IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2023

Pronounced on : 13.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.3688 of 2015

D.Manoharan ... Petitioner

Vs.

1.Canara Bank,
rep. by its
Executive Director,
Industrial Relations Department,
Head Office, Manipal,
Karnataka 576 105

2.The General Manager(Personnel)/
Appellate Authority, Canara Bank,
Industrial Relations Department,
Head Office, Manipal,
Karnataka 576 105

3.The Deputy General Manager (Personnel)/
Disciplinary Authority,
Canara Bank,
Industrial Relations Department,
Head Office, Manipal,
Karnataka 576 105

4.The Deputy General Manager,
Regional Office,
Canara Bank,
Industrial Relations Department,
West Ponnurangam Street,
R.S.Puram,

Coimbatore
(R1 to R4 cause title amended (Syndicate Bank substituted with Canara Bank) vide order dated 04.09.2023 made in WMP.No.24887 of 2023 in WP.No.3688 of 2015) ... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order bearing Ref.No.3025/0089/PD:IRD/OR-WP-294 dated 12.07.2012 on the file of the first respondent and consequently the order bearing No.24/PD:IRD/DA-7 dated 24.06.2008 on the file of the second respondent and order bearing No.006/PD:IRD/DA-6 dated 07.01.2008 on the file of the third respondent, quash the same and direct the respondents herein to reinstate the petitioner with continuity of service with all backwages and all other attended benefits.

For Petitioner : Mr.G.Sankaran,
Senior Counsel
for Mr.S.Ashok Kumar

For Respondents : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co.

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 07.01.2008 thereby dismissed the petitioner from service and the same was confirmed by the second respondent by order dated 24.06.2008 and the order of dismissal of review dated 12.07.2012 passed by the first respondent.

2. The petitioner was appointed as Clerical Staff in the first respondent bank on 24.10.1984. Thereafter, he was promoted as Assistant Manager in the year 2001. In the year 2004, he was transferred and posted as Assistant Manager in Mettupalayam Branch. He had served as Assistant Manager from June 2004 to 08.01.2006. Thereafter, he was posted to the Office of the fourth respondent and he had joined duty on 10.01.2006. After his transfer, he was served with order of suspension dated 10.01.2006. He was served with charge memo dated 07.11.2006 consisting two charges. Thereafter, the charges were split into 21 charges. On receipt of explanation from the petitioner dated 18.11.2006, without satisfying with the explanation, domestic enquiry was ordered on the basis of the report submitted by the Vigilance

Department. After completion of enquiry, the enquiry officer submitted its report and held that the charges No.5 and 9 were not proved, charges No.7 and 8 were partly proved and charges No.1 to 4 & 10 to 21 were proved. After issuance of show cause notice and on receipt of the explanation submitted by the petitioner, disciplinary authority i.e. the third respondent imposed punishment of dismissal from service by order dated 07.01.2008. Aggrieved by the same, the petitioner preferred appeal before the second respondent and the same was also dismissed by order dated 24.06.2008. Once again, the petitioner filed review application before the first respondent and the same was also dismissed by order dated 12.07.2012.

3. Mr.G.Sankaran, the learned Senior Counsel appearing for the petitioner submitted that though other persons were charged along with the petitioner, the third respondent did not initiate common proceedings as contemplated under Rule 10 of Syndicate Bank Officer Employees' (Conduct) Regulations, 1976. In fact, during the vigilance enquiry, the other persons categorically admitted their fault while

issuance of demand drafts. Therefore, the third respondent ought to have initiated common proceedings. Non initiation of common proceedings is violation of rule of parity. Insofar as the allegation with regard to issuance of demand draft, the amounts were remitted by the customers immediately. Insofar as the transaction regarding discounting of cheques, out of the total amount of Rs.145 lakhs due from the customers, all the customers remitted back together with interest and also overdue interest. Therefore, there is absolutely no loss to the bank.

