



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on :07 August 2023**
Judgment pronounced on :25 August 2023

+ **LPA 297/2021**

SUNIL KUMAR NAGPAL Appellant
Through: **Mr. N.C. Gupta and Mr. Deepak Singh, Advs.**

versus

CENTRAL BANK OF INDIA & ORS. Respondents
Through: **Mr. Divyanshu Sahay, Ms. Shradha Narayan and Mr. Akshay Sahay, Advs.**

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The appellant has instituted this 'Letters Patent Appeal'¹ in terms of Clause 10 of the Letters Patent of Lahore, as applicable to the Delhi High Court, read with Section 10 of the Delhi High Courts Act, 1996, directed against the impugned order dated 26 March 2021, passed by the learned Single Judge of this Court, whereby Writ Petition filed by him bearing WP(C) No. 7401/2017 against the

¹ LPA



respondents challenging his dismissal from service by the Disciplinary Authority² was dismissed.

FACTUAL BACKGROUND:

2. The appellant was appointed to the post of Probationary Officer in the respondent No. 1 Bank on 09 July 1984. He was posted as Chief Manager at South Extension Branch of the Bank, at Delhi in June, 2011. The appellant was served with a memorandum by the Zonal Manager, Zonal Office dated 27 September 2013 alleging certain acts of omissions and commissions committed by him while discharging his duties at the South Extension Branch and also at the Khan Market Branch, to which a reply was filed by him dated 14 October 2013. Vide letter dated 22 October 2013, his reply was not found to be satisfactory and disciplinary action was initiated against him, simultaneously placing him under suspension vide memo dated 26 October 2013 which was followed by a charge-sheet dated 11 December 2013 issued by the Senior Regional Manager acting as the DA. The charge-sheet set out 17 articles of charge³ but later by way of an addendum dated 21 March 2014, 10 additional charges were added to the existing articles of charge⁴. A Presenting Officer⁵ was appointed vide order dated 29 March 2014 and inquiry proceedings were initiated against the appellant, which commenced on 06 May 2014 and was concluded on 25 November 2014. Ultimately after considering

² DA

³ A-4

⁴ A-5

⁵ PO



the written briefs submitted by the petitioner as also the PO, an inquiry report dated 07 January 2015 was culminated. Suffice to state that out of 17 charges that formed part of the charge-sheet dated 11 December 2013, the Inquiry Authority held that the charges 1, 3, 6, 9 to 13 and 15 were proved whereas charges 2, 4, 5, 7, 8, 14, 16 and 17 were not proved, whereas out of 10 charges that constituted part of the addendum to the memorandum dated 21 March 2014, three charges were held to be proved against him.

3. The DA on 13/19 January 2015, addressed a disagreement note to the appellant concurring with all the findings of the Inquiry Authority except for charge Nos. 2, 4 and 17 *inter alia* also assigning reasons for disagreement. The appellant was afforded an opportunity to submit his written submissions within 7 days thereof, which were submitted by the petitioner on 17 February 2015, whereby the petitioner refuted the findings of the Inquiry Authority on various counts. The DA on observing the entire record of the inquiry proceedings vide order dated 27 March 2015 held that charges 1 to 4 and 6 were fully proved whereas charge No. 7 was partly proved while charge Nos. 9 to 13 and 15 to 17 as well as addendum charge Nos. 1 to 7 and 9 were also proved against him. In a nutshell, the DA found that the appellant had mis-conducted himself while being posted as the Branch Head by carrying out reckless financing, violating bank systems and procedures, acting in a manner which was unbecoming of a bank employee and failing to take all possible steps



to protect the interests of the bank and thus recorded the following observations:

“Looking to the nature and gravity of the charges proved against the CSO and considering the facts, enquiry proceedings, written briefs of PO, and CSO, findings of enquiring authority and written submissions of CSO and having regard to the acts of omission and commission committed by the CSO wherein unethical, manipulative and accommodative transactions have been done in the accounts for concealment of correct status of the account, Five Borrowal frauds have been perpetrated, as also the huge loss of 12 crores, likely to be suffered by the bank on accounts of lapses attributable to Sh. Nagpal. I observe that his continuation in the bank is a threat to the organisation and the staff working with him and these acts if not checked at this moment will result in adverse consequences causing huge monetary losses to the bank which is custodian of Public Money...”

4. In the light of the aforesaid observations, on considering the cumulative effect of the proved charges, the DA imposed punishment of dismissal of the appellant further disqualifying him for future employment in terms of regulation 4 (j) of the Central Bank of India Officers Employees (Discipline & Appeal) Regulations, 1976⁶. It was further directed that the ‘petitioner would not be entitled for any increment falling due during the period of suspension and for the difference between the full wages & subsistence allowance besides other privileges for the period of suspension, or to any type of leave for the suspension period’. The appellant preferred an appeal before the General Manager (HRD). The Appellate Authority dismissed the appeal vide order dated 10 February 2016 with the following observations:

⁶ The Regulations



“(i) The principles of natural justice have been observed by the IA. Every opportunity had been provided to him to rebut the charges levelled against him, to cross examine the bank’s witnesses and to produce witnesses/evidences in his own defence which was also stated to have been availed by the petitioner. It was also observed that the petitioner was also given the opportunity to defend his case through his representative, which, too, he availed.

(ii) The enquiry had been conducted strictly in accordance with the regulations of Central Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976 (“the Regulations”, hereinafter).

(iii) All points raised by the petitioner in appeal were already dealt with and most of the objections raised by the petitioner were mere repetitions of objections raised in his submissions against the findings of the IA which had already been taken care of and dealt in the final orders issued in this regard.

