 of the Bank of India Officer Employees' (Conduct) Regulations, 1976 read as under.

Regulation 3 (1):

"Every Officer employee shall at all time takes all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an Officer Employee".

Regulation 24:

"A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976."

5. The Bank proposed to rely upon 20 documents in support of charges. Bank also proposed to examine 07 witnesses to prove the charges. Petitioner replied the Memorandum of charge sheet denying the charges on 30th May 2013. Thereafter Departmental Inquiry was conducted by appointing Inquiry Officer and Presenting Officer.

Petitioner participated in the inquiry and cross-examined the witnesses produced by the Bank in support of the charges. At the end of the inquiry, Presenting Officer submitted prosecution brief and Petitioner submitted his defence brief. The inquiry officer submitted his report on 30th September 2013 recording following findings with regard to each articles and elements of charge.

"7. CONCLUSION-

ARTICLE-I

Allegation (a)	Partly Proved
Allegation (b)	Proved
Allegation (c)	Partly Proved
Allegation (d)	Proved
Allegation (e)	Proved

As such, Article-I is **'Partly Proved.'**

ARTICLE-II

Allegation (a)	Not Proved
Allegation (b)	Not Proved
Allegation (c)	Proved
Allegation (d)	Proved

As such, Article-II is **'Partly Proved.'**

ARTICLE-III

Allegation (a)	Partly Proved
Allegation (b)	Proved

As such, Article-III is '**Partly Proved.'**

ARTICLE-IV

Allegation (a)	Not Proved
Allegation (b)	Not Proved

As such, Article-IV is **'Not Proved.'**

> **8. <u>FINDING –</u>** From the aforesaid discussion, the breach of Regulation 3(1) of Bank of India Officer Employees' (Conduct) Regulations, 1976 is **'Proved'.**"

6. Petitioner submitted his response to the report of the Inquiry Officer on 11th January 2014. The Disciplinary Authority, after taking into consideration, the report of the Inquiry Officer and the explanation submitted by the petitioner, passed order dated 4th June 2014 agreeing with the findings of the Inquiry Officer and imposed penalty of compulsory retirement of petitioner in terms of Regulation 4(h) of the Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976.

7. Petitioner preferred appeal before the Zonal Manager/ Appellate Authority on 16th July 2017. The Appellate Authority was however pleased to reject the appeal and confirmed the penalty vide order dated 21st April 2015. Petitioner is accordingly challenging the orders of the Disciplinary Authority dated 4th June 2014 and the Appellate Authority dated 21st April 2015 in the present petition.

8. Appearing for the petitioner, Mr. Gole learned counsel would submit that the findings recorded in the departmental inquiry are not supported by evidence on record. That the credit facilities sanctioned by petitioner to Mrs. Chaudhari were fully secured by collateral security of mortgage of land. That the findings recorded by the Inquiry Officer are based on surmises and conjunctures. That mere procedural lapses in management of accounts due to heavy workload in the branch cannot be

a reason for penalising petitioner, especially when he was not keeping good health during the relevant period. That the credit facilities were sanctioned in accordance with prevailing practice in the bank and that no irregularity was noticed in the yearly financial audit. That the Disciplinary Authority did not apply independent mind while awarding punishment. That the Appellate Authority failed to take into consideration character and integrity of the complainants and their tutored witnesses. That majority of the charges were not proved against the petitioner in report of the Inquiry Officer. Lastly, Mr. Gole would submit that the punishment of compulsory retirement is grossly dis-proportionate for the alleged misconduct. That on account of punishment of compulsory retirement, petitioner is receiving only 2/3rd of the amount of pension and has been put to financial losses.

9. We have also heard Mr. Dsouza the learned counsel appearing for Respondent Bank. He would support the findings recorded by the Inquiry Officer, Disciplinary Authority and the Appellate Authority. He would submit that the findings are supported by evidence on record and that the penalty imposed is proportionate to the misconduct is proved.

