IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2098 OF 2010

Vasantrao Marotrao Deshmukh,
Aged about 57 years.
Occupation-(Dismissed Branch Manager
VKGB, Mangrul Zanak Branch)
R/o. Infront of Vitthal Mandir,
House No.9, Santaji Nagar,
Sudhir Colony, Akola.

.... **PETITIONER**

...V E R S U S...

1. Vidarbha Konkan Gramin Bank,
through its Chairman,
Chandraprastha, 2nd and 3rd Floor,
Deendayal Nagar, Ring Road,
Nagpur-440 022.

Amended as per Hon'ble Court's order dated 24.11.2022 Sd/- RSSirpurkar Counsel for Petitioner.

2. The Chairman, Vidarbha Konkan Gramin Bank,
Chandraprastha, 2nd and 3rd Floor,
Deendayal Nagar, Ring Road,
Nagpur-440 022.

3. The Board of Directors (Appellate Authority)
Vidarbha Konkan Gramin Bank,
Chandraprastha, 2nd and 3rd Floor,
Deendayal Nagar, Ring Road,
Nagpur-440 022.

4. The Enquiry Officer (Br.Manager) (Respondent no.4 is not necessary as per
Vidarbha Kshetriya Gramin Bank, counsel for petitioner.)
Branch at Chikhali, District Buldana.

.... **RESPONDENTS**

Ms Renuka S. Sirpurkar, Advocate for petitioner.
Shri N.W.Almelkar, Advocate for respondents-Bank.

CORAM :- A.S.CHANDURKAR AND ANIL L. PANSARE, JJ.
ARGUMENTS WERE HEARD ON :_08.12.2022
JUDGMENT IS PRONOUNCED ON :03.02.2023

<u>JUDGMENT</u> (Per A.S.CHANDURKAR, J.)

1. The challenge raised in this writ petition is to the order of dismissal dated 20.10.2009 passed by the Vidarbha Kshetriya Gramin Bank (for short, the Bank) as confirmed in appeal vide communication/order dated 25.02.2010 by the Board of Directors of the said Bank.

2. The facts relevant for considering the challenge to the aforesaid orders is that the petitioner came to be appointed as a Branch Manager with the Bank on 01.06.1984. During the course of service memorandum of charges dated 13.02.2008 came to be served on the petitioner. There were in all four charges which included flouting of KYC norms while opening account of about ten account holders; transferring Kisan Credit Card (KCC) loan amount to Home Savings Scheme (HSS) without consent of the account holders; disbursement of loans to sixteen fictitious borrowers without obtaining proper identification as well as without carrying out pre/post inspection under KCC advance and leaving headquarters on 18.01.2008 without permission which amounted to violation of the instructions given by the Disciplinary Authority. During the course of enquiry, the Enquiry Officer held Charge Nos. 1 and 3 to be partially proved and Charge Nos. 2 and 4 to be proved. The Disciplinary Authority thereafter on 29.06.2009 gave notice to the petitioner stating therein that after going through the enquiry report it sought to differ with the Enquiry Officer's finding that Charge No.3 had been partially proved. According to the Disciplinary Authority, from the

documentary material on record Charge No.3 had been fully proved. In response, the petitioner on 27.07.2009 submitted his say and took the stand that the Disciplinary Authority had taken a final decision that Charge No.3 had been proved which was against the settled procedure since it was necessary for the Disciplinary Authority to have indicated its tentative findings to the petitioner before taking a final decision on the report of the Enquiry Officer. After considering the report of the Enquiry Officer as well as the say of the petitioner as regards Charge No.3, the Disciplinary Authority proceeded to impose the punishment of dismissal from service. The said order was passed under Regulation No. 38(1)(b)(v) of the Banks Service Regulations, 2005 (for short, the Regulations). The petitioner then preferred an appeal under Rule 47 of the said Regulations before the Board of Directors. On 25.02.2010 the Board of Directors dismissed the said appeal and confirmed the order of punishment as imposed by the Disciplinary Authority. It is against this order that the petitioner has preferred this writ petition challenging the same.