3.1 He further submitted that the petitioner had followed only an usual course of action and normal methodology followed by the branch situated at the industrial area for retaining its valuable customers and shown some leverage at the time of issuance of demand drafts, that too with the knowledge of the higher officials. It was clearly admitted by the Senior Branch Manager in his deposition before the Vigilance Officer. In fact, even prior to his joining as Assistant Manager, the Branch had adapted some procedure of issuance of demand drafts or transferring the cash without balance in the respective account and later on, after receipt of cash from the customers, made entries in their accounts. These facilities were provided to its customers in order to accommodate certain important clients and to meet their urgent business needs. Therefore, the petitioner was also forced to follow the same procedure. In fact, the third respondent did not take any action as against the other officials in the branch. Therefore, all of them made the petitioner a scapegoat. There was no fraud involved in the issuance of demand draft. The petitioner had no monetary benefit. There was no illegal gratification and there was no loss to the bank.

3.2 He further submitted that during the enquiry, the petitioner asked for certain documents and those were not provided to defend his case. Without furnishing the copies, the enquiry officer proceeded with the enquiry and he was imposed with capital punishment of dismissal from service. The third respondent had enquired only one witness i.e. Vigilance Officer. He deposed before the enquiry officer and marked the statements which were recorded during the preliminary enquiry. Those who were examined by the Vigilance Officer were not examined before the enquiry officer. Therefore, enquiry itself is vitiated since the petitioner was not given opportunity to cross examine those witnesses who were examined by the Vigilance Officer. Except the Vigilance Officer, no one was examined by the enquiry officer. Whatever the statements and documents recorded by the Vigilance Officer during preliminary enquiry, cannot be marked before the enquiry officer, that too by Vigilance Officer. It is impermissible in law. In support of his contention, he relied upon the following judgments:

(i) ***Principal Secretary to Government Vs. K.R.Palanisamy*** reported in ***2021 SC Online Mad 2850***

(ii)***Naresh Chandra Bhardwaj Vs. Bank of India and others*** reported in ***(2019) 15 SCC 786***

(iii)***N.Rajavelu Vs. The Superintendent of Police, Villupuram District*** rendered in WP.No.32816 of 2013 by this Court

(iv)***T.Pitchai Vs. Deputy Inspector General of Police, Tirunelveli*** reported in ***2006 (2) LLN 293***

(v) ***State of Uttaranchal Vs. Kharak Singh*** reported in ***(2008) 8 SCC 236*** (vi)***Nirmala J.Jhala Vs. State of Gujarat and another*** reported in ***(2013) 4 SCC 301***

4. The respondents filed counter and Mr.P.Raghunathan, the learned counsel appearing on behalf of the respondents submitted that common proceedings as contemplated under Rule 10 of Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 is only directory in nature and it is not mandatory. That apart, the petitioner ought to have raised plea for common proceedings. Without any plea for common proceedings, it is not an automatic for common proceedings. When the petitioner asked for certain documents, he ought to have stated the relevancy and purpose of the documents. In fact, the petitioner duly participated in the enquiry without any protest for non supplying of the documents which were sought by him. In fact, after issuance of second show cause notice also, the petitioner did not raise any protest for non supplying of the documents. Therefore, no prejudice caused to the petitioner even assuming that he was not served with documents. The petitioner was served with charge memo for various acts of irregularities in purchase of cheques, issuance of demand draft without obtaining

funds and certain fraudulent transactions committed by him as the Assistant Manager of the bank during the period 02.06.2004 to 07.01.2006.

4.1 He further submitted that the charge memo was consisting of 21 charges. After giving sufficient opportunity to the petitioner, enquiry was conducted. The enquiry officer found that out of 21 charges, 17 charges were proved, two charges were partly proved and two charges were not proved. Based on the enquiry report, he was awarded with punishment of dismissal. His appeal and review were also dismissed. In fact, he had no right to file an appeal. However, he preferred appeal and also review. Both were dismissed. In pursuant to various allegations, investigation was ordered. Based on the investigation, charges were levelled against the petitioner. Apart from the petitioner, other two managers were also awarded punishment of lowering the grade in one and reduction of pay to another manager. The petitioner was given enough opportunity and as such there was no violation of principles of natural justice. That apart, no prejudice was caused to him. In fact, whatever the documents requested by the petitioner were produced at the time of enquiry and those documents were received by the petitioner. He further submitted that there was no discrimination among the delinquents. If the petitioner raised the ground of discrimination, he ought to have stated the discrimination among the delinquents. No particulars were submitted that the petitioner was only discriminated among the other delinquents. In support of his contention, he relied upon the following judgments:

