A.F.R.

(278)

2019

HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

Writ Petition No.2017 of 1998

PETITIONER: Rajendra Kumar Shrivastasva,
Aged about 54 years,
Son of Late Shri L.L. Shrivastava
R/o Opposite 'C'-1, Krantinagar,
Distt. Bilaspur (C.G.)

Versus

RESPONDENTS:

1. Chief General Manager,
State Bank of India, Local
Head Office, Hoshangabad Road,
Bhopal.

2. General Manager (DNPB), State
Bank of India, Local Head Office,
Hoshangabad Road, Bhopal.

3. Deputy General Manager, State
Bank of India, Zonal Office,
Shankar Nagar, Raipur.

POST FOR ORDERS ON 26th *SEPTEMBER, 2003*

Sd/-
L.C. Bhadoo
Judge

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Present: -

Shri Rohit Arya, Sr. Advocate with Shri R.R. Sinha, Advocate — For the petitioner

Shri P. Diwakar with Miss Pritha Ghosal, Advocates — For the respondents.

Before: Hon'ble Shri Justice L.C. Bhadoo

O R D E R

(Passed on 26th September, 2003)

1. By this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has questioned the legality, validity and propriety of the impugned order of dismissal dated 13-5-97 received by the petitioner on 25-5-97 and the appellate order dated 5-11-97 received on 19-11-97.

2. Facts leading to filing of this writ petition are that the petitioner joined State Bank of India as Clerk on 10-10-67 through competitive

examination thereafter in the year 1976 he was promoted as Officer Junior Management and as MMGS-II in August 1988. The petitioner was posted as Branch Manager of Janjgir branch from 15-12-88 to 31-5-90, during this period for committing certain irregularities in sanction, disbursement and follow up of advances, the petitioner was served with a charge sheet (Annexure-P/2) dated 3-1-1994 received on 14-1-1994. The charges were mainly classified as 11 in number but in the statement of allegations in all such irregularities were mentioned as 41. The petitioner submitted a detailed reply to the charge sheet on 11-3-1994. The disciplinary authority decided to hold the disciplinary proceedings against the petitioner in terms of Rule 68 (1)(i) of the State Bank of India (Supervisory Staff) Service Rules (hereinafter referred to as 'the Rules').

3. The enquiry was conducted by the Enquiry Officer and the same was completed on 17-10-95 and after completing the enquiry, the Enquiry Officer submitted his finding that all the charges were proved against the petitioner.

4. The petitioner made a detailed representation against the findings of the Enquiry Officer on 30-9-96, but the disciplinary/appointing authority agreed with the findings of the Enquiry Officer and ultimately imposed the penalty of dismissal from service on 13-5-1997 (Annexure-P/7) against which the petitioner preferred an appeal before the Appellate Authority i.e. The Chief General Manager. The Appellate Authority also dismissed the appeal vide order dated 20-10-97 communicated to the petitioner vide order dated 5-11-97.

5. Return has been filed on behalf of the respondents.

6. I have heard the learned counsel for the parties.

7. Main thrust of the learned counsel for the petitioner is basically on the following grounds:-

(i) that enquiry authority did not supply the documents demanded by the petitioner and the documents were taken on record by the Enquiry Officer at a very late stage in piece-meal;

(ii) no witness was examined by the Department. The Enquiry Officer

had not followed the procedure as envisaged in the Rules 68 (2) (x) (a) and the Enquiry Officer had not examined the petitioner as per the provisions of Rule 68 (2) (xvii) of the Rules.

8. Shri Arya, learned counsel for the petitioner advanced his arguments mainly on the above points and while referring the report of the Enquiry Officer, he had drawn the attention of the Court towards relevant portions of the report in which it has been mentioned that the documents were demanded by the petitioner but those documents were not supplied to the petitioner.