10. We have considered submissions canvassed by both the sides. It must be observed at the very outset that petitioner has fully participated in inquiry and has been offered full and proper opportunity to defend himself. There is no infraction of procedure in conduct of the departmental inquiry. Principles of natural justice has been fully adhered

to. Therefore there is no scope for this court to interfere in the orders passed by the Disciplinary Authority and Appellate Authority on the ground of procedural violation in conduct of the inquiry.

11. This leaves the issue of correctness of findings recorded by the Inquiry Officer, Disciplinary Authority and Appellate Authority. While extracting power of judicial review, this court is not expected to re-appreciate the evidence or determine sufficiency of evidence. Similarly, it is well established that presence of some evidence on record would obviate interference by Courts and Tribunals in the findings recorded in the departmental inquiry. From submissions advanced by Mr. Gole it is clear that Petitioner has not set up a case of perversity. It is not Petitioner's case that there is absolutely no evidence in support of charges. What is sought to be canvassed before us is that the evidence produced is not sufficient to hold petitioner guilty of the charges.

12. We have gone through the report of the inquiry officer. Petitioner was facing serious charges not only with regard to financial irregularities in advancing credit facilities but also charges of demanding illegal gratification and offering of amount to the complainant for withdrawal of complaint. By way of illustration, we deal with findings recorded by the Inquiry Officer in support of Article-III wherein allegation of demand of illegal gratification and offering of Rs. 2 lakh to the complainant were levelled. The first element of charge-III involved the allegation of demand of illegal gratification of Rs. 72,000/- from the borrower and collecting

two cheques of Rs.40,000/- and 32,000/- and returning them upon receipt of cash from the borrower. The second element of collection of cheques has been disproved by the inquiry officer. However the first element of the charge of demanding illegal gratification has been proved in the inquiry. In this regard the relevant finding recorded by the inquiry officer with regard to the charge of demand of illegal gratification is as under;

> "As regard to part (I) though, there is no direct evidence other than the complaints, (In the complaint letter dated 15.03.2011 i.e. ME-2, Mr. & Mrs. Chaudhari had stated that due to the percentage given to CSO and deposit kept with the Bank, they could not complete the project & in the complaint letter dated 08.06.2011 i.e. ME-3 Mr. & Mrs. Chaudhari had stated that CSO told them to keep aside the middle-man and give him his share then he will do their work.) following circumstantial evidence proves the CSO has accepted bribe :
>
> (a) Pay-slip of Rs.3,34,360/- was credited in the SB A/c. Of the contractor, Shri. P. H. Patil on 24.08.2010. On 25.08.2010, an amount of Rs.2,62,360/- and Rs.72,000/- was withdrawn from said SB A/c. Though withdrawal slips. Both these withdrawals were allowed by CSO, though the pass-book was not accompanied with it. Though the amount of Rs.2,62,360/- was withdrawn at 11.00 hrs., the amount of Rs.72,000/- was withdrawn at 17.10 hrs. i.e. well after the business hours.
>
> (b) Through the deposition of MW-2, MW-4, MW-6 and MW-7 it has come on record that CSO along with Shri Raghuvanshi (the successor Branch Manager of Chimthane Br.) and Shri Namdev Dhangar went to Shri Chaudhari's (complainant) residence, and offered Rs. 2 lakhs for withdrawing the complaint made against him.
>
> (c) MW-4 in his cross examination deposed that he had availed a loan of Rs.5.50 lakhs somewhere in the month of December. Out of this loan Rs.1.95 lakhs were disbursed to him. For said transaction he paid Rs.30,000/- to CSO Shri Namdev Dhangar (MW07) also confirmed that he had visited CSO's residence along with the complainant (MW-4) for paying said Rs.30,000/-.
>
> (d) Investigating Officer (MW-8), on the last page of his investigation Report (ME-5) has stated that (I) oral evidence of Shri Kishore Devidas Sanje clearly suggests that he was Collection Agent of Shri Bipin S. Patil. The CD could not be traced as is given to Shri Bipin S. Patil for handsome amount. (ii) the oral submission of Shri Punju Daga Patil R/o. Salve establishes at ill-health

of Chimthana Branch practicing unethical and illegal practices. (iii) oral evidence of Shri Samadhan Rajaram Borse also indicates at ill-health of Chimthane Branch practicing unethical and illegal practices during the period of Managership of CSO.