3. Mrs R.S.Sirpurkar, learned counsel for the petitioner submitted that in the disciplinary proceedings the Bank through its Presenting Officer failed to examine any of the account holder to substantiate the charge that the accounts had been opened by flouting the KYC norms or that the loan amount was transferred to the Home Savings Scheme without consent of the account holders. Though the Bank held three preliminary enquiries in the matter, it did not supply the

statements recorded in the said enquiries nor did it supply relevant documents to the petitioner. As a result, the petitioner could not defend himself properly in the disciplinary proceedings. By making various applications on 25.02.2008, 23.04.2008 and on 20.06.2008 the petitioner had sought supply of those documents but the Bank failed to make the same available. The learned counsel referred to the proceedings before the Enquiry Officer to substantiate the said contention. It was then submitted that on the same charges criminal proceedings had been initiated against the petitioner. The petitioner had preferred Writ Petition No.2743 of 2008 praying that the disciplinary proceedings be stayed since the petitioner would be required to disclose his defence therein. This writ petition was decided on 07.08.2008 by observing that the petitioner was free to make an application before the Enquiry Officer for staying the Departmental Enquiry and that the earlier refusal by the Enquiry Officer on 12.03.2008 to stay the proceedings would not come in the way of the Enquiry Officer while taking such decision. Notwithstanding this, the Enquiry Officer refused to stay the disciplinary proceedings as a result of which the matter proceeded resulting in passing of the order of dismissal. In the criminal proceedings the petitioner was acquitted on 19.03.2018 and the order of acquittal had attained finality. Since the same was an honourable acquittal, the petitioner was entitled to benefit of the same especially as the charges in the disciplinary proceedings and the criminal trial were similar. In that regard the learned counsel placed reliance on the decisions in *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another* ***[(1999) 3 SCC 679]***, *G.M.Tank* *vs. State of Gujrat and others* ***[(2006) 5 SCC 446]****, S.Bhaskar Reddy and another vs. Superintendent of Police and another* ***[(2015) 2 SCC 365]****, Ramkrishna Shivram Gadekar vs. Board of Trustees of the Port of Mumbai and another* ***[2009 II CLR 866]****, R.Mahendran vs. Chief Security Commissioner, Railway Protection Force, Southern Railway, Chennai and others* ***[2014 III CLR 413]*** and *Parameswaran V. vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and another, Chennai* ***[2010 III LLJ 415(Mad)].*** It was thus submitted that the effect of the honourable acquittal of the petitioner ought to be taken into consideration.

Failure to supply the necessary documents did cause prejudice to the petitioner in the disciplinary proceedings. Though it was alleged that the opening of the bank accounts was not as per Circulars dated 07.09.2004 and 16.07.2007, the same were never supplied to the petitioner. It was clear that Circular dated 16.07.2007 had been received in the Bank only on 30.07.2007 while the accounts had been opened prior to that date. Moreover, the Vigilance Cell of the Bank had also conducted an enquiry which was in favour of the petitioner but the documents of the same were not supplied to him. The cashier Shri Wagh had been held responsible in the matter of opening of such accounts and therefore no penalty ought to have been imposed on the petitioner. In this regard, reference was made to the decisions in *Union of India vs. S.K.Kapoor* ***[2011 II LLJ 627(SC)]****, Duryodhan Lenka vs. Chairman, Board of Directors, Kalinga Gramya Bank and others* ***[2012 III CLR 1013]*** and *R. Mahendran* (supra). Since the enquiry was not conducted in a fair manner the same was vitiated. Reference in that context was made to the decision in *Roop Singh Negi vs. Punjab National Bank and others* ***[2009 I CLR 160].*** Moreover, the appellate Authority was required to record reasons for not accepting the grounds raised in the memorandum of appeal. It however failed to do so and hence in the light of the decision in *Madhukar Tulsiram Tayade vs. Chairman, Board of Director's, Vidarbha Kshetriya Gramin Bank, Akola and others* ***[2011 II CLR 183]*** its order was also vitiated. It was thus submitted that the order of dismissal was liable to be set aside and the petitioner was entitled to be reinstated in service with all consequential benefits.