9. On the other hand, Shri Diwakar argued that whatever necessary documents asked by the petitioner were supplied to him. Enquiry was conducted in his presence. All the opportunities were given to the petitioner to make his representation and principles of natural justice as well as rules for conducting the enquiry were followed by the Enquiry Officer, therefore, no irregularity was committed by the Enquiry Officer and the power of the judicial review under the writ jurisdiction of this Court is very limited. The Court cannot look into the merits and scrutinize the evidence, by evaluating the evidence this Court cannot replace its own finding in place of the finding of the Enquiry Officer and this Court cannot re-appreciate the evidence and record its finding as Appellate Court.

10. The law laid down by the Hon'ble Apex Court regarding exercise of powers of judicial review by the High Court under the writ jurisdiction has been laid down in the case of **B.C. Chaturvedi Vs. Union of India and others** reported in **(1995) 6 SCC 749** it has been held that the High Court while exercising judicial review cannot take his decision as a Court of appeal but certainly can review the manner in which the decision was made. The scope of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with

the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But the finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. When the authority accepts the evidence and the conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The court in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry 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, the Court may interfere with the conclusion or the finding.

11. In the matter of **State of Rajasthan Vs. B.K. Meena and others**, reported in **JT 1996 (8) SC 684** Hon'ble Apex Court has held that in case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application Preponderance of probabilities and some materials on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct." Hon'ble Apex Court again in the matter of **Lalit Popli Vs. Canara Bank & Others** reported in **JT 2003 (5) SC 494** has held that "While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority".

12. In the matter of **B.C. Chaturvedi (Supra)** Hon'ble Apex Court has held that the scope of judicial review by the Court is of decision making process and where the findings of the disciplinary authority is based on some evidence the Court or Tribunal cannot re-appreciate the evidence or substitute its own finding. Again in the matter of **R.S. Saini Vs. State of Punjab and others** reported in **JT 1999 (6) SC 507** in paragraph 16 it has been held that "Before adverting to the first contention appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the Court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

13. Now, coming to the question of forwarding of documents as per the Rule 68 (2) (v) is concerned, a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated as per the clause-vi are required to be forwarded by the disciplinary authority to the Enquiry Officer along with other documents. A note has been appended to this rule that the forwarding of the documents referred to in this clause need not necessarily be done simultaneously. Therefore, the relevant document, as per this note, can be produced at the time of the enquiry and moreover, in this case documents which were produced by the presenting officer before the Enquiry Officer pertains to bank record and these documents were submitted in the presence of the petitioner and as per the defence copies of all the 66 documents were given to the petitioner. The petitioner had opportunity to examine those documents and it is not the case of the petitioner that the copy of each and every documents which were asked by him were not supplied to him. Therefore, I am of

the view that not sending the documents to the Enquiry Officer at the initial stage and submitting the documents during the enquiry has not in any manner prejudiced the right of the petitioner.

14. A perusal of the report of the Enquiry Officer shows that at page 19 of the report, while dealing with allegation No.3, in para-3 of the finding portion the Enquiry Officer has mentioned that the petitioner demanded copy of the equitable mortgage created in respect of M/s Hotel Madhar, but he has not further pursued on this and has also not mentioned about this specifically. Similarly, the petitioner asked for the office copy of the control return, but the Enquiry Officer recorded the finding that "I am not convinced with the statement of the defence that the control return was submitted for all the three loans sanctioned by him." Similarly, at page-27, the Enquiry Officer has mentioned that the petitioner states that the stock statements were obtained and has demanded copies thereof. But, later on it was recorded that he has not pursued it further and provided evidence nor has he said that the same was not provided to him and the Enquiry Officer has specifically mentioned that the petitioner has not stated that the copy of the same was not provided to him. At page-42, the Enquiry Officer has also mentioned that the charge sheeted officer demanded copies of the control return, but he has not pursued it nor has he mentioned about this in his brief and the prosecution has stated that no control return was found in the documents. At page-43, it has been mentioned that the petitioner has argued that a letter No. MIS 91/3 dated 10-1-91 was sent to the Executive Engineer, CADA. He has demanded copy of the letter, but he did not pursue this and also allowed the limit to be utilized beyond 4 months.