(i)***Disciplinary Authority cum Regional Manager Vs. Nikunja Bihari Patnaik*** reported in ***(1996) 9 SCC 69***

(ii)***State Bank of India Vs. Chaman Lal*** reported in ***2008 SCC Online Del 736***

(iii)***State Bank of India Vs. T.J.Paul*** reported in ***(1999) 4 SCC 759***

(iv)***State of India Vs. Bela Bagchi and others*** reported in ***(2005) 7 SCC 435***

(v)***Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain*** reported in ***(2005) 10 SCC 84***

(vi)***S.Sreesanth Vs. Board of Control for Cricket in India***
reported in ***(2019) 4 SCC 660***

(vii)***Lucknow Gramin Bank Vs. Rajendra Singh***
reported in ***2013(5) LLN 100***

(viii)***Balbir Chand Vs. FCI and others*** reported in
(1997) 3 SCC 371

(xi)A***dministrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia*** reported in
(2010) 5 SCC 775

(x)***Katra Education Society Vs. State of UP*** reported in
CDJ 1996 SC 101

(xi)***National Carbon Company, Madras Vs. Labour Court Madras*** reported in ***1987 1 LLN 405***

5. Heard, Mr.G.Sankaran, the learned Senior Counsel appearing for the petitioner and Mr.P.Raghunathan, the learned counsel appearing for the respondents.

6. The petitioner was appointed as Clerical Staff in the first respondent bank. Thereafter, he was promoted to the post of Assistant Manager and posted at Mettupalayam Branch. He had worked from June 2004 to 08.01.2006 as Assistant Manager and thereafter, he was transferred to the fourth respondent bank. After his transfer, he was suspended from service by order dated 10.01.2006. In pursuant to his suspension, he was served with charge memo dated 07.11.2006 consisting the following 21 charges:

"*1. He fraudulently issued DD No.652773/5983 for Rs.4,00,000/- and DD No.652774/5984 for Rs.3,00,000/- on Salem main branch on 27.12.2005 favouring M/S TELCO Construction Equipment Co Ltd on behalf of Srii Palanisamy, Prop. M/s Shanmuga Blue Metals without receiving necessary funds and, in order to cover up this mistake he falsified branch records by inflating SB Sub-day book figure by Rs.7 lakh so as to tally the Day Book.*

2. He dishonestly routed extraneous transactions not pertaining to the customer like cash credit of Rs.1575/- on 27.12.2005, Rs.7.00 Lakh cash 30.12.2005 and Rs.900/ on 3.1.2006 in SB account no.22989 of Sri P Rangasamy without his knowledge or consent.

3. He fraudulently adjusted Rs.7.00 lakh from SB account no. 22989 of Sri Rangasamy on 30.12.2005 through office cheque no.522780 by forging the signature of the account holder, towards the amount of two DDs issued on 27.12.2005 without funds.

4. He dishonestly misutilised Rs.5.00 lakh out of Rs.7.00 lakh recovered from M/s Shanmuga Metals towards DD issued on Salem Main branch on 27.12.2005.

5. He fraudulently and dishonestly debited Rs.5.00 lakh to Branch Adjustment account on 30.12.2005 on the pretext of supplying Cash to Corporation Bank, Mettupalayam branch against their DD on Coimbatore by raising Dr IBA no. 337 dated 30.12.2005 and utilised the amount dishonestly for giving credit of Rs.7.00 Lakh to SB account no. 22989 of Sri Rangasamy for adjusting two DDs for Rs.7.00 lakh issued on 27.12.2005 without arranging funds.

6. He deliberately and dishonestly withheld the Dr IBA no. 337 dated 30.12.2005 up to 5.1.2006 and attached Tamilnadu Mercantile Bank Ltd DD No. 601135 dated 5.1.2006 for Rs.5.00 lakh received in respect of genuine cash remittance of Rs.5.00 Lakh to the said bank on 5.1.2006, to the spurious Branch Adjustment Dr.IBA no. 337 dated 30.12.2005 so as to adjust the fraudulent debit raised under Branch Adjustment Head.