4. Shri N.W.Almelkar, learned counsel for the respondent-Bank opposed the aforesaid submissions. According to him, at the concerned branch where the petitioner was serving there were only three staff members. The petitioner was the Branch Manager while Shri Wagh was the cashier alongwith a peon. As a Branch Manager the petitioner was responsible in supervising the transactions at the Bank. A complaint was received by the Bank on 29.09.2007 and the same was sent to the petitioner on 04.10.2007. The petitioner replied to the same on 22.10.2007 stating therein that permission be granted to lodge First Information Report. Thereafter on 27.12.2007 the petitioner issued another communication and sought to justify his conduct. The petitioner was infact aware that Circular No.2004/25 had not been followed while opening accounts. In the enquiry proceedings it was seen that the petitioner as well as the cashier had worked together and the

documentary material considered clearly established the charges. All relevant material that was relied upon in the enquiry proceedings was supplied to the petitioner. Insofar as the preliminary investigation was concerned, the same was not relied upon in the enquiry proceedings and therefore it could not be said that failure to supply the preliminary investigation report resulted in causing prejudice to the petitioner. The Presenting Officer had clarified on various occasions that the documents on which the Bank was relying in the enquiry would be supplied and it was only the documents on which the Bank was not relying that were not supplied. It was submitted that strict rules of evidence were not applicable to domestic enquiries and in that regard, reference was made to the decisions in *State of Haryana vs. Rattan Singh* ***[(1977) 2 SCC 491]*** and *Tata Informedia Ltd. Vs. Tata Press employees Union* ***[2005 II CLR 463].***

As regards the acquittal in the criminal trial was concerned, it was submitted by the learned counsel that the petitioner's acquittal was on account of failure on the part of the prosecution to produce the seized documents. The trial Court had specifically observed in the judgment that the Investigating Officer had failed to co-operate in the trial and strictures had been passed against him in the judgment dated 19.03.2018. The petitioner's acquittal therefore could not be treated to be a honourable acquittal but it was on account of failure to produce the relevant documents. For this reason, the petitioner was not entitled to rely upon the order of acquittal and seek benefit in the present proceedings. It was also pointed out that the enquiry proceedings were concluded in the year 2009 while the acquittal of the petitioner was after nine years in 2018. For this reason the petitioner was not entitled to any benefit of acquittal from the criminal proceedings. The learned counsel referred to the proceedings before the Enquiry Officer to indicate that on various occasions the demand of documents made by the petitioner had been considered and the petitioner had been informed that only the documents on which the Bank was relying would be supplied. As regards the disagreement of the Disciplinary Authority with the finding that Charge No.3 was partly proved, it was submitted that the petitioner was informed of such disagreement by supplying him with the tentative findings and only thereafter it was held that Charge No.3 was completely proved. There was no breach of any procedure in that regard. It was thus submitted that as the petitioner was holding a responsible post of Branch Manager and the charges framed were serious in nature pertaining to gross negligence as well as violation of applicable Circulars, there was no reason to interfere with the order of dismissal. Since the Board of Directors agreed with the opinion of the Disciplinary Authority, it was not necessary for it to pass a detailed order in that regard. The writ petition was therefore liable to be dismissed.

5. We have heard the learned counsel for the parties at length and we have also been taken through the enquiry report submitted by the Enquiry Officer. We have also given due consideration to the rival submissions. The Enquiry Officer during the course of enquiry has found that Charge Nos. 1 and 3 had been partly

proved and Charge Nos. 2 and 4 had been duly proved. Insofar as Charge No.1 of flouting KYC norms while opening the Home Savings Scheme accounts is concerned, the Bank has relied upon accounts of ten customers of the Bank in that regard. According to the Bank, Circular No.2004/25 dated 07.09.2004 had not been followed. As per that Circular, a document for customer identification was necessary or introduction by a person known to the branch was also permissible. It was however found that the petitioner failed to any obtain such document while opening said ten accounts. One account was opened on the basis of introduction by one Shri Dhote who had however denied that he had signed the account opening form as introducer. It is on this basis that the Eqnuiry Officer held the said charge to be partially proved. It has been specifically observed that about three accounts were opened after 30.07.2007 when Circular No.2007/21 dated 16.07.2007 was received at the Branch. Hence, with regard to these accounts the said Circular dated 16.07.2007 had been breached. This Charge has been held to be partly proved.

Charge No.2 was the transfer of KCC loan amount to the aforesaid Home Savings Scheme-HSS accounts of fictitious borrowers. This was with reference to six HSS account holders. It was found that various amounts were transferred from the KCC account to the HSS account of these persons. Thereafter the said amounts that were transferred came to be withdrawn. It was found that the petitioner was present on 03.07.2007 but failed to verify the transactions of that day. The transfer of the amounts had taken place on 03.07.2007 and despite being present on that day, the petitioner did not pass the withdrawal as Branch Manager. This was found to be an act of gross negligence resulting in fraud in the KCC accounts. This Charge was held to be proved.