15. At page-49, while dealing with allegation No.8 it has been mentioned that the charge sheeted officer asked for the control return No.89/4. He demanded copy of the return but has not pursued it further. Therefore, in view of the above findings of the Enquiry Officer the petitioner either orally asked for the copies at the fag-end of the enquiry and he had not pursued further and moreover, in 2-3 cases control return was not submitted. It has not been argued that the petitioner moved an application at an early stage asking for the copies

of the documents and those documents were not supplied to him. Moreover, the Enquiry Officer has recorded that the charge-sheeted officer has stated that no written request was given and it was only oral request. The defence counsel requested for providing copies of the documents, since the arguments of the Enquiry Officer were concluded, the Enquiry Officer would submit his brief. Therefore, findings of the Enquiry Officer that no written request was made by the petitioner for documents and that too he asked for the documents at the time when arguments and enquiries were concluded.

16. Therefore, in view of the above, it cannot be held that the Enquiry Officer was negligent in any way by not providing the copies of the documents to the petitioner nor he has specifically raised any point that he made a written request and how his right has been prejudiced by not providing these documents. The Enquiry Officer has specifically dealt with the request while recording the findings on each and every charge and all the relevant documents concerning those charges were produced in the evidence and it has not come on record that the copies of those documents were not furnished to the petitioner. In view of the above, I do not find any substance in the submission of the learned counsel for the petitioner that the right of the petitioner is prejudiced on account of non-supply of the documents or the Department deliberately did not supply the copies.

17. As far as the question of non-examination of the witnesses is concerned, it is true that no witness has been examined by the Department in this case. The Enquiry Officer has recorded his findings after scrutiny of Bank record and his findings are based on bank record. The learned counsel for the petitioner submitted that the relevant witness was Field Officer, S.C. Mukherjee, MM-II and he has not been examined, but S.C. Mukherjee was himself charge sheeted on the ground of these irregularities. The enquiry was conducted against him and he was also punished, therefore, there was no use of examining him as he himself was involved in the misdeeds so what kind of evidence could have been given by him. If at all he was relevant person then the petitioner could have examined in his defence.

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18. As far as the argument of the learned counsel for the petitioner that the documents are not proved by any witness, therefore, the documents produced in enquiry cannot be considered as proved. In this connection, if we look into the provisions of Bankers' Books Evidence Act 1891, in Section-4, it has been prescribed that:-

> **"Subject to the provisions of this Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible,"**

Therefore, in view of this provision, the entries of the account books of the bank are prima facie evidence and not required to be proved by the oral evidence. Therefore, I do not find any substance in the argument of the learned counsel for the petitioner.

19. Moreover, as per the law laid down by the Hon'ble Apex Court that technical rules of Evidence Act does not apply in the enquiries, even rule of adequacy of evidence or reliability of evidence cannot be permitted to be canvassed and where authority accepts the evidence and conclusion receives support from them, the disciplinary authority is entitled to hold the delinquent guilty when the findings are based on some evidence. Court cannot re-appreciate or interfere. This is not a matter of no evidence. Apart from that the petitioner himself has admitted in his reply to the charge sheet that some irregularities were committed by him. Therefore, there is no substance in the arguments of learned counsel for the petitioner.

20. Now, coming to the question of the non-examination of the petitioner as per the provisions of clause-(xvii) of subrule-2 of the Rule 68 is concerned, this rule envisaged that "The Inquiring Authority ***may***, after the officer closes his evidence

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and shall if the officer has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer to explain any circumstances appearing in the evidence against him." If we look into this provision, in the first instance it is not mandatory for the Enquiry Officer to examine delinquent in all cases. It is the discretion of the Enquiry Officer, in the facts and circumstances of the case, if he feels necessary then he may examine. Moreover, the petitioner was himself present during whole enquiry, he argued the matter himself which is clear from the report of the Enquiry Officer. The arguments raised by the petitioner were considered and dealt with in the Enquiry Report. Moreover, in reply to the charges and statement of allegations, the petitioner had filed a detailed reply, therefore, in the circumstances, I do not find any irregularity in the enquiry by non-examining the petitioner under this provision by the Enquiry Officer. Moreover, no witness was examined by the department. Whole case was based on documents and about that the petitioner had already submitted his reply to charge sheet.