7. He arranged for purchase or DD for Rs.5.00 lakh in favour of Syndicate Bank from Indian Bank, Mettupalayam branch, on 10.1.2006 in collusion with M/s Srirama Agencies to whom CDDs were extended indiscriminately and submitted the DD along with Dr IBA no. 341 dated 5.1.2006, raised in respect of genuine cash remittance to Tamilnadu Mercantile Bank Ltd, to CAO, Coimbatore after his transfer and suspension, thereby falsified bank records and meddled with the evidence even after your suspension.

8. He arranged GCDD 117/04 dated 4.8.2004 for Rs.45,000/- and GCDD 164/04 dated 7.9.2004 for Rs.24,000/- in the name of his wife Smt.Bhuvaneshwari, without entering in the CDD ledger and unauthorisedly debited the said two outstanding CDDs to current account No.2100 of M/s/ Srirama Agencies on 29.9.2004 and 31.12.2004 respectively, thereby gained pecuniary benefit.

9. He unauthorisedly debited overdue CDD 113/04 dated 2.8.2004 for Rs.25,2000/- of Smt.Subauda Banu and CDD 148/04 dated 28.8.2004 for Rs.24,900/- of Sri M Shekar to current account no.2100 of M/s Srirama Agencies thereby passed on the benefit to ineligible persons at the cost of M/s Srirama Agencies.

10. He dishonestly replaced original CDD ledger containing entries from 1.12.2004 to 31.7.2005 with a fabricated CDD ledger *without containing entries regarding large number of accommodative CDDS extended to M/s Srirama Agencies and other groups by allotting altogether different CDD numbers so as to avoid detection of irregularities thereby exhibited your criminal intention regarding misrepresentation and falsification of records.*

11. He dishonestly falsified CDD ledger entries regarding date of realisation of CDDs and rounded off outstanding CDD entries without receiving actual credits resulting in non collection of overdue interest, thereby caused pecuniary loss to the bank intentionally.

12. He rolled over overdue CDDs by rounding off the entry in the ledger by mentioning imaginary/misleading credit IBA numbers and opening fresh CDDS without taking in Sub-day book and without passing the credit to borrower's account and without collecting discount charges interest, thereby fraudulently accommodated the parties dishonestly at the cost of the bank.

13. He did not despatch large number of accommodative CDD instruments to the drawer bank and unauthorisedly withheld them. Subsequent on his transfer/suspension, he despatched some of the withheld discounted cheques, which were returned by the drawee banks. In some cases original discounted cheques were even replaced with a set *of new cheques drawn by different parties on different banks, thereby intentionally jeopardised bank's interest.*

14. He is still dishonestly withholding 26 cheques in respect of CDDs arranged to M/s Srirama Agencies and M/s JB Corporation after 1.2.2005 in addition to discounted instruments in respect of blocked amount of Rs.22,78,995/- which were neither despatched to the drawee banks nor held with the branch, thereby jeopardised bank interest in recovery of amount from the borrowers and put the bank in an embarrassing position.

15. He arranged rolled over / fictitious CDDs in the name of M/s Roja Agencies and their associates and M/s Shanmuga Blue Metals to accommodate other group concerns like M/s Srirama Agencies and fraudulently arranged to square off such CDDs by purchasing DDs from the drawee banks through the employees of M/s Roja Agencies, after detection of the irregularities and thereby he is responsible for dubious and non genuine transactions in the name of regular customers which tarnished the image of the bank.

16. He committed serious irregularities like adjusting OBC proceeds, accounting double amount, excess/short amounts towards CDDs, adjusting altogether different amount to CDDs, not recovering *paid out commission etc. which indicate certain under hand dealing with the customers.*

17. He falsified CDD balancing book, Manager's Certificate and Return 2-A statement by fraudulently suppressing the overdue long pending CDDs, thereby misled the controlling office.

18. He falsified cash paid vouchers by replacing two cash paid debit slips dated 28.9.2005 for Rs.9.95 lakh each in respect of payment of cash to M/s Srirama Agencies In current account no. 2100 with cheque no. 066330 and 066331 for the same amount.

