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**(2001) 04 CAL CK 0011**  
**In the Calcutta High Court**  
**Case No : C.O. No. 7390 (W) 1988**

Bidyut Kumar Mitra

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

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**Date of Decision :** 18-04-2001

**Acts Referred:**

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 49, 50(3), 51(3)

**Citation :** 106 CWN 120 : (2002) 1 LLJ 1001

**Hon'ble Judges :** Barin Ghosh, J

**Bench :** Single Bench

**Advocate :** P.R. Chakraborty, for the Appellant; S.S. Saha, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Barin Ghosh, J.—This writ petition was filed in the year 1988 by a Senior Manager of the respondent bank, who worked initially as a Clerk in the Imperial Bank of India and then with the respondent bank for a period of 39 years, challenging the charge sheet dated December 14, 1981, entire disciplinary proceedings thereon, the report of the Enquiry Officer, the order of recommendation passed by the respondent No. 4, the final order passed by the respondent No. 2 whereby the services of the petitioner were terminated, the appellate order passed by the respondent No. 3 and the order passed by the respondent No. 6 rejecting the application for review. Very many points had been urged in the writ petition in support of the challenge thrown to the charge sheet, proceedings pursuant thereto and the orders passed therein, but at the hearing the same was restricted to denial of natural justice during the course of the enquiry for not supplying the documents and denial of natural justice for not supplying the vigilance report, which, according to the petitioner, was considered while taking the decision for completion of the disciplinary proceedings.

2. The charge sheet, in the instant case, is dated December 14, 1981. It was alleged in the charge sheet that when the petitioner was posted as Branch Manager of Biplabi Rash Behari Basu Road Branch of the respondent bank

between February, 1978 and August, 1979, the petitioner granted/sanctioned loans in excess of his authority. It was also contended in the charge sheet that the petitioner while granting/sanctioning such loans to a large number of Transport Operators did not make scrutiny of the relative proposals. It was also alleged that even before completion of the necessary formalities and without making any discrete enquiries as to the creditworthiness of the borrowers/guarantors made such grant/ sanction. It was also the contention of the respondent bank in the charge sheet that in the matter of making such grant/sanction the petitioner by doing everything himself took upon the responsibility alone instead of collective responsibility of other officers of the bank. At the enquiry stage the petitioner was asked by the Enquiry Officer to submit a list of additional defence documents by March 31, 1982 and also the list of additional witnesses within the same time. On March 31, 1982 the petitioner represented that he will submit a list of defence witnesses and documents within a couple of days. On April 3, 1982 the petitioner submitted a list of witnesses and documents. The list first mentioned the names of the witnesses. It then mentioned the documents. These documents were not produced. The petitioner did not object to the non-production of the said documents. The petitioner was asked to file his notes on defence. The petitioner filed his defence arguments. In that also it was not pointed out that the documents as were called for by the petitioner were not produced. It was also not pointed out that for non-supply of the documents how the petitioner has been prejudiced. The enquiry report was then submitted. In that it was held that the charges against the petitioner stand proved. Thereafter a note was prepared by the Disciplinary Authority for the Appointing Authority to pass the appropriate order. In that the charges against the petitioner, findings of the Enquiry Authority and the comments of the Disciplinary Authority were furnished in a tabular form. Thereafter on April 14, 1983 the Appointing Authority passed the following order:

"I refer to the charge sheet dated December 14, 1981 served on you by the Disciplinary Authority and the enquiry into the charges conducted by Shri A.R. Banerjee, Commissioner for Departmental Inquiries. The findings of the Inquiring Authority have since been received. A copy of the findings of the Inquiring Authority is enclosed.

2. The Disciplinary Authority has considered the findings of the Inquiring Authority and has accepted his findings. A copy of the note dated June 16, 1983 containing the findings of the Disciplinary Authority together with his discussions in a tabular form is enclosed.

3. I have considered the records pertaining to the enquiry in their entirety and agree with the findings recorded by the Disciplinary Authority.

4. Taking into account the gravity of acts of misconduct established against you, I have decided to impose upon you the penalty of "dismissal" from Bank's service in terms of Rule 49(h) of the State Bank of India (Supervising Staff) Service Rules read with Rule 50(3)(iii) *ibid*. Accordingly you are hereby dismissed

from the Bank's service effective from the date of receipt of this letter by you.