(e) Shri Vinod Hemkant Bagad was sanctioned a car loan of Rs.1,80,000/- by CSO on 05.05.2009. Rs.75,000/- were transferred to OD account of Shri B.S. Patil on 15.05.2009. Towards the repayment Shri B.S. Patil had issued a cheque of Rs.71,000/- to Shri Vinod Bagad on 27.05.2009. However, there is no accounting about difference of Rs.4000/-, which was paid less by CSO. (COS, while submitting his brief dated 18.09.2013, has stated that the said amount was returned within a week by paying Rs.71,000/- from his account and Rs.4000/- in cash. However, he has not produced any proof for cash payment of Rs.4000/- as such this is an afterthought).

(f) The investigating officer (MW-8), in his report (ME-5) while discussing the facts disclosed during investigation has stated that Shri Koshore D. Sonje had admitted that he had referred the loan proposals of 12 personnel of Sawal Mukti Village to Shri Bipin S. Patil. He had further informed that Shri Bipin S. Patil has collected 10% of the loan amount from all the borrowers and did not spare any one. He admitted that he had also paid Rs.30,000/- towards the loan of Rs.3 lakhs availed in the name of his mother Smt. Pushpabai D. Sonje. He further informed that he was collecting the money from the borrowers and was giving to Shri Bipin S. Patil. By recording the same on his mobile phone, he prepared a Compact Disc (CD) of the same. He had gone along with the so called CD to Shri Sudhir N. Guldagad, Sr. Manager, AFD, OPS, Pune Zonal Office. Shri Sudhir N. Guldagad, presently posted as Chief Manager, Shahapur Branch was contacted over telephone by the investigating officer and was asked about the incident of CD as claimed by Shri Koshore D. Sonje. Shri S.N. Guldagad in his submission admitted that there were complaints about Shri Bipin S. Patil regarding corruption and loans sanctioned by him but the complainants had not produced evidence to substantiate the allegation and as such, no probe was made into the allegation. It is pertinent to note that CSO has not cross-examined investigating Officer (MW-8) on this point."

13. The second element of charge in Article-III was about offering Rs. 2 Lakh to the borrower for withdrawal of the complaint. This charge has been also to be proved by the Inquiry Officer by recording following findings.

Mrs. Vaishali Dharmendra Chaudhari (MW01) on 21.08.2013 has deposed that

Shri K.U. Raghuvanshi, Shri Namdev Dhangar and Shri Patil saheb came to her residence requesting her to withdraw the complaint made by her, for which Shri Patil saheb offered her sum of Rs.2 lakhs. In her cross examination, though she was not able to tell the exact date on which CSO along with two others had visited her residence, she confirmed that the offer was made by Shri B.S. Patil and the said amount was demanded by her for withdrawing the complaint.

Shri Dharmendra Uttamrao Chaudhari (MW-4) while deposing in his examination-in-chief has stated that on 16.06.2011 Shri B.S. Patil along with Shri Raghuvanshi and Shri Namdeo Dhangar visited his residence requesting to withdraw complaint for which he offered Rs.2 lakhs. However, he had not withdrawn the complaint. Shri Chaudhari was not cross examined by the Defence Assistant / CSO on this subject.

Shri Kishorkumar U. Raghuvanshi (MW-6) while deposing in his examination-in-chief has stated that he went to residence of Shri D.U. Chaudhari along with Shri B.S. Patil and Shri Namdeo Dhangar on 16.06.2011 and Shri Patil offered Rs. 2 lakhs to Shri Chaudhari for withdrawing the complaint, which was not accepted by Shri. Chaudhari. In his cross examination also he confirmed the same thing.