19. He failed to obtain OG-72 and sanction orders of the Senior Branch Manager, before arranging accommodative CDDs.

20. He failed to follow up overdue and long pending CDDs till November 2005.

21. He was unauthorisedly holding bank's stationery like OF 1920 A&B, SF 1205 pads (covering letter for CDDs and OBCs) in his possession even after his transfer and suspension, which were utilised for submitting discounted cheques for collection after his transfer / suspension"

7. On receipt of the charge memo, the petitioner submitted explanation on 18.11.2006. Further, he requested for supply of documents in order to attend enquiry. However, he was not furnished with any documents as sought for by him. On perusal of the request made by the petitioner, revealed that he categorically mentioned about the documents and its relevancy to defend the charges. The charge memo was issued to the petitioner on the preliminary report submitted by the Vigilance Department. The Vigilance Officer conducted enquiry and recorded statement from various persons thereby the Vigilance Officer only was examined before the enquiry officer. Whatever the submissions an documents made before the Vigilance Department, were marked before the enquiry officer, that too only through Vigilance Officer. Therefore, the petitioner was not in a position to cross examine the persons who were deposed before the Vigilance Officer. Whatever the depositions made by the witnesses and whatever the documents marked before the Vigilance Department, were marked through Vigilance Officer before the Enquiry Officer. The enquiry officer submitted his report only based on the deposition of the Vigilance Officer and other depositions

and documents produced before the Vigilance Officer. No witnesses or no documents were subjected for any cross examination by the petitioner.

8. Finally, the enquiry officer concluded by the report dated 08.10.2007 and held that the charges No.5 and 9 were not proved. Insofar as the charges No.7 and 8 were partly proved and the charges Nos.1 to 4 and 10 to 21 were proved. On the basis of the enquiry report, the petitioner was dismissed from service. Therefore, the punishment based upon the evidences given in the preliminary enquiry cannot be sustained. The enquiry officer cannot give a finding based upon the mere surmises and conjectures. The petitioner was not given any opportunity to cross examine the witnesses to verify the statement made by them before the Vigilance Department.

9. In the case of ***Union of India VS. Ahamed*** reported in ***2009 10 SCC 87***, held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry. Therefore, the report submitted by the

enquiry officer is not sustainable in view of the fact that the said view was taken solely based on the deposition of Vigilance Officer and based on the statements recorded during the preliminary enquiry conducted by the Vigilance Department. When the petitioner had no occasion to cross examine the witnesses who deposed before the Vigilance Department during the preliminary enquiry, the charges framed against the petitioner cannot be said to be validly proved.

10. The Hon'ble Supreme Court of India held in the case of ***Amalendu Ghosh Vs. North Eastern Railway*** reported in ***AIR 1960 SC 992*** that the purpose of holding a preliminary enquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and *prima facie*, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary enquiry, no order of punishment can be passed. The Hon'ble Supreme Court of India further held in the case of ***Champaklal Chimanlal Shah Vs. Union of India*** reported in ***AIR 1964 SC 1854*** that the preliminary enquiry should not be confused with regularly enquiry.

The preliminary enquiry is not governed by the provisions of Article 311(2) of the Constitution of India. The preliminary enquiry may be held *ex parte*, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the Government servant even at such an enquiry. Thus, the preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice nor remains of no consequence. Whereas in the case on hand, the Vigilance Officer who conducted preliminary enquiry deposed before the regular enquiry officer and whatever the documents marked by the witnesses and whoever deposed before the Vigilance Officer, those documents were marked before the enquiry officer. Therefore, using such evidence would be violative of the principles of natural justice since the petitioner was not given any opportunity to cross examine the persons who were examined in such preliminary enquiry.

11. Insofar as non furnishing the documents which were sought by the petitioner in order to defend the charge is concerned, the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***State of Uttaranchal Vs. Kharak Singh*** reported in ***(2008) 8 SCC 236*** , wherein it is held as follows:

> *A reading of the enquiry report also shows that the respondent herein was not furnished with the required documents. The department's witnesses were not examined in his presence. Though the respondent who was the writ petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the reply affidavit filed by the department. Mere denial for the sake of denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by the enquiry officer to the disciplinary authority, the respondent herein was furnished with the copy of the said report along with all the relied upon documents. When all these infirmities were specifically pleaded and*

brought to the notice of the appellate authority (i.e. Forest Conservator), he rejected the same but has not pointed the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision. Hence, the appellate authority has also committed an error in dismissing the appeal of the respondent.