5. Please acknowledge receipt."

3. The petitioner then preferred an appeal. In that it was, inter alia, contended that the 5 documents as were called for by the petitioner at the enquiry stage were not produced. It is to be noted that the petitioner did not indicate if any or all of the said documents had been produced, what difference it would have made. In other words for non-production of any or all of the said documents what prejudice the petitioner has suffered. The appellate authority disposed of the appeal by an order dated June 6, 1984. The text whereof is as follows:

"I have gone through the records of the case and have given careful consideration to the grounds of appeal preferred by Shri B.K. Mitra. On an analysis of the entire circumstances, I agree with the reasons and -conclusions arrived at by the Disciplinary Authority. The points raised by Shri Mitra were not based on facts and he was trying to take shelter by misinterpreting the circular instructions. He failed to submit the list of documents and witnesses, which he wanted to produce for the purpose of his defence within the date, stipulated by the Inquiring Authority and he also did not raise any objection during the course of the, enquiry. His comparison of the irregularities committed at his Branch with other branches are irrelevant and in no way be construed as extenuating circumstances. Each case of such lapses on the part of, officials was considered on the facts and circumstances and wherever warranted appropriate disciplinary action was taken. He was given adequate opportunity by the Inquiring Authority to rebut the charges and the principles of natural justice, equity and fair play were not violated. Shri Mitra had financed a very large number of transport operators during the period March to August 1979 without adhering to the norms and practices of the Bank. The departmental enquiry has conclusively proved Shri Mitra's gross negligence in the matter, which is likely to result in substantial loss to the Bank, Taking into account the grave nature of the misconduct on the part of Shri Mitra, I uphold the action of the Appointing Authority in imposing the punishment of dismissal from the bank's service. There is no valid ground for even interfering with the penalty imposed. The official's appeal is accordingly rejected. The order may be communicated to Shri B. K. Mitra by the Chief Vigilance Officer. "

4. The petitioner then filed an application for review but therein also did not make any attempt to demonstrate for non- production of all or any of the subject documents what prejudice he suffered. The Review Committee then passed an order, which is as follows:

"Submitted a Memorandum dated July 24, 1987 by the Chief Vigilance Officer, requesting that the review petition dated December 1, 1984, preferred by Shri B.K. Mitra, Officer SMGS-IV (since dismissed from Bank's service) be considered and order as deemed fit be passed in terms of Rule 51(3) of the State Bank of India (Supervising Staff) Service Rules. The petition as well as the records of the

case were perused and discussed by the Committee.

RESOLVED that, in the light of the detailed order pronounced by the Committee, the petition be and is hereby rejected.

FURTHER RESOLVED that a copy of the aforesaid order be furnished to the petitioner by the Chief Vigilance Officer."

5. The detailed order pronounced by the Committee as mentioned in the order of the Review Committee set out above, is as follows:

"The Reviewing Committee has considered the submissions made by the petitioner, Shri B.K. Mitra, in his review petition dated December 1, 1984. It is observed from the records of the case placed before the Committee that all charges framed against the petitioner were established at the enquiry as per the Inquiring Authority's findings with which the Disciplinary Authority agreed. It is also observed that the Disciplinary Authority, after considering the entire matter in the light of the serious nature of the irregularities committed by Shri Mitra, recommended to the Managing Director, the Appointing Authority, that Shri Mitra be dismissed from the bank's service. It is further observed that, after considering the case in its entirety and agreeing with the Disciplinary Authority in the matter, the Appointing Authority imposed on the petitioner the penalty of "dismissal"; vide his order dated July 4, 1983. The records also reveal that the petitioner submitted an appeal subsequently to the Appellate Authority, viz., the Chairman, who, after going through the records of the case and after giving careful consideration to the grounds of appeal, concluded that there was no ground to interfere with the penalty imposed and rejected Shri Mitra's appeal.

2. Shri Mitra, in his review petition, has raised several issues relating to practically all the charges established against him at the inquiry. It is observed that many of these issues find place in his appeal preferred earlier and covered in the statement enclosed to the Appointing Authority's order dated July 4, 1983. A perusal of the petition gives the impression that Shri Mitra, has made a vain attempt to justify the various irregularities committed by him by introducing certain new issues, most of which are irrelevant or are not based on facts. The records placed before the Committee clearly show that not only all the charges were proved against the petitioner but also that no principles of natural justice were sacrificed in the process. All reasonable opportunities were given to the petitioner by the Inquiring Authority to enable him to defend himself during the inquiry proceedings and as such the proceedings were not vitiated.