As regards Charge No.3 is concerned, it has been found that loan was sanctioned and disbursed to about sixteen fictitious borrowers without obtaining proper identification and without carrying out pre/post inspection under the KCC Scheme. Disbursement made to these accounts was also not informed to the Head Office. This resulted in violation of the Regulations of the Bank. The Enquiry Officer has found that relevant documents were not verified before disbursing the loan amount nor was there any proper verification carried out. According to the petitioner, the M.C.R. had been prepared by the Clerk-cum-Cashier and the petitioner had merely signed the said document. It was found that the Bank had been put to net loss of Rs.5,93,650/-. This Charge was held to be partially proved.

As regards Charge No.4, the petitioner was stated to have left the headquarter on 18.01.2008 without prior permission of the Superior Authority. In this regard, it was found that in the suspension order dated 26.11.2007 it was stated that the petitioner's headquarter would be at Area Office, Buldhana and he was directed not to leave the headquarter without permission of the Disciplinary Authority. However on 18.01.2008 he was arrested at Washim which indicated that the petitioner had left the headquarter without due permission. This Charge was held to be proved.

6. It is thus seen that the Enquiry Officer held Charge Nos. 1 and 3 to be partially proved and Charge Nos. 2 and 4 to be fully proved. Insofar as Charge No.3 is concerned, the Disciplinary Authority issued a notice to the petitioner on 29.06.2009 by which the Disciplinary Authority indicated that it intended to differ with the finding of the Enquiry Officer that Charge No.3 was partially proved. The reason for disagreeing with the said finding was communicated to the petitioner and he was asked for his comments on the same. The petitioner replied to the same on 27.07.2009 and took the stand that the Disciplinary Authority had not indicated any tentative decision but had already made up its mind to hold that Charge No.3 was proved. The Disciplinary Authority in the final order dated 16.10.2009 did not accept the explanation of the petitioner in that regard and proceeded to hold Charge No.3 to be fully proved. The learned counsel for the petitioner submitted that it was necessary for the Disciplinary Authority to have first indicated tentative reasons for disagreeing with the Enquiry Officer and after giving an opportunity to the petitioner ought to have recorded its findings. The same was however not done. In this context, the learned counsel for the Bank has relied upon the decision in *Boloram Bordoloi vs. Lakhimi Gaolia Bank and others* ***[(2021) 3 SCC 806]*** to urge that by issuing notice dated 29.06.2009 to the petitioner the Disciplinary Authority had indicated its disagreement with the finding of the Enquiry Officer and thus due opportunity was given to him.

We find that by the communication dated 29.06.2009 the Disciplinary Authority has referred to the documents at MEX-24 to 77 for disagreeing with the finding of the Enquiry Officer. It was for that reason that the Disciplinary Authority gave such notice and after considering the say of the petitioner passed the final order. We do not find that there was any illegality committed by the Disciplinary Authority in that regard since the basis of his disagreement was put to the petitioner and his response thereto was sought. Even assuming that Charge No.3 is taken to be partially proved as found by the Enquiry Officer the same would not make much difference as Charge No.1 was also partially proved while Charge Nos. 2 and 4 had been fully proved. When all charges are collectively considered, the same are sufficient to sustain the punishment order of dismissal.

7. Coming to the grievance raised by the petitioner of non-supply of documents on which the Presenting Officer had relied, it can be seen from the proceedings of the enquiry that on various occasions relevant documents were supplied to the petitioner and he was also permitted to verify the documents at the Branch of the Bank for raising appropriate defence. In this regard, reference can be made to the proceedings of the enquiry held on 23.04.2008, 30.05.2008, 20.06.2008. The proceedings held on 20.06.2008 also record absence of any objection by the petitioner to the documents submitted by the Presenting Officer. The proceedings held on 29.07.2008 record the supply of documents to the petitioner on 16.07.2008. Since the petitioner on 12.08.2008 raised a grievance that he had not received certain documents, the same were supplied to him. During the course of enquiry it was agreed that the date of verification of

documents at Mangrul Zanak Branch would be fixed as 16.07.2008. Thereafter, the petitioner was again permitted to visit Mangrul Zanak Branch to search out the documents in presence of the Presenting Officer on 21.08.2008. The proceedings held on 02.09.2008 record that the petitioner searched out various documents and informed the Enquiry Officer about the same. Again on 11.09.2008 the Presenting Officer supplied about twenty documents that were relevant and further stated that about six documents that were not relevant were not being supplied to the petitioner. On 25.10.2008 the Enquiry Officer informed the defence representative that the enquiry report pertaining to the internal matters of the Bank would not be supplied to the petitioner and that it was for the petitioner to search out his own document and witnesses. The Bank thereafter completed presentation of its case on 12.12.2008.