Shri Namdeo Ramdas Dhangar (MW-7) while deposing in his examination in chief has stated that he along with Shri B.S. Patil and Shri K.U. Raghuvanshi went to Shri Chaudhari's house to settle the matter of Shri B.S. Patil. Shri B.S. Patil offered Rs. 2 lakhs, however the settlement could not take place.

The investigating Officer while discussing the evidence under Item No. 20 has stated as under:

"The oral testimony of Shri Namdeo Ramdas Dhangar and Shri Pradeep Pratapsingh Thakare also vouches for meeting amongst the complainant and branch Manager for striking the deal. Shri. K.U. Raghuvanshi has also orally accepted that he was also at the residence of Shri D.U. Chaudhari along with Shri Bipin S. Patil during the time of deal. This evidence clearly suggests that Shri Bipin S. Patil might have accepted the bribe and due to fear of consequences, was ready to compromise by offering more amounts."

Though CSO has contended that Shri Chaudhari insisted him to come to Chaudhari's residence to settle the issue was well as that Shri Raghuvanshi, his successor at Chimthane Branch had advised him to meet Shri Chaudhari and settle the issue, he has not cross examined both these parties on this point. Therefore, this appears to be an afterthought.

CSO himself in his representation dated 18.09.2013 has confirmed that he, along with Shri Raghuvanshi, had visited the residence of Shri Chaudhari on 16.06.2011 to request him to withdraw the complaint as he was under tremendous stress and tension. His contention that Shri Chaudhari made a false complaint that CSO offered Rs. 2 lakhs to withdraw the complaint as Shri Chaudhari's demand of Rs. 15 lakhs was refused by CSO. However, CSO has neither submitted any proof or confirmed his contention by cross examining Shri Raghuvanshi to this effect. On the contrary, Shri Dhangar in his cross examination has specifically stated that Shri Chaudhari had not demanded for any additional amount. CSO by referring Page 2 item No. 7 of Investigating Report is questioning the integrity of Shri Raghuvanshi and thereby asking for not to rely on the statements/deposition of Shri Raghuvanshi stating that he is also an interested party.

However, it is observed that on page No. 2 item No. 7 it is allegation made against Shri K.U. Raghuvanshi. On the contrary, finally in conclusion, the investigating Officer has stated as under:

> "Allegations of corruption are also being levelled against Shri. K.U. Raghuvanshi even though direct evidence is not forthcoming."

As regards denying the allegations made by Shri Chaudhari and Shri Dhangar having visited CSO's residence and handling over an envelope containing Rs.30,000/- CSO has not produced any documentary or oral evidence during the enquiry.

In view of above the said charge is held as '**Proved'.**

14. After going through the above findings recorded by the Inquiry Officer, we are fully satisfied that the findings are supported by evidence on record. Thus, no case of perversity in the findings recorded by the Inquiry Officer is made out by petitioner. No interference in the findings are therefore warranted.

15. This leaves the last issue of proportionality of penalty. As observed above, petitioner was charged with serious misconduct of committing financial irregularities while sanctioning credit facility. The more serious charges were about demanding illegal gratification and offering Rs.2 Lakh to the complainant for withdrawal of complaint. These charges have been already to be proved against petitioner. Such serious misconduct

would in fact entail a harsher penalty. However, the Disciplinary Authority has taken a lenient view and imposed the penalty of compulsory retirement on him. The age of petitioner at the time of filing of the petition in the year 2015 is shown to be 55 years. This means that at the time of imposition of penalty of compulsory retirement, petitioner was 54 years of age. He has thus put in sufficiently longer service, which would entitle him to substantial amount of pension and retirement benefits. In these circumstances it cannot be said, by any stretch of imagination, that penalty imposed on petitioner is disproportionate to the misconduct proved. The penalty does not shock our conscious. The contention in this regard is therefore rejected.

16. In the result, no case is made out by petitioner for interference by this court in the orders of the Disciplinary Authority and Appellate Authority. The writ petition is devoid of merits, it is dismissed with no orders as to costs. Rule is discharged.

SANDEEP V. MARNE, J. **S. V. GANGAPURWALA, ACJ**