(iv) The plea, of the petitioner, that the DA had erroneously proceeded only against the petitioner, who was the recommending authority, without taking action against the sanctioning authorities, the DA held that staff accountability was fixed in the bank as per well-set guidelines and well-established policy framed by their central office and disciplinary action is initiated against the persons who are found accountable for the lapses/ misconduct. **It was noted that in the present case also accountability was fixed on recommending officials, as well as other staff and accordingly disciplinary action was initiated against them.** Simply alleging that the DA has intentionally shifted all onus on the petitioner was stated to not serve any purpose as a number of bank officials of different levels were said to be involved in staff accountability exercise. It was observed that disciplinary action proceedings are initiated only after completion of such well-defined exercise and proper identification of officials accountable for the slippage of accounts to NPA or fraud etc.

(v) The contention, of the petitioner, that some of the accounts had become NPAs only after his transfer from the branch, which was attributable to poor follow up by the petitioner’s successors, the **DA observed that, as per the guidelines of the Bank, if the account became a NPA only due to poor monitoring and follow-up of the branch officials, responsibility would not attach to the sanctioning official, but, on the other hand, if the**



account had become NPA due to weaknesses/lacunas occurred at the time of appraisals/ sanctions, then the recommending/sanctioning authorities would be held responsible. In the case of the petitioner, the DA held that the charges against the petitioner included five fraud accounts involving large sums of money, in respect of which frauds were perpetrated owing to lapses on the part of the petitioner.

(vi) On the objection of the petitioner that sufficient opportunity in the manner of providing documents of defence was not granted to him, the appellate authority observed that on going through the inquiry proceedings, that all reasonable opportunities were provided to the petitioner to defend his case. It was, furthermore, added that the impartiality of the departmental enquiry was evident as the IA had directed the PO for providing the demanded documents which were very large in number to the petitioner for defending his case.

(vii) In response to the objection raised by the petitioner that double punishments were awarded to him for the same alleged offence, the Appellate Authority stated that after going through the entire proceedings of the Departmental enquiry, **it observed that in four borrowal accounts, a minuscule part of the charge was regarding unethical entries in these accounts, while Charge No. 13 exclusively dealt in unethical transactions which included of 23 such transactions. It was observed, that this charge of unethical transactions was serious in nature and it was duly established that these unethical transactions were carried out at the behest of the petitioner for concealment of status of accounts which were otherwise NPA.**

However, noting that these lapses were only a minuscule part of the charge and as such could have no bearing on the essence of the charges and the resultant penalty.

(viii) On the objection of the petitioner as to how he could have benefited from these alleged unethical transactions and on the plea that the Bank staff and supervisory staff had carried out these transactions on their own at the behest of borrowers and that there was no loss to the bank, the Appellate Authority held the plea of the petitioner to be not acceptable. It was stated that as a branch head, the petitioner had to face the consequences of the increased NPA and so the net impact of the fraudulent entries would check the escalation of NPA of the branch and thereby ease his position.





It was moreover observed that one could not digest the logic that at the behest of the borrowers, junior staff of the branch were effecting these alleged unethical transactions without bringing it to the notice of the petitioner. Noting that the petitioner was the branch head and thus the custodian of the branch, It was observed that it was the petitioner's paramount duty to check any such misdeeds in the branch, however, the petitioner had failed to carry out his duties diligently and rather himself had indulged in such malpractices as it was only the petitioner being the branch head who could have benefited from these transactions for concealment of NPA status of the account.

(ix) It was also stated that the plea of increasing/decreasing the limit as being done by the junior staff in the borrowal accounts without taking the petitioner into confidence was not tenable. It was stated that the junior staff would not decrease or increase the limit of the borrower on their own without bringing the same to the knowledge of the branch head. It was stated that in fact the petitioner had manipulated the CBS system by increasing/decreasing the sanctioned limits to provide benefit to the customer and accommodate them for reasons best known to the petitioner which reflected on his doubtful integrity, ulterior motives and malafide intentions.

(x) On the plea of the petitioner that no reckless advances were made by him and that he was only achieving the target set by the regional office in a very consistent manner from month to month basis, it was observed that from the factual position of the branch, it was evident that there was a sudden burst of NPA as well as reporting of fraud in the borrower accounts of the branch which were financed during the petitioner's stay at the branch. This was stated to very much indicate that the advances were made in a reckless manner.

(xi) Regarding the award of heavy punishment against the petitioner, it was noted that the punishment should be commensurate with the nature and gravity of lapses/misconduct committed by the erring official. Moreover, the total amount of loss to be borne by the Bank due to misconduct of the airing officials was also a major factor for deciding the quantum of penalty/punishment."



5. In the ultimate analysis, the Appellate Authority also held that consolidated penalty as imposed by the DA was commensurating with the gravity of proven charges. The appellant filed a review petition on 31 March 2016, raising the following pleas:

- “The DA has intentionally evaded to take cognizance of the responsibilities of recommending/sanctioning officers in case of the reported fraud cases and rather mechanically shifted all onus on him.
- The DA has awarded the punishments in a biased manner, as, no enquiry has been initiated against any of the authorities of RLCC with an intention to target him as a scapegoat.
- There was no concealment of facts on his part, as, availing multiple finance was from the borrowers side.
- Inquiry was held in gross violation of the principles of natural justice as he was neither supplied with the copies of the documents relied upon by the PO nor supplied with list of witnesses before initiation of the inquiry.
- Inquiry report is flawed as it is based on insufficient evidence brought on the record.”

6. To cut the long story short, the review also met with the same fate resulting in the order dated 07 March 2017, *inter alia* holding that the review was not made out as the delinquent had failed to place on record any new material or evidence before the Reviewing Authority and the order dated 27 March 2015 by the DA dismissing the petitioner from service was confirmed.