3. The petitioner has contended that certain documents required by him were not made available to him by the prosecution at the inquiry. The records reveal, in this respect, that he was asked to submit his lists of documents and witnesses by March 31, 1982 and that he had failed to do so. The lists were in fact received by the Presenting Officer on May 28, 1982, far beyond the stipulated time, and as such no action was taken thereon. However, the Committee is at a loss to understand as to why the petitioner did not press at the inquiry for the

production of the requisite documents if they were so vital as to cause serious prejudice to his defence as alleged. The petitioner's accusation that the Inquiring Authority refused to summon all the defence witnesses is also not acceptable for the same reason that the list was not received within the stipulated period. The Committee, however, observes that the Inquiring Authority had, in fact, permitted the petitioner to produce his witnesses for deposition.

4. The petitioner has taken pains to justify his action in granting the various medium term loans to the transport operators beyond the discretionary powers vested in him by presenting a distorted picture in regard to the contents of the relative circulars issued by the Bank to establish that his discretionary powers permitted him to grant each such loan to the extent of Rs. 2 lacs, which was, in fact, not the case. The records show that he has admitted his lapse of exceeding his discretionary powers to the Inquiring Authority during his cross-examination as also in his letter R.M.S.L. No.55-180 dated August 13, 1979, under the cover of which he had forwarded control returns to the controlling authority. Again, the allegation that the prosecution shifted its stand by bringing into the picture Circular No. SIB/ 7 of 1978, as against Circular No. 57 of 1979 mentioned against charge No. 1(a) in the charge-sheet, is not correct, as the statement attached to the latter circular merely shows the updated position regarding the structure of discretionary powers of various functionaries.

5. As far as completion of opinion reports on the borrowers is concerned, the records show that what was required to be done by the Field Officer/Head Cashier was, in fact, done by the petitioner himself, thereby clearly indicating that he had avoided to involve them. The petitioner has merely attempted to justify the circumstances in which he had to do the compiling work himself but he did not deny at the inquiry the established practice of having the impugned reports prepared by the Field Officer/Head Cashier. On this issue, the Committee feels that the petitioner by passed the concerned functionaries and did things in a haphazard manner, ignoring the relevant instructions laid down by the Bank. In support of his action, he has put forth as one of the pleas, that priority sector lendings warranted his immediate attention. This contention is untenable as he was not expected to give a go by to the prescribed instructions for extending credit facilities to the priority sectors. Further, the petitioner's argument that he had granted the irregular advances in question in order to increase advances to the priority sector does not hold water as he does not appear to have granted such advances at the Branch till March 1979, although he had assumed charge thereof in March 1979. In the circumstances, we do not see that the findings of the Inquiring Authority in regard to the relative charge were perverse, as alleged.

6. In the matter of allowing certain parties to stand as guarantors to the advances to the concerned applicants and vice versa, as was done by the petitioner, he has sought to make out that the said guarantors were independent parties having no credit facilities at the branch (by furnishing false addresses). However, the records contain indications, which go to falsify his, contention. The

Committee, however, notes that such guarantees were not required to be obtained for the advances of the nature in question in terms of the bank's extant norms and, for the reason stated above, had no value.

7. Again, the petitioner has laboured hard to explain that it was not his fault or negligence in not submitting the control returns in respect of advances granted under his discretionary powers at the appropriate time. We observe from the records that, whereas advances in question were granted by the petitioner between March 21, 1979 and May 21 1979, the control returns were submitted in one lot to the controlling authority only in August 1979 under cover of his letter R.M.S.L. No. 55-180 dated August 13, 1979 referred to earlier. The control returns are required to be submitted to the controlling authority at periodical intervals as prescribed, to enable them to know the quality of advances granted by Branch Managers and suggest corrective steps if there were any deficiencies in the matter of granting such advances as disclosed in such returns. In the instant case, it would appear that the petitioner had delayed submission of the impugned reports for about 3 to 5 months, thereby defeating the purpose for which the system has been introduced in the Bank and the reasons put forth for the delay are least convincing.

8. As regards the petitioner's submissions relating to the medium term loan to the concerned borrower for the purchase of a trailer truck, the records show that the fact that a trailer truck was to be constructed separately and the body was not to be built on the chassis was brought forth during the enquiry. The Inquiring Authority, as also the Disciplinary and Appellate Authorities, had taken the view that simultaneous finance for the trailer was premature. The Committee is inclined to agree with their view.