21. Now, if we look into the report of the Enquiry Officer, Annexure-R/3, the Enquiry Officer after giving opportunity to the Department and the petitioner and perusal of the documents produced by the Department has recorded his findings and reached to the conclusion that the charges stand proved against the petitioner. In the finding of charge No.1, after evaluating everything and arguments advanced by the petitioner, the Enquiry Officer recorded finding that as a prudent officer before disbursement of additional limit he must have perused all the papers and the point of change in the guarantor must have been in his knowledge. Overlooking to this aspect without proper reason as Branch Manager leads to the conclusion that the charge sheeted person has changed the guarantor deliberately against the terms originally stipulated in the sanctioned letter. Similarly, on the allegation

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No.2 also the Enquiry Officer reached to the conclusion that the same is proved that the petitioner sanctioned the loan for higher amount. He sanctioned additional term loan to the borrower under the same category despite the fact that the higher authority sanctions the existing term loan to the borrower.

22. Similarly, allegation against the petitioner is that he sanctioned the term loan without prior approval of the higher authorities. The petitioner sanctioned Rs. 1 lakh extra beyond his powers to Hanuman Enterprises, Calcutta towards the payment of loan thereby he extended the finance to the unit beyond stipulated limit. Similarly, as per the charge No.5 in spite of the unit default in payment of stipulated installments the petitioner made no efforts for recovery of the installments/loans and the term loan account was held irregular. Similarly, the petitioner sanctioned the additional loan of Rs.1,20,000/- contrary to the delegations of financial powers and contravents the rules 51 and 54 of the State Bank of India under the charge No.5. The petitioner sanctioned a medium Term Loan of Rs. 2 lakh to M/s Hotel Madhav and again sanctioned additional loans of Rs. 1.00 lacs and Rs. 50,000/- to the unit beyond discretionary powers vested in the petitioner. Similarly in other charges also financial irregularities were committed by the petitioner and the Enquiry Officer's findings and conclusions on each and every charge are based on documentary evidence and as per the charge No.11 the petitioner obtained a payment of a cheque for Rs. 3,000/- drawn on his current Account No. 1436 at Janjgir Branch whereas the amount in his current account was Rs. 1397/95. Therefore, the findings of the enquiry officer is based on the documentary evidence and records and no procedural irregularity has been committed by the Enquiry Officer and principle of natural justice was also not violated by the Enquiry Officer, therefore, as per the law laid down by the Hon'ble Apex Court in the above cited judgments, if we

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look into the finding and conclusion of the disciplinary authority which has been confirmed by the appellate authority, they have not violated any principle of natural justice and the finding of the disciplinary authority is based on the documentary evidence, therefore, on this count no interference is required by this Court.

23. A perusal of the decision of the appellate authority shows that the appellate authority while passing the order Annexure-P/10 has recorded that while rendering the decision, the appellate authority considered the charges, statement of allegations and finding of the disciplinary authority and also considered the memo of appeal and reached to the conclusion that there is no significant point of merit in the appeal and the punishment inflicted is commensurate with the misconduct, therefore, the appellate authority also considered each and every aspect and confirmed the finding of the Enquiry Officer and the order of appointing authority.