CHALLENGE IN THE WRIT:

7. The aforesaid orders were challenged by filing a Writ petition under Article 226 of the Constitution of India seeking a Writ for certiorari for setting aside the impugned inquiry report dated 07 January 2015 leading to order dated 27 March 2015, 10 March 2016



and 07 January 2017 *inter alia* on the grounds that the DA chose to disagree with the findings of the Inquiry Authority with a pre-determined intent in as much as of all the articles of charge slapped against him, the DA found only charge Nos. 2, 3, 4, 9 and 13 sufficient to warrant dismissal or removal from service and proceeded vide order dated 27 March 2015 to award consolidated penalty which was *per se* harsh and unconscionable; and that there was never imputed any criminal intent upon the appellant and he ought not to have been awarded extreme punishment of dismissal from service since the DA completely overlooked the Staff Accountability Circular dated 25 February 2012 that envisaged **taking of risks as an integral part of the business** in banking institutions, and that the appellant could not have been made liable for recommending and sanctioning of loans, which were done after due approval from the sanctioning/recommending authority; and that an additional plea was taken during the course of arguments that the appellant had not been afforded a second opportunity of hearing before being awarded the punishment of dismissal of service in terms of Regulation 4 of the Regulations. Reliance was placed on decisions in **Punjab National Bank v. Kunj Behari Mishra**⁷; **Rajpal Singh v. UOI**⁸ and **R.R. Peri v. Oriental Bank of Commerce**.⁹

8. *Per contra*, it was the defence of the respondents that there was no violation of principle of natural justice occasioned in the matter;

⁷ (1998) 7 SCC 84

⁸ 2016 SCC OnLine Del 1586

⁹ MANU/DE/2551/2013



and the High Court exercising its powers under Article 226 of Constitution of India was not sitting as a Court of Appeal; and that the appellant was afforded an opportunity against disagreement note dated 13/19 January 2015 against which a detailed response was filed *by him running into 93 pages on 17 February 2015*; and that the charges against the petitioner were very serious in nature and the punishment of dismissal from service could not be regarded as disproportionate to the charges in any manner. Reliance was placed on decisions in **Deputy General Manager v. Ajai Kumar Srivastava**¹⁰ and **Oriental Bank of Commerce v. R.K. Uppal**¹¹.

IMPUGNED ORDER:

9. Learned Single Judge in his elaborate decision found that the findings recorded with regard to charges 2, 4 and 17 of the articles of charge were not sustainable as on a careful perusal of the disagreement note *qua* the said charges invited an inference that the DA had already made up his mind even before the appellant had an opportunity to respond, and merely because the delinquent had submitted a 93 page response, the findings recorded by the DA on such charges i.e. *charge 2, 4 and 17 vitiated the exercise of disagreement in its entirety*. Although learned Single Judge observed as to the unusual manner in which the DA resorted to expressing his opinion regarding punishment with respect to each proved article of charge, it was held that such blemish would not be a fatal infirmity

¹⁰ (2021) 2 SCC 212

¹¹ 2011 (10) SCR 218



when it came to forming a cumulative view of the proved article of charges.

10. Learned Single Judge observed that there is *a greater degree of circumspection* which is required while evaluating affairs of bank and conduct of its employees and reliance was placed on decision in the case of **Ajai Kumar Srivastava (supra)** and **Ishwar Pal Singh v. Punjab National Bank**¹². In the ultimate analysis, it was held that findings recorded by the Inquiry Authority vide article 3 and 13 by themselves were sufficient to justify the punishment awarded. Suffice it to indicate at this stage that charge 3 pertained to allegations that the Appellant recommended a credit limit of Rs. 15.50 Crore but after sanction was obtained, a sum of Rs. 11.40 crore was disbursed to sister concerns *on the very first day of the credit entry* and the gravamen of the charge was that he failed to ensure end-use of the funds, and in effect allowed diversion of funds which was in contravention of sound banking norms and practices. In so far as Charge 13 is concerned, allegations envisaged a series of misconduct in the sense of non- verification of the title documents tendered by the borrowers; and *twenty three transactions* wherein certain individual borrowers were given undue benefits by crediting their accounts with transferred funds from the operational accounts of the other customers/depositors of the bank so as to conceal the aspect of such accounts of the beneficiary customers having become dormant or non

¹² MANU/DE/0575/2020



performing asset¹³, and thereafter reversing the entries after a day or two to guard against any complaints or inquiries. As regards non-compliance of Regulation 4 of the Regulations, it was held that it did not cause any grave prejudice to the delinquent. Thus, in view of the nature of allegations and concurrent findings recorded by the Inquiry Authority, DA and the Appellate Authority, Learned Single Judge was pleased to dismiss the Writ Petition.

GROUND FOR APPEAL:

11. The impugned Judgment dated 26 March 2021 passed by the learned Single Judge is challenged in the instant LPA *inter alia* on the grounds that no accountability for any financial irregularities could have been fastened on the appellant/petitioner in terms of Staff Accountability Policy vide circular No. CO:CGM:RECV:2011-12 dated 25 February 2012, Para 10 (xiii) which provides that “*in cases where documents have been got vetted from the approved advocate/firm of solicitors, concerned/responsible officers will not be liable for any subsequent defect observed except in cases where qualifying remarks of advocate have not been attended to*”; and that the learned Single Judge committed gross error in not considering that every transaction that takes place in the Branches including entertaining loan proposals, their pre-sanction appraisals and post follow-up were subject to minute scrutiny by the concurrent auditor(s) as also by a dedicated officer posted by the Head Office on a day to day basis tasked with reporting of any deviation and adversity hand to hand, besides subjected to audit of the accounts

¹³ NPA



periodically with quarterly/half yearly/yearly reports submitted to the Branch and vertically up till Head Office for taking corrective steps, if required; and that the learned Single Judge erred in not considering the audit reports that never adversely commented about any misconduct on the part of the petitioner. It is also submitted that the disciplinary action initiated by the respondents against the appellant *qua* the charge-sheet dated 11 December 2013 was in complete violation to the procedure established vide Regulation No. 6(3)¹⁴ and 6(5)¹⁵ of the Regulations in as much as the appellant was neither provided nor forwarded all the documents listed in Annexure-III to the charge-sheet while on the other hand the Inquiry Authority allowed the management representative to produce documents and also introduce witnesses thereby, causing grave and irreparable prejudice

¹⁴ Reg. 6(3) provides thus: "Where it is proposed to hold an inquiry the Disciplinary authority shall frame definite and distinct charge on the basis of the allegations against the officer employee and the, articles of charge together with a statement of the allegations, list of documents relied on along with copy of such documents and list of witnesses along with their statements, if any, on which they are based shall be communicated in writing to the officer employee who shall be enquired to submit within such time as may be specified by the Disciplinary authority ... a written statement of his defense".