9. Regarding the grant of clean overdrafts to 8 of the transport operators financed at the Branch, while admitting that these were omitted to be reported to the controlling authority for certain reasons, the petitioner has contended that letters of request were actually obtained from the concerned applicants and repayment programme stipulated in the relative "consent letters" and has alleged that this fact could not be proved because of the failure of the prosecution to produce at the enquiry the relative file(s) apart from certain other documents, though requisitioned by him. The aspect relating to the delayed submission of the list of defence documents is discussed in Para 3 of this order. In regard to the petitioner's contention that the impugned overdrafts were sanctioned to meet the sudden increase in the price of the vehicles in 1979 after processing of loan applications and deposit of margin moneys, the records do not show that the defence produced any evidence indicating the deposit of margin monies by the parties. If the petitioner's aforesaid contention is to be taken as reflecting the factual position, the records do not indicate that he apprised the controlling authority suitably in this regard, when he submitted the various control returns to them in August 1979 under cover of his letter RMSL No. 55-180 dated August 13, 1979, if not earlier.

10. In order to prove the quality of the advances in question, the petitioner has made certain observations in regard to the subsequent recoveries effected in some of the loan accounts. The charge against the petitioner was that, by violating the laid down norms and instructions of the Bank while granting the impugned advances, the petitioner exposed the Bank to grave risk of financial loss. It should have been obvious to an official of the petitioner's seniority and experience that, in order to ensure the safety of advance granted by the Bank, all required formalities are to be completed in accordance with the prescribed instructions at the time of granting such advances. His failure to do so has, it is observed, resulted in substantial loss to the Bank, the recovery made so far notwithstanding.

11. The Committee also feels, after perusal of the records of the case, that the allegations that the Appointing Authority accepted the recommendations of the disciplinary authority mechanically and that the Appellate Authority also passed the appellate order similarly without application of mind, are not based on facts. Further, the concerned authorities have taken the petitioner's past record of service into consideration but the gravity of the offences warranted the penalty of "dismissal" imposed on him.

12. Having regard to the foregoing, the Committee is not inclined to interfere with the action of the Appointing Authority as recommended by the "Disciplinary Authority, as upheld by the Appellate Authority, in having imposed on the, petitioner the penalty of "dismissal".

6. Nothing has been shown in the petition that after April 3, 1982 the petitioner did ask for production of any of the documents mentioned in the list of documents, which was submitted to the Enquiry Officer on April 3, 1982. Although the contention of the respondent bank that the petitioner did not submit the list of documents called for on or before March 31, 1982 and accordingly was not entitled to the said documents, is not sustainable, but then if after submitting a list of documents called for, the documents so called for are not produced and at the same time such documents are essential to prove the innocence of the petitioner, in the normal circumstances the petitioner would seek or press for production thereof during the course of enquiry and at least while submitting his notes on arguments, otherwise it can be safely said that those were not required and thus the petitioner did not press for production of the same. The Authorities concerned have proceeded in that direction. Can it be said that the Authorities concerned thus denied natural justice? The answer would be "no".

7. If non-production of the subject documents has in fact caused any prejudice to the petitioner, it is for the petitioner to highlight the same. As aforesaid, the petitioner made no such effort in his notes on arguments, in the appeal preferred by him and also in his review application. In the instant petition too no such attempt has been made. It is, therefore, difficult on my part to hold that there has been denial of natural justice in relation to non-supply of any document at

the enquiry stage.

8. As would be evidenced from the orders of the Appellate Authority and of the Review Committee that the same referred to the Chief Vigilance Officer, one requested him to communicate the order and the other records requested by him for consideration of the review petition of the petitioner. Prior thereto the vigilance angle was totally absent in the Departmental Proceedings, although the Enquiry Officer is the Commissioner for Departmental Enquiry, Central Vigilance Commission. In paragraph 47(b) of the petition the petitioner has contended that he has come to know that in all cases where an Officer of the Central Vigilance Commission holds the disciplinary enquiry, the said Commission invariably sends an advice after completion of the enquiry to the disciplinary authority with the recommendation of punishment and such advice and recommendation is also given by the Central Vigilance Commissioner to the Appellate Authority and the Reviewing Authority if a petition of appeal or a review is filed by the delinquent. This assertion has not been denied in the affidavit-in-opposition. In paragraph 47(c) of the petition the petitioner has contended that in the case of the petitioner also such advice and recommendations were sent by the Central Vigilance Commission to the disciplinary authority, appointing authority, the appellate authority and to the reviewing authority and the said authorities in passing their orders have acted on such advice and recommendations. This assertion has been denied in the affidavit in-opposition. It is the case of the petitioner that since the decisions have been taken on the basis of the advice and recommendations of the Central Vigilance Commission and since such advice and recommendation have not been given to the petitioner, the orders in question are bad for the same have been passed in denial of natural justice.