12. In the case on hand, the petitioner was not furnished with documents and the witnesses who deposed before the Vigilance Department were not cross examined by the petitioner. Therefore, non furnishing the copies of the documents caused serious prejudice to the petitioner.

13. Insofar as common proceedings is concerned, the learned Senior Counsel submitted that the third respondent failed to follow the procedure as contemplated under Rule 10 of Syndicate Bank Officer Employees' (Conduct) Regulations, 1976. The petitioner along with other persons were served with charge memo of same set of charges. However, separate enquiry was conducted and failed to follow Rule 10 of

Syndicate Bank Officer Employees' (Conduct) Regulations, 1976, which is extracted hereunder:

> *Where two or more officer employees are concerned in a case, the authority competent to impose a major penalty on all such officer employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings.*

14. Admittedly, the petitioner and two other managers in the very same branch were subjected for disciplinary proceedings. Separate enquiry was conducted against them and they were awarded punishment of lowering the grade in one and reduction of basic pay to another manager. That apart, there was conflict of punishment imposed on each delinquent though they were subjected for very same set of charges. In fact, the respondents failed to produce any documents to show that other managers were subjected for different set of charges and therefore they were punished with lesser punishment. As such, the contention of the respondents that the petitioner failed to seek any common proceedings along with other delinquents did not arise, since the petitioner was not served any details of the disciplinary proceedings initiated against other

delinquents. Therefore, he had no opportunity to submit any representation asking for common proceedings as contemplated under Rule 10 of Syndicate Bank Officer Employees' (Conduct) Regulations, 1976. The disciplinary authority should have taken common proceedings when two or more delinquents were involved in the misconduct. Likewise, the learned counsel for the respondents also raised a contention that the petitioner failed to show any protest while submitting explanation for non supply of documents. It is also not accepted since at the time of enquiry, he submitted several representations for supply of documents. Mere denial of non availability of documents cannot be accepted, because all the documents were marked before the Vigilance Department during preliminary enquiry.

15. Insofar as rule of parity is concerned, the learned counsel for the respondents relied upon the judgment in the case of ***Lucknow Gramin Bank Vs. Rajendra Singh*** reported in ***2013(5) LLN 100***, wherein the Hon'ble Supreme Court of India held as follows:

> 19. *The principles discussed above can be summed up and summarized as follows:*

19.1 When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;

19.2 The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

19.3 Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;

19.4 Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

19.5 The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the *disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable.*

16. Whereas, insofar as rule of parity is concerned, the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Naresh Chandra Bhardwaj Vs. Bank of India and others*** reported in ***(2019) 15 SCC 786***, wherein it is held as follows:

5. It is trite to say that the domain of the courts on the issue of quantum of punishment is very limited. It is the disciplinary authority or the appellate authority, which decides the nature of punishment keeping in mind *the seriousness of the misconduct committed. This would not imply that if the punishment is so disproportionate that it shocks the conscience of the court the courts are denuded of the authority to interfere with the same. Normally even in such cases it may be appropriate to remit the matter back for consideration by the disciplinary/appellate authority. However, one other cause for interference can be where the plea raised is of parity in punishment but then the pre-requisite would be that the parity has to be in the nature of charges made and held against the delinquent employee and the conduct of the employee post the incident. It is the latter aspect which is sought to be advanced by learned counsel for the appellant by relying upon the judgment in Rajendra Yadav v. State of Madhya Pradesh & Ors. 1 On this very aspect learned counsel for the respondents drew out attention to a subsequent judgment in Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. v. Rajendra Singh 2 which had taken note of the earlier judgment referred to aforesaid.*

7. The principle, thus, culled out is that remitting a matter on the issue of quantum of punishment would be as set out in para 19.5 aforesaid, i.e., where a co-delinquent is awarded lesser punishment by the disciplinary *authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This is based on the principle of equality but then there has to be an absolute parity.*