Provided that wherever it is not possible to furnish the copies of documents, Disciplinary Authority shall allow the officer employee inspection of such documents within a time specified in this behalf.

¹⁵ Reg. 6(5) provides as:

"The Disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority:

- i) a copy of the articles of charges and statements of imputations of misconduct or misbehavior;
- ii) a copy of the written statement of defence, if any, submitted by the officer employees;
- iii) A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be substantiated;
- iv) A copy of statements of the witnesses, if any;
- (v) evidence proving the delivery of articles of charge under sub-regulation (3);
- (vi) a copy of the order appointing the 'Presenting Officer' in terms of sub-regulation (6).





to the appellant; and that the learned Single Judge failed to consider the settled proposition of law enunciated in the case of **Punjab National Bank v. H.N. Wadhwa**¹⁶. Further, that the addendum to the memorandum (supplementary charge-sheet) was issued on 06 May 2014 exactly on the day the inquiry was initiated and not even providing him with the copies of the documents and the statement of witnesses; and lastly that penalty of dismissal from service imposed upon the appellant/petitioner is shockingly harsh, disproportionate and grossly monstrous overlooking the fact of more than 30 years of meritorious and unblemished service of the appellant/petitioner; and that the impugned Judgment has been passed in complete violation of the law laid down in the case of **Colour Chem Ltd v. AL Alaspurkar & Ors.**¹⁷; **Kumaon Mandal Vikas Nigam Ltd. v. Girija Shanker Pant**¹⁸

12. The impugned judgment passed by the learned Single Judge has been further assailed on the ground that the appellant has been singled out for the alleged blemishes without fastening any liability on the Senior Regional Manager, who was the sanctioning authority and ignoring the blemishes committed by the Junior Staff/officials, namely Mr. J.C. Bana and Mr. S.K. Bagga. It is further contended that they had made certain entries in the bank accounts of few customers to please them, which aspects were not required to be scrutinized by the appellant; and that the approach adopted by the Inquiry Authority and

¹⁶ 2013 (DRJ) 633 (DB)

¹⁷ (1988) 3 SCC 192

¹⁸ AIR 88 (2001) SC 24





the DA was in violation of the *ratio* in the case of **State of U.P. v. Rajpal Singh**¹⁹ which has been relied in the case titled **C.D. Sharma v. Union of India**²⁰ by another Division Bench of this Court. The following reliefs have been sought in the instant LPA:

- “i) Admit and allow the LPA setting aside the impugned order dated 26/03/2021 passed by Hon'ble Single Judge.
- ii) Review and set aside the inquiry proceedings conducted in grave violation of procedure prescribed by law and principles of natural justice and consequent penalty imposed upon the appellant based on perverse findings with consequential benefits.
- iii) Grant any other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances.”

13. The respondents in their reply supported by the affidavit of Chief Manager have assailed the aforesaid submissions primarily on the ground that the same is not maintainable in view of concurrent findings of fact recorded by the Inquiry Authority, DA and the Appellate Authority after meticulous appreciation of material on the record and after granting him adequate opportunity of hearing at every stage of the inquiry, this LPA is an attempt to re-open the pleas regarding merits of the findings, which are not permissible in law. Mounting a challenge to the grounds of appeal raised by the appellant, it is stated that punishment meted out to the appellant is based on the cumulative findings with regard to article 1, 3, 6, 10 to 13, 15 and 16 of the charge-sheet as also article 1 to 7 and 9 of the addendum charge-sheet. As regards the plea of the appellant that he was not afforded second opportunity of hearing under Regulation 4 before

¹⁹ (2010) 5 SCC 783

²⁰ W.P. (C) 2680/2012



awarding of punishment, it is stated that the learned Single Judge rightly rejected the same as such plea was raised for the first time on 22 March 2021 and it was not advanced previously before the DA, Appellate Authority or even before the Revisionary Authority, and secondly such opportunity is not required to be given under Regulation 4 to 6 of the Regulations.

ANALYSIS AND REASONS FOR DECISION

14. We have given our thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. We have gone through the entire record of the disciplinary proceedings as also the record of the writ proceedings besides the impugned Judgment as also the relevant case law cited at the Bar.

POWERS OF JUDICIAL REVIEW

15. Before embarking on an exercise to appreciate the facts and circumstances established on the judicial record, it would be apposite to indicate the settled position in law that while exercising powers of judicial review, this Court is not sitting as an 'Appellate Court' over the factual findings arrived at in the disciplinary proceedings, and the same cannot be interfered with so long as the findings are reasonably substantiated by evidence that cannot be faulted on account of procedural illegalities or irregularities vitiating the whole purpose of decision arrived at. Avoiding a long academic discourse on the proposition of law as to the exercise of judicial review under Article 226 of the Constitution, it would be expedient to refer to a few decisions so as to reiterate the well ordained law on the subject. In the



referred case relied upon by the learned Single Judge titled **SBI v. Ajai Kumar Srivastava (supra)**, it was observed:

24. “It is thus settled that the power of judicial review, of the constitutional courts, *is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion.* The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

- (i) whether the enquiry was held by the competent authority;
- (ii) whether rules of natural justice are complied with;
- (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

16. In another case titled **State Bank of Patiala v. S.K. Sharma**²¹, the Supreme Court, after discussing a plethora of judicial pronouncements, distinguishing between “adequate opportunity” and “no opportunity at all”, in the context of observance of the principles of natural justice in the conduct of disciplinary proceedings, summarised the principles as under:

²¹ (1996) 3 SCC 364



“(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental inquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the inquiry held or order passed. **Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively.** If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the inquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the inquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. **Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined.** The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.