9. It is true that if in a disciplinary proceeding a decision is taken on the basis of a recommendation or advice, not supplied to the delinquent, such a decision would be bad. On the pleadings there is no dispute that in the case of the petitioner advice and recommendations were sent by the Central Vigilance Commission. There is also no dispute that such advice and recommendations were not communicated to the petitioner. If the decisions impugned in this writ petition have been taken on the basis of such advice and recommendations, the same are equally bad. It is not the case of the petitioner that by reason of any applicable rule or by reason of usage, custom or practice, the Authorities concerned, who have decided the matters, are bound to take into account such advice or recommendations of the Central Vigilance Commission. Therefore, despite such advice and recommendations having been given, the Authorities concerned, who are empowered to decide, may totally ignore such advice and recommendations and if they so ignore they will be well within their right to do so. In the instant case it has been denied that such advice or recommendations were taken note of or considered by the Authorities concerned, who passed the impugned orders. The orders in " question have been set out above. From that it does not appear that the Authorities concerned have in fact considered any of the said advices or recommendations of the Central Vigilance Commission.



Merely because the Central Vigilance Commission had given advices or recommendations, but the same were not furnished to the petitioner to give him an opportunity to deal with the same, would not make the decisions impugned in the instant case bad, unless it is shown and established that the decisions in the instant case are influenced by such advices or recommendations. There is nothing on record from where it can be safely said that at or before making the impugned decisions, any of the Authorities concerned in fact looked into or considered such advices or recommendations of the Central Vigilance Commission. In that view of the matter, it cannot be said that there has been denial of natural justice in the instant case for not supplying the vigilance reports or advices and recommendations, as the case may be.

10. Strong reliance was placed on behalf of the petitioner in the decision of State Bank of India and others Vs. D.C. Aggarwal and another, . In that case 13 charges were framed against the delinquent. The Enquiry Officer, who was appointed by the Central Vigilance Commission, found charges I(1) and II(1) only have been proved. The remaining were found not to have been proved. Consequently the Enquiry Officer recommended for exonerating the delinquent as the charges found to be proved were minor and of procedural nature. The Central Vigilance Commission, however, examined the enquiry report and recorded its own findings on each of the charges and found the delinquent guilty of each charge. It then sent its recommendations to the respondent bank. The Disciplinary Authority considered the enquiry report and the recommendations of the Central Vigilance Commission and agreed with the recommendations of the Central Vigilance Commission on each charge on which the Central Vigilance Commission had found the delinquent guilty, but disagreed on the quantum of punishment. In that background the Supreme Court held that the order of punishment is vitiated for relying and acting on material which was not only irrelevant but could not have been looked into. The Supreme Court further held that the purpose of supplying document is to give an opportunity to contest its veracity or give explanation. It observed that non-supply of recommendations of the Central Vigilance Commission prepared behind the back of the delinquent without his participation, but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. It having been contended before the Supreme Court that the recommendation of the Central Vigilance Commission was a privileged communication, the Supreme Court observed that taking action against an employee on confidential document, which is the foundation of the order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. This judgment, therefore, in no uncertain terms makes it abundantly clear, as the law is, that the fate of a delinquent in a disciplinary proceeding can only be decided on documents or materials which have been disclosed to the delinquent in order to give him an opportunity to contest their veracity or to explain and not otherwise. In order to come within the ratio of the said judgment and the law known in that regard, the delinquent must show and establish that, in fact, the

decision is based on documents and materials, which were concealed from him. As aforesaid, on facts it does not appear that the Authorities concerned have, in fact, looked at the advice or recommendation of the Central Vigilance Commission given in respect of the petitioner at or before making the impugned decisions.

11. The last contention of the petitioner is that the punishment is disproportionate to the charges found to have been proved against the petitioner. It is well settled principle that a Court exercising power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If, however, the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, it can appropriately mould the relief. Can it be said that the misconduct of the petitioner as proved is such that the punishment meted out in relation thereto can shock the conscience of the Court? The answer would be negative, for the simple reason that admittedly the petitioner has exceeded his known authority in the matter of dealing with public funds. It may be true that for the actions of the petitioner complained of, the respondent bank may not have suffered any loss but despite it having been proved that the petitioner acted in excess of his authority, if the petitioner is not suitably dealt with, a wrong signal would percolate to the persons holding similar position as that of the petitioner to the effect that despite violation by them of the limit prescribed to control their fiduciary obligations and thereby acting in mistrust, they may be pardoned and in such event there would be no discipline at all, which in turn would encourage dealing of public money in a manner not contemplated and as a sequel the same would be against public interest.

12. For these reasons the writ petition is dismissed. There shall be no order as to costs.

13. Let urgent certified xerox-copies of this judgment, if applied for, be delivered to the learned advocates for the parties as early as possible.