24. Now, coming to the question of quantum of punishment, the learned counsel for the petitioner argued that no loss has occurred to the bank nor it has been proved that the petitioner has committed these irregularities with an ulterior motive or for any personal gain. The business of the bank was increased and the deposits were also increased by Rs. 1 crores, at Janjgir branch and the charges against the petitioner were framed regarding irregularities in sanction, disbursement follow up of advances and out of 17 accounts, 14 accounts were liquidated by recoveries and one account was ultimately settled in the Lok Adalat and under the charge No.10, the principal amount has been recovered and only the interest part is outstanding. On account of operations by the petitioner the bank received Rs. 9 lacs as interest. He further argued that field officer Mr. S.C. Mukherjee was also charge sheeted under the same irregularities and he was let off after awarding much lesser punishment then the petitioner. Therefore, the penalty of dismissal is harsh, vindictive and the

same is disproportionate to the alleged misconduct of the petitioner which shocks the conscious of a prudent man. As such the same is liable to be set-aside. Shri Arya, counsel for the petitioner placed reliance on decisions reported in **AIR 2003 SUPREME COURT 1377** and **1989 Labour and Industrial Cases 1471** and **1988 Labour Law Journal Kerala 105.**

25. On the other hand, Shri Diwakar argued that the petitioner being a senior officer of the bank, he was dealing with the financial matters and heavy duty was on his shoulder. He committed serious irregularities by advancing the loan, flouting the bank regulations beyond his discretionary powers. In support of his arguments he placed reliance on decisions reported in **JT 2003 (2) SC 78, JT 2003 (5) SC 494 & JT 2003 (2) SC 27** and argued that the disciplinary authority has awarded the punishment in proportion to the misconduct of the petitioner, therefore, no interference is required by this Court.

26. In **AIR 2003 SUPREME COURT 1377** in the matter of **Kailash Nath Gupta V. Enquiry Officer (R.K. Rai), Allahabad Bank and others,** the Hon'ble Apex Court has held that:-

> **"Removal from service on account of certain procedural irregularities – No irregularity or misconduct by delinquent officer in the long past service except charges in question – Small advances became irrecoverable due to procedural irregularity however no evidence to show that he either misappropriated any money or had committed any fraud – Loss caused to bank could be recovered from delinquent- Procedural irregularity cannot be termed as negligence to warrant extreme punishment of dismissal from service."**

High Court of Andhra Pradesh in the matter of **G.A. Sarma Vs. The Chairman Syndicate Bank and others** reported in **1989 LAB. I.C. 1471** held that:-

> **"Delinquent, a bank official committing certain irregularities in sanctioning loan and thus violating provisions- No evidence that bank suffered any financial loss thereby- Punishment of removal of delinquent - Disproportionate to gravity of lapses committed.**

Similarly, High Court of Kerala in the matter of **State Bank of India & Others Vs. T.J. Paul, Kochi** reported in **1988 L.L.J.KERALA 105** held that:-

> **"Respondent for granting loan irregularly in excess of his discretionary power and for violating instructions and directions in the matter of granting loan. Violation of Head Office instructions and negligence was only a minor misconduct, major penalty was not justified."**

On the other hand, the Hon'ble Apex Court in the matter of **Chairman and Managing Director, United Commercial Bank & Ors v. P.C.Kakkar** reported in **JT 2003 (2) SC 78** held that:-

> **"Quantum of punishment and the question of proportionality - Power of court to interfere in the matter of punishment - Disciplinary proceedings against the respondent bank officer- On charges being found to have been established, bank dispensing with the services - Respondent failing before the appellate authority as also on review- the court finds that a punishment is shockingly disproportionate it must record reasons for coming to such a conclusion and mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Further the charges against the respondent not being casual in nature but being serious, the High Court was not justified in interfering with the quantum of punishment."**

The Court held that "the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural

impropriety or was shocking to the conscience of the court. The court should not substitute its decision to that of the administrator.

The Hon'ble Apex Court in the matter of **Balbir Chand v. Food Corporation of India Ltd. and Ors.** reported in **JT 1996 (11) SC 507** held that:-

> **"A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank."**

In the matter of **B.C. Chaturvedi v. Union of India and Ors. (Supra)** the Hon'ble Apex Court observed that:-

> **"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."**

In the matter of **Lalit Popli v. Canara Bank & Ors.** reported in **JT 2003 (5) 494**, the Hon'ble Apex Court held that:-

> **"The High Court was justified in upholding the order of dismissal in view of the limited scope of the judicial review.**

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Respondent bank terminating the services of the appellant on account of fraudulent withdrawal of monies by the appellant from the accounts of a customer by forging his signatures and endorsements."