(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, **then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation.** If, on the other hand, it is found that the delinquent officer/employee has not waived it *or* that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar* [(1993) 4 SCC 727]. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the inquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — **the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment.** In other words, a distinction must be made between “no opportunity” and no *adequate* opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it ‘void’ or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is



made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., **to ensure a fair hearing and to ensure that there is no failure of justice.** It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.” *{emphasis supplied}*

17. Further, it would be apposite to refer to the decision in the case of **Madhyamam Broadcasting Limited v. Union of India & Others**²², wherein issues arose in the context of decision by the government leading to denial of security clearance to a media house without any hearing, it has been held as under:

“53. The judgment of this Court in *Maneka Gandhi* (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that hold an inherent value in itself. In view of this shift, **the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome.** In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held

²² (2023) SCC OnLine 366



that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. **The facet of *audi alterum partem* encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness.** The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing.”

{emphasis supplied}

18. The aforesaid authoritative pronouncements clearly bring out that there is perceptible departure in service law jurisprudence from its earlier proposition of law that even a small violation shall result in the order being rendered a nullity. Resultantly, the plea by the appellant that he was not supplied with all the relevant documents as also the list of witnesses before the Inquiry Authority commenced the inquiry proceedings is a far cry in the wilderness. It is pertinent to mention here that at the time of admission of the present LPA, the main plank of the plea of the learned counsel for appellant was recorded in the order dated 27 August 2021 by this Court to the effect that there has been breach of principles of natural justice referring to alleged violation of Regulation 6(3) and Regulation 6(5). A careful perusal of paragraphs (22) & (23) of the impugned Judgment passed by the learned Single Judge dated 26 March 2021 would rather invite a strong inference that any objections on account of non-compliance with the said regulations had been waived of. It is borne from the



record that no issue was raised as regards non-supply of relevant documents and/or list of witnesses at the first available opportunity before the DA while submitting written statement on 17.02.2015 and this objection was belatedly taken for the first time before the Appellate Authority and eventually found unsubstantiated by the Revisional Authority too. Nonetheless, on a careful perusal of the proceeding sheets before the Inquiry Authority, we find that while the imputation with regard to 17 charges was supplied on 11 December 2013 and addendum on 10 charges of misconduct was supplied on 21 March 2014, and though the disciplinary inquiry commenced on 29 March 2014, the requests of the appellant for supply of relevant documents were not only noted down by the Inquiry Authority on 06 May 2014, 16 June 2014 and again on 23 June 2014, but also appropriate directions were given to the PO and eventually all the relevant documents (about 897 in numbers) and the list of witnesses were supplied to the appellant to his full satisfaction on 30 June 2014.

19. It needs to be emphasized that it was only thereafter that the PO was called upon to marshal his witnesses and lead evidence by the Inquiry Authority. Reliance on decision in ***PNB v. H.N. Wadhwa (supra)***, has no parallel with the factual matrix in the instant matter since it was case where the delinquent was served imputation of charge with regard to fraudulent withdrawal of TA/DA. However, the delinquent was not asked to submit a written statement for his defence to the additional charge and no list of documents or list of witnesses to prove the additional charge was supplied and the delinquent was not



afforded time to prepare for cross-examination of witnesses. In the case before us, there has never been raised any issue by the appellant that he was not afforded sufficient time and opportunity to cross-examine each of the witnesses produced by the PO. At no juncture the appellant raised any issue that he was not allowed to lead evidence in defence. Therefore, the appellant is unable to persuade us to show any kind of irreparable or grave infraction of the principle of natural justice during the course of inquiry, and thereafter, in presenting his case before the DA and the Appellate as also the Revisional Authority.

QUANTUM OF PUNISHMENT

20. In the case of **Krishna District Coop. Central Bank Ltd. v K. Hanumantha Rao**²³ on the issue of interference with the punishment imposed in the disciplinary proceedings, their Lordships held as under:-

“**7.2.** Even otherwise, the aforesaid reason could not be a valid reason for interfering with the punishment imposed. It is trite that courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. **Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same.** It is only in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority/employer is wholly disproportionate, that too to an extent that it shakes the conscience of the court, that the court steps in and interferes.

7.2.1. No doubt, the award of punishment, which is grossly in excess to the allegations, cannot claim immunity and remains open for interference under limited scope for judicial review. This

²³ (2017) 2 SCC 528



limited power of judicial review to interfere with the penalty is based on the doctrine of proportionality which is a well-recognised concept of judicial review in our jurisprudence. The punishment should appear to be so disproportionate that it shocks the judicial conscience. (See *State of Jharkhand v. Kamal Prasad* [*State of Jharkhand v. Kamal Prasad*, (2014) 7 SCC 223 : (2014) 2 SCC (L&S) 386] .) It would also be apt to extract the following observations in this behalf from the judgment of this Court in *Kendriya Vidyalaya Sangathan v. J. Hussain* [*Kendriya Vidyalaya Sangathan v. J. Hussain*, (2013) 10 SCC 106 : (2013) 2 SCC (L&S) 833] : (SCC pp. 110-12, paras 8-10)

“8. The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the court or a tribunal. The court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See *UT of Dadra & Nagar Haveli v. Gulabhia M. Lad* [*UT of Dadra & Nagar Haveli v. Gulabhia M. Lad*, (2010) 5 SCC 775 : (2010) 2 SCC (L&S) 101] .) **In exercise of power of judicial review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic.** This limited scope of judicial review is permissible and interference is available only **when the punishment is shockingly disproportionate, suggesting lack of good faith.** Otherwise, merely because in the opinion of the court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.

9. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with the doctrine of *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that **it shocks the conscience of the court and the court is forced to believe that**



it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* [*Council of Civil Service Unions v. Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] in the following words: (AC p. 410 D-E)

‘... Judicial review has, I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads, grounds upon which administrative action is subject to control by judicial review. **The first ground I would call “illegality”, the second “irrationality” and the third “procedural impropriety”.** This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of “proportionality”....”
{emphasis supplied}

21. Further, in the case of **Naresh Chandra Bhardwaj v. Bank of India**²⁴, it was observed as under:-

“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 prerequisite 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 the learned counsel for the appellant by relying upon the judgment in *Rajendra Yadav v. State of M.P.* [*Rajendra Yadav v. State of*

²⁴ (2019) 15 SCC 786



M.P., (2013) 3 SCC 73 : (2013) 1 SCC (L&S) 476] On this very aspect the learned counsel for the respondents drew out attention to a subsequent judgment in *Lucknow Kshetriya Gramin Bank v. Rajendra Singh* [*Lucknow Kshetriya Gramin Bank v. Rajendra Singh*, (2013) 12 SCC 372 : (2013) 3 SCC (L&S) 159] which had taken note of the earlier judgment referred to aforesaid.

6. There is really no difference in the proposition, which is sought to be propounded except that in the latter judgment the principles have been succinctly summarised in the last paragraph of the judgment, which read as under: (*Lucknow Kshetriya Gramin Bank case* [*Lucknow Kshetriya Gramin Bank v. Rajendra Singh*, (2013) 12 SCC 372 : (2013) 3 SCC (L&S) 159] , SCC p. 382, para 19)

“19. The principles discussed above can be summed up and summarised 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 19.4 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 employee concerned 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.”
(emphasis supplied)

22. It is thus well ordained in service law jurisprudence in our country that strict rules of evidence are not applicable to departmental enquiry proceedings and the only requirement of law is that the evidence produced against the delinquent in the inquiry entailing punishment must be of such nature which any reasonable person acting objectively may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is also well settled that the court may not exercise its power of judicial review even after the charges which have been proved, justify imposition of penalty. So the question that begs an answer is: whether the punishment awarded to the appellant is disproportionate to the proven charges?

23. In the prior cited case of *Colour-Chem Ltd. v. A.L. Alaspurka (supra)*, the two delinquent workmen were working as Plant Operators during the night shift and on a surprise visit by the Supervisor they were found to be sleeping though the machine was working. A domestic inquiry followed and ultimately the two delinquents were awarded the punishment of dismissal from their services. The workmen challenged their dismissal *inter alia* contending that their dismissal amounted to unfair labour practices committed by the Management against them under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971. The



Labour Court passed an award setting aside the order of dismissal from services and directing their reinstatement in service, which award was assailed unsuccessfully before the High Court. On the matter reaching the Supreme Court, the plea of the workmen that they have been victimized was accepted and it was held:

“Thus if a person is made to suffer by some exceptional treatment it would amount to victimisation. The term “victimisation” is of comprehensive import. It may be victimisation in fact or in law. Factual victimisation may consist of diverse acts of employers who are out to drive out and punish an employee for no real reason and for extraneous reasons. As for example a militant trade union leader who is a thorn in the side of the management may be discharged or dismissed for that very reason camouflaged by another ostensibly different reason. Such instances amount to unfair labour practices on account of factual victimisation..... It must, therefore, be held that **if the punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to the particular major misconduct and the past service record of the delinquent or is such as no reasonable employer could ever impose in like circumstances, it would be unfair labour practice by itself being an instance of victimisation in law or legal victimisation independent of factual victimisation, if any.....”**

24. In the case of *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant (supra)*, the delinquent was served with a show-cause notice containing about 13 allegations however, without any documentary support in regard thereto. Although copies of the documents were asked for but the same were not made available. The delinquent was however allowed to inspect some of the documents but a number of other documents were not made available to the delinquent employee. Even no PO was appointed and the Inquiry Authority almost worked in a dual capacity discharging functions



assuming himself to be the PO as well. It was in the said factual matrix that the inquiry was held to be vitiated in law for violation of the principles of natural justice.

25. In the light of the aforesaid discussion, it would be expedient at this stage to re-reproduce the relevant findings articulated in the inquiry report that led to the impugned order dispensing with his services from the bank:

Charge 3

Sehej Enterprises: Centrade A/c No. 3175711945:

Sh. Nagpal sanctioned Overdraft limit of Rs. 150.00 lacs under Centrade Scheme on 14.4.2012 to M/s Sehej Enterprises against Property bearing no. A-70 (old No. 16-C, Village NangliJalib, now known as Ganesh Nagar, Block-A, New Delhi. While sanctioning the loan he committed following acts of Omission and Commission:

- i. He failed to observe due-diligence in the account.
- ii. He failed to conduct discrete market enquiries about the credentials of the borrowers and collateral securities accepted for mortgage. It was subsequently revealed that party has defrauded the bank by depositing fake/fabricated title deeds. PNB have informed that the above party had availed loan against security of same property mortgaged with us.
- iii. He failed to ensure Comparison of Certified copies of title deed with the original so to check the genuineness. The Title deeds held with the Bank are not genuine.
- iv. He failed to conduct independent inspection and local enquiry of property mortgaged with us. It has facilitated the party to defraud the bank by depositing fake title deeds.
- v. He failed to generate CIBIL commercial Report of this Borrower for verification. This CIBIL report clearly indicates a loan of Rs.3.00 crores. The CIBIL report is not generated from the Branch id.
- vi. He failed to ensure proper and independent valuation of property as the same has got done by only one valuer.
- vii. He failed to obtain Closure certificate/statement regarding closure of A/C with Allahabad Bank.
- viii. He failed to conduct renewal of account, renewal of Insurance of property and ensure ITR Verification for last 3 years.



ix. A/C is out of order since 31.05.2013. However, Sh. Nagpal has shown it as regular by manipulating transfer of Rs. 10000.00 from OD A/C Vikas Collection on 29.6.2013 and reversing the same on 01.07.2013.