17. He also relied upon the judgment of this Court in the case of ***Principal Secretary to Government Vs. K.R.Palanisamy*** reported in ***2021 SC Online Mad 2850***, wherein it is held as follows:

> *11. A reading of the above paragraphs makes it abundantly clear that the courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority, but, an exception is carved out therein to the effect that if the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges, then the Court is at liberty to interfere with the punishment. In such case, instead of remitting the matter back, the Court can substitute a suitable punishment.*
>
> *12. If the principle enunciated in the above judgments is applied to the facts of the instant case, it is*

clear that the writ petitioner is entitled for the similar treatment, that has been extended to N.Subramanian and after passage of time, remitting the matter again to the authorities would not serve any purpose. Thus, directing the authorities to modify the punishment imposed on the writ petitioner to the one that has been imposed on N.Subramanian would meet the ends of justice. Thus, the learned Single Judge rightly set aside the Government Order refusing to extent such benefit to him. We find no reason to interfere with the said order.

18. Thus it is clear that if the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges, then the court is at liberty to interfere with the punishment. In the case on hand, though the respondents failed to produce any documents to show that co-delinquents were issued with lower grade and reduction of pay, the petitioner was punished with capital punishment of dismissal from service. Therefore, the petitioner is also entitled for same treatment like other managers.

19. Further, such comparison of punishment is permissible only when other employee who has been given lighter punishment was co-delinquent. Such comparison is not permissible by citing the cases of other employees as precedents in all together different departmental enquiry. But in the case on hand, the co-delinquents, who were also served with same set of charges like the petitioner herein, were imposed lesser punishment than the petitioner. That apart, there was no loss to the respondents in view of issuance of demand draft to its customers since within period of three days, the persons who received demand draft remitted the entire amount with interest at the rate of 18% per annum.

20. In fact, the petitioner was working as Assistant Manager and he had acted only on the directions issued by the Senior Manager. Once the Senior Manager approved for issuance of demand draft and on the direction issued by the Senior Manager, the petitioner acted upon and issued demand draft to its customers. When it being so, the person who approved and directed to issue demand draft was punished with lesser punishment and whereas the petitioner has been punished with capital punishment. Therefore, it is clear violation of rule of parity.

21. Further, on perusal of records, revealed that the practice of accommodation for certain business clients in the interests of business development of the Branch was done with the knowledge and approval of the Regional Office. Admittedly, there was no loss to the respondents due to issuance of demand draft. Therefore, the judgments cited by the learned counsel for the respondents are not applicable to the case on hand.

22. In view of the above discussion, the impugned orders are liable to be quashed. Accordingly, the impugned orders dated 07.01.2008, 24.06.2008 & 12.07.2012 are quashed. Reinstatement of the petitioner into service does not arise since the petitioner already attained age of superannuation. However, in view of the co-delinquents were punished with lowering the grade in respect of one manager and reduction of basic pay in respect of another manager, this Court imposes punishment of stoppage of increment for a period of two years with cumulative effect in respect of the petitioner. The petitioner is entitled for all benefits except for the above two years period. Therefore, the

respondents are directed to disburse all terminal benefits and other attendant benefits to the petitioner within a period of twelve weeks from the date of receipt of copy of this order.

23. In the result, this writ petition stands partly allowed. There shall be no order as to costs.

13.10.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
lok

G.K.ILANTHIRAIYAN, J.

lok

To
1.Executive Director,
Canara Bank,
Industrial Relations Department,
Head Office, Manipal,
Karnataka 576 105
2.The General Manager(Personnel)/
Appellate Authority, Canara Bank,
Industrial Relations Department,
Head Office, Manipal,
Karnataka 576 105
3.The Deputy General Manager (Personnel)/
Disciplinary Authority,
Canara Bank,
Industrial Relations Department,
Head Office, Manipal,
Karnataka 576 105
4.The Deputy General Manager,
Regional Office,
Canara Bank,
Industrial Relations Department,
West Ponnurangam Street,
R.S.Puram,
Coimbatore
5.The Government Advocate
High Court, Madras.

W.P.No.3688 of 2015
13.10.2023