In view of the law laid down by the Hon'ble Apex Court and the High Courts, this court can interfere with the punishment awarded to the delinquent officer only when the Court reaches to the conclusion that looking to the facts and circumstances of the case and the alleged misconduct of the petitioner, punishment is disproportionate to the misconduct which shocks the conscience and the punishment is unduly harsh or vindictive, irrational or perverse and is not stood up to the test of doctrine of proportionality. The power of interference with the quantum of punishment is extremely limited. But, when relevant factors are not taken care of, which have some bearing on the quantum of punishment, certainly the Court can direct re-consideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. At the same time, while considering the question of quantum of punishment, this Court is required to keep in mind the law laid down by the Hon'ble Apex Court in **Balbir Chand case (Supra)** that a Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer."

27. In the light of the above law, if we look into the facts of the present case, in the opinion of this Court these are the circumstances which mitigate the severity of charges leveled against the petitioner. The petitioner has stated that during his 29 years of career he received appreciation. The business of the bank during the period in question increased and out of 17 accounts, most of the accounts were liquidated by recoveries, only in Charge No. 10 the amount of interest could not be recovered whereas, the principal amount was already recovered. These factors have not been contraverted by the bank in return. A perusal of the charges shows that the petitioner committed irregularities by exceeding his limits, but there is no allegation against the petitioner that he committed

any fraud, misappropriation or he exceeded his authority for personal gain. As far as personal gain is concerned, in one case he withdrew more amount of Rs.3,000/- from his personal account whereas only Rs. 1397/95 was in the account which was later on deposited by him. Moreover, the petitioner has stated that all these things were done in order to increase the business of the bank. It has not come on record or raised by respondent bank that he exceeded the power or he committed the irregularities deliberately in order to benefit himself or to the borrower with an ulterior motive.

28. The other mitigating factors are that in the same irregularities the field officer namely, S.C. Mukherjee was also involved and he was let off with the lesser punishment. The bank has not come forward to disclose that on account of these irregularities how much financial loss actually occurred in the matter. Before awarding punishment in the present case, the disciplinary authority ought to have prepared a balance sheet showing the achievements of the petitioner in increasing the deposits and business of the bank on the one hand and on the other hand, the irregularities/misconduct committed by the petitioner. Thereafter only the disciplinary authority ought to have reached to the conclusion after looking into the balance sheet whether the alleged misconduct of the petitioner was such which warrants the severe punishment of dismissal, which has not been done in the present case and the mitigating circumstances have also not been taken into consideration by the disciplinary authority while awarding the punishment of dismissal i.e. whether the petitioner committed these irregularities for increasing the business of the Bank or just to favour the borrower.

29. Therefore, looking to the totality of the circumstances, I am of the opinion that the punishment awarded to the petitioner is excessive and the same is not commensurate with the gravity of the charges leveled against the petitioner and does not stand up to the test laid down by the Hon'ble Apex Court and same is conscious shocking. The petitioner was dismissed from the service and he is facing the enquiries since 1994, therefore, in order to shorten the litigation and in the facts and circumstances of the case, if the penalty of compulsory retirement instead of dismissal is awarded to the petitioner, then it will meet ends of justice. However, it is made clear that punishment should always be commensurate

with charge/misconduct. For example if the past track record of the employee is good, but in particular, if the misconduct is so serious then he cannot be given any benefit of his past good record that can be considered only when the misconduct is not serious or does not stem out of any deliberate action, malafide or serious lapse.

30. Therefore, the writ petition is disposed of with a finding that as far as misconduct of the petitioner is concerned that has been rightly held to be proved against the petitioner, but the punishment awarded to the petitioner being excessive and harsh, therefore, same is set-aside and the matter is remitted to the appellate authority for converting the punishment of dismissal to compulsory retirement.

Sd/-
L.C. Bhadoo
Judge

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