The borrower has availed multiple Finance from different Banks by concealment of Facts and perpetrated fraud On the bank as the title deeds deposited with the bank to constitute security are not genuine. The bank is likely to suffer financial loss of Rs.157.43Lacs + Interest.

IA in her findings and after discussion on the exhibits and arguments of both the sides in detail has held the Charge as proved.

CSOE in his written submissions has referred to various exhibits and deposition of MW-3 in reply to various questions has held the charge as not proved.

PO has put forth documents MEX-239/1 to 239/7, MEX-240/1 to 240/4, MEX-241/1 to 241/2, DEX-843/1 to 843/5, MEX- 243/2, MEX-245. HEX.246/1 to 246/3, DEX.819/1 to 819/11, DEX-823, DEX-833/1, MEX-249/1 to 249/10, MEX-425, MEX-251/1, MEX-252/1 and MEX-252/2, MEX-247/1 to 247/7, DEX-887/10,DEX-850/1 and 850/2 and has examined MW-3 vide various questions at EPP-191 and EPP-227.

After examining all the documentary and oral evidences in respect of this charge, I agree with the views of IA and find that CSOE failed to perform his duties diligently and in contravention of Bank norms which resulted in perpetration of this Fraud, thus, causing substantial loss to the Bank. Keeping in view the above, I concur with the findings of IA and hold the charge as “PROVED”

The above acts committed by Sh. Nagpal are in contravention of Central Office guidelines. Thus, due to his above lapses, the fraud has been perpetrated and recovery is not forthcoming in this account.

I find that had the CSOE been vigilant and observed due diligence while sanctioning this account, the borrower could not have perpetrated fraudulent acts with the Bank thus causing huge financial loss of Rs. 157.43 lacs+ Interest + Charges.



As such Shri S.K. Nagpal acted in a manner which is unbecoming of an officer employee and did not take all possible steps to ensure and protect the interests of the bank and did not discharge his duties with utmost integrity, honesty, devotion and diligence and is charged under Regulation 3 (1) and 3(3) read with Regulation 24 of Central Bank of India Officer Employees (Conduct) Regulations, 1976, attracting penalty under Regulation '4' of Central Bank of India Officer Employees (Discipline & Appeal) Regulations 1976, as amended from time to time.

The above acts tantamount to gross misconduct with ulterior motives and looking to the Fraud perpetrated in the account and gravity of the charge and huge loss of Rs. 157.43 lacs + interest, I award the following penalty to CSO in respect of this charge:

Dismissal which shall ordinarily be a disqualification for future employment in terms of Regulation 4(j) of Central Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976, amended up to date.”

Charge No. 13:

Unethical Transactions:

Sh. Nagpal failed to furnish correct status of borrowal accounts. He Concealed following NPA accounts by Transferring the amount from other accounts to the Probable NPA accounts and reversing the same after one or two days. The account of Vikas Collection was used as a conduit and was in no way related to the business of the borrower. Twenty three such transactions have been done. One such transaction is discussed in detail as under to describe the modus-operandi

The other 21 identical manipulative and accommodative transactions are given in Annexure A.

Amount Credited from OD Vikas collection A/c No. 3064937301 to A/C no. 3154712353 of Balaji Metals on 29.11.2012 and reversed on 30.11.2012.

1. 29.11.2012 Rs.30,000/- to A/C No.3154712353 Balaji Metal Works reversed on 30.11.2012.

On 29.11.2012 a sum of Rs. 30000/- was transferred from OD account no. 30644937301 of M/s Vikas Collection to A/c No.



3154712353 of M/s Balaji Metals as the same was on verge of slippage to NPA and that any credit would be treated as repayment by the CBS system.

Hence this credit prevented slippage of this account and this account was shown as PA by the system. As the account was upgraded by system and there purpose was over the amount of Rs. 30000/- was reversed on 30.11.2012.

This entire transaction was carried out vide contra Vouchers without obtaining any mandate from the account holders. No mandate of the party whose account has been debited is on record. Although these entries were posted and authorised by other staff members, but Sh. Nagpal being the Branch head failed to monitor these transactions which were manipulative, accommodative and unethical in nature.

The details of other 21 identical manipulative and accommodative transactions are given in Annexure-A attached herewith.

Debit and Credit entries in the same account were made through batch entry which are as under:-

1. 27.08.2012 Rs.25,000.00 in ODBD A/C No. 3070480550.
2. 30.04.2013 Rs.46,000.00 in OD cent mortgage A/C No. 135835185 Sanjeev Narang.
3. 31.05.2013 Rs.10,000.00 in OD cent mortgage A/C No. 3135835185 Sanjeev Narang
4. 09.07.2013 Rs.26,000.00 in OD cent mortgage A/C No. 3089986305 Biram Bati
5. 26.03.2013 Rs.2,75,000.00 in OD cent mortgage A/C No. 3181092266 of Vivek Gupta

On account of these manipulative transactions, Sh. Nagpal concealed the correct position of accounts which were otherwise NPA. The accounts are irregular and are likely to turn into NPAs. The Bank is likely to suffer huge financial loss, which is prejudicial to the interest of the Bank.

IA in her findings and after discussion on the exhibits and arguments of both the sides in detail has held the Charge **as proved.**



CSO in his written submissions has Referred to deposition of MW-2 in reply to Q No.54 at EPP-173, deposition of MW-3 vide reply to Q No.-12 at EPP-180 and examination of MW-3 vide Q No. 2,3 at EPP-203 and Q No,250 at EPP-225.