8. From the aforesaid conduct of the enquiry proceedings it can be gathered that on various occasions steps were taken to supply the documents sought to be relied upon by the Bank. Further, on two occasions the petitioner was permitted to visit the Branch to take a search of the relevant documents. It therefore cannot be said that the Bank failed to supply the documents relied upon by it to the petitioner. It was made clear that the internal enquiry reports of the Bank would not be supplied as well as those documents not found relevant would also not be given. We therefore find that the enquiry has proceeded on the basis of material on record. The prejudice as alleged for failure to supply documents has

not been made out nor can it be said that the alleged prejudice is of such gravity so as to vitiate the enquiry proceedings itself. In *S.K.Kapoor* (supra) the disciplinary authority consulted the Union Public Service Commission and relied upon its report for taking disciplinary action but it did not supply that report to the delinquent. The prejudice caused was obvious. In *Duryodhan Lenka* (supra) the request for supply of documents was not considered by the enquiry officer and an ex-parte enquiry was held. The conduct of the enquiry was found to be vitiated for breach of principles of natural justice. These decisions turn on their own facts and same cannot be made the basis for upsetting the enquiry report in the present case. Said contention of the petitioner therefore cannot be accepted.

9. Insofar as the reliance placed on the acquittal of the petitioner in the criminal trial, it can be seen that the petitioner's acquittal cannot be said to be honourable in nature. The trial Court has recorded in its judgment that the Investigating Officer failed to bring on record and produce the documents seized during investigation. Despite various opportunities given, the Investigating Officer did not co-operate in the conduct of the trial. The learned Judge of the trial Court was thus compelled to direct a copy of the judgment to be sent to the Superior Authority to enable action to be taken against the Investigating Officer. All this would indicate that there was no honourable acquittal of the petitioner and the same is for want of necessary documents. It would have been a different matter if all material documents or at least some of them that were considered by the

Enquiry Officer were brought before the trial Court and the case of the prosecution was tested on that basis. Same is not the fact. The petitioner's acquittal is for want of proper documents and therefore his acquittal in the criminal trial cannot be the basis of support for seeking reinstatement in that regard. It would have been a different matter if the pettioner would have been acquitted after a full-fledged trial where the evidence led by the prosecution was disbelieved. Hence in these facts the decisions relied upon by the learned counsel for the petitioner cannot be of any assistance. It is also to be noted that the enquiry proceedings concluded in the year 2009 while the petitioner's acquittal in the criminal trial was on 19.03.2018. We therefore do not find that much would turn on the petitioner's acquittal in the criminal trial.

10. It was urged by the learned counsel for the petitioner that the Board of Directors decided the appeal filed by the petitioner without giving any reasons. In that regard, the learned counsel placed reliance on the decision in *Madhukar Tulsiram Tayade* (supra). It is however to be noted that the learned counsel for the petitioner addressed us at length on the challenge to the order passed by the Disciplinary Authority and took us through the entire proceedings to substantiate the contention that the order of punishment was uncalled for. Since it was found that the order of punishment is dated 20.10.2009 and the present proceedings were pending in this Court since the year 2010, the challenge to the order passed by the Disciplinary Authority on the contentions urged by the petitioner on merits

has been considered. In that view of the matter we do not find it expedient to go into the aspect of the appellate Authority having passed an unreasoned order so as to consider whether the appellate Authority could be directed to pass a fresh order by remanding the proceedings. We however find that the order passed by the Board of Directors records that it has considered the grounds raised by the petitioner and has not found any merit therein. We have thus considered the challenge as raised on merits but for reasons aforestated, we do not find any case made out to interfere in extra ordinary jurisdiction.

11. The writ petition is thus dismissed. Rule stands discharged with no order as to costs.

(ANIL L. PANSARE, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..