After examination of documents marked as MEX 301/1,MEX-415,MEX-416, MEX-407 DEX-252/2 to 252/3, MEX-407, MEX-411, 412, 413, 414, 415, 416, 417,MEX-418/1 to 418/2 DEX-887/15 and examination of MW-2 vide various questions at EPP-166,167,168,172,173,180,225. It is duly substantiated that above referred transactions and other 21 identical manipulative and accommodative transactions were done as per details in Annexure-A. These entries were done to conceal the correct position of the accounts which otherwise were NPA.

On perusal of Enquiry proceedings it is established that there was no mandate from respective account holders for effecting these transfers from their accounts and that these entries were passed on verbal instructions of CSO which is duly testified by MW-3 during cross examination vide Q No. 11 appearing on EPP-180 and reply to Q No,256 appearing on EPP-255.

It is observed that the only person to benefit from these manipulative entries was CSO as such an action would not have benefitted either MW-2 the maker and MW-3 the checker of these transactions. These entries resulted in concealment of correct status of the accounts which otherwise were NPA.

After re-examining all the documentary and oral evidences in respect of this charge it is clearly established that these manipulative transactions were carried out at the instance of Sh. Nagpal in order conceal the correct position of accounts which were Otherwise NPA. These accounts were irregular and were likely to slip in to NPA category. From these manipulative and accommodative transactions it is established that CSO had malafide intentions with ulterior motives which is unbecoming of an Officer.

Thus Shri S K. Nagpal acted in a manner which is unbecoming of an officer employee and did not take all possible steps to ensure and protect the interests of the bank and did not discharge his duties with utmost integrity, honesty devotion and diligence and is charged under Regulation 3(1) and 3(3) read with Regulation 24 of Central Bank of India Officer Employees' (Conduct) Regulations,1976, attracting penalty under Regulation '4' of



Central Bank of India Officer Employees" (Discipline 8t Appeal)
Regulations 1976 as amended from time to time.

Keeping in view the above, I concur with the findings of IA and hold the charge as "PROVED" beyond doubt and considering the malafide intention and gravity of this charge, I award the penalty as under:

Dismissal which shall ordinarily be a disqualification for future employment in terms of Regulation 4(j) of Central Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976, amended up to date."

26. A careful perusal of the contents of article of charge 3 and 13 and the findings recorded thereupon would clearly establish that the appellant while posted in the capacity of Branch Head/Chief Manager committed various acts of omissions and commission in the sense of failing to make discreet market inquiries about the financial wherewithal of the borrowers/beneficiaries and accepted collateral securities for mortgage, which were already mortgaged with some other bank and thereby failed to observe due diligence *qua* charge (3). As regards charge 13, it was found that a series of deliberate attempts were made so as to conceal the correct status of the borrowers' accounts, which were almost non-operational and on the verge of being declared NPA by transferring amounts from accounts of other bank customers and then reversing the entries after a day or two and as many as 23 transactions were found to have been carried out throwing all banking norms to the wind. The findings recorded by the Inquiry Authority clearly brought out that the appellant committed gross misconduct in the nature of not only falsifying the entries in the



books of accounts but also committed fraud upon the bank and thereby causing irreparable financial loss. It is immaterial that the respondents did not proceed to institute criminal complaints against the appellant.

27. Further, there is nothing to discern from the record that the appellant has been victimized or made a scapegoat, or for that matter persecuted in any manner since it is the admitted position that some other officials concerning the same transactions had also been proceeded for disciplinary action. It is borne out from the record that disciplinary action was initiated against another official, namely Mr. J.C. Bana, Senior Manager and ultimately vide order dated 14 July 2015 punishment in the nature of “compulsory retirement” was administered in terms of Regulation 4(h) of the Regulations (R-8). Further, disciplinary action was also initiated against S.K. Banga, Manager, who vide order dated 27 July 2014 (R-9) was awarded punishment of “reduction by two stages in the time scale of pay for a period of one year with further directions that the employee would not earn any increment of pay during the period of such reduction; and further ‘on expiry of such period had the effect of postponing the future increments of his pay in terms of Regulation 4 (h) of the Regulations’. It is nobody’s case that the appellant and the other bank officials were acting in *cahoots* with one another. Further, there is nothing brought home by the appellant so as to suggest that the imputation of charges with regard to other delinquent bank officials were deliberately diluted. It goes without saying that the appellant was



the Branch Head and he was enjoined upon to exercise a greater degree of responsibility towards the banking business of the branch concerned. There is no gainsaying that absolute devotion, integrity and honesty is a *sine qua non* for every bank employee in banking business. The bank employees are required to maintain good honest conduct, financial discipline and deal with the money of its depositors and the customers in such a manner that inspires trust and confidence in the mind of the public.

28. In so far as the reliance placed by the appellant on the Staff Accountability Circular dated 25 February 2012 is concerned, we are unable to decipher any flaw in the decision of the learned Single Judge that it would not confer any advantage to him in view of the proven misconduct. Lastly, there is nothing to discern that the DA had any perceived 'bias' against the appellant on any count. Indeed, the learned Single Judge found a flawed approach on the part the DA in putting disagreement note *qua* charge 2, 4 & 17, but at the cost of repetition the findings recorded on charges 3 & 13 tell their own tale. In the case of ***SBI v. Ajai Kumar Srivastava (supra)***, it was categorically observed that that if the order of punishment can be justified even on some of the articles of charge and held to be proven against a delinquent employee, there could not be case for interference with the findings *qua* the said articles of charge and the order of punishment upon the delinquent cannot be revisited.

29. In view of the foregoing discussion, we have no hesitation in holding that the punishment of dismissal from service meted out to the



appellant is just, fair and reasonably based on cumulative appraisal of the proved charges against him, which by all means were serious in nature, and thus exhibiting complete lack of trust and confidence in the appellant. Hence, the instant appeal is bereft of any merits and the same is accordingly dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

AUGUST 25, 2023

Sadique

