

(2008) 04 MAD CK 0143

In the Madras High Court

Case No : W.A. No. 1439 of 2006 and M.P. No. 1 of 2006

Canara Bank and Others

APPELLANT

Vs

S.P. Shanbhogue

RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Evidence Act, 1872 — Section 33(2)

Citation : (2008) 04 MAD CK 0143

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : P.S. Raman, S.C. for P.R. Raman, for the Appellant; C.R. Chandrasekaran, for Aiyar and Dolia, for the Respondent

Judgement

M. Venugopal, J.—This Writ Appeal is preferred by the appellants/ respondents as against the order of the learned single Judge in W.P. No. 6015 of 1997 in allowing the writ petition.

2. The respondent/writ petitioner has filed W.P. No. 6015 of 1997 praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the third respondent bearing No.IRS:DP:MC:CHF:3151:96 dated 18.1.1996 and the order of the second respondent dated 30.8.1996 and quash them, directing the first respondent to restore the petitioner to Senior Management Grade Scale IV together with usual and normal increments that are due to him along with other attendant benefits including promotion to Senior Management Grade Scale V.

3. The learned single Judge in his order has inter alia observed that "the Appellate Authority has inflicted the punishment, and thereby, it is clear that the petitioner has lost the right of appeal, resulting the petitioner making an appeal to the Reviewing Authority, which is a Board and surprisingly, the Committee of Board has considered the review petition/appeal and it is stated that the Committee has nothing to do with the employment or the service conditions of the petitioner who is working in Scale IV and has allowed the writ petition for

more than one reason".

4. Aggrieved against the order passed by the learned single Judge in W.P. No. 6015 of 1997 dated 09.08.2006, the respondents in the writ petition have preferred this Writ Appeal as appellants.

5. In the instant case, the facts that the respondent has been serving as Manager of first appellant Bank and while in service he has been subjected to disciplinary action and later retired in the year 2000 under the Special Voluntary Scheme are not in dispute.

6. The charges framed against the respondent/writ petitioner are that:

(i) while he was working as Divisional Manager at Headquarters Road, Coimbatore Branch from 08.05.1987 to 05.06.1989, current account in the name of Shri.K.S.Prabhu, Share Broker, 99 Vimal 1st Floor/Dr.Alagappa Chettiar Road, Tatabad, Coimbatore was opened on 16.03.1989 and on the very next day of opening the account on 17.03.1989, he permitted TOD in the above current account and on 13.04.1989 another TOD was permitted by him when the earlier TOD permitted by him was outstanding and when the matter was taken up for recovery while he was working as Divisional Manager at Divisional Office, Tirunelveli, a D.D. for Rs. 6,450/- favouring Shri.K.S.Prabhu was taken by him at Tirunelveli Junction Branch out of the amount drawn from his OD account;

(ii) that there was no K.S.Prabhu living in the address given in the Current Account Opening Form and there was only one Shri.K.V.Prabhu living at that address, who was enjoying an OD limit of Rs. 50,000/- at Oppanakara Street, Coimbatore Branch and knowing fully well that Shri.K.V.Prabhu and K.S.Prabhu are one and the same, he had permitted TOD in the current account, thereby abetted impersonation to accommodate the party and exposed the Bank to financial risks and thereby failed to perform his duties with honesty, integrity, devotion and diligence and acted in the manner which is most unbecoming of a Bank Officer and thereby violated Regulation 3(1) read with Regulation 24 of the Canara Bank Officer Employees" (Conduct) Regulations 1976, a misconduct punishable under Canara Bank Officer Employees" (Discipline and Appeal) Regulations, 1976.

7. The Inquiry Authority, by his findings dated Nil, has concluded that the respondent/writ petitioner knew well Shri.K.V.Prabhu by virtue of his business dealings in Share Service Centre, at the time of opening of a current account in the name of Shri.K.S.Prabhu and in view of the share transactions/dealings with Share Service Centre, he intentionally caused opening of an account in the name of Shri.K.S.Prabhu and in order to accommodate Shri.K.V.Prabhu, Proprietor of M/s.Share Service Centre, he allowed TOD in the account of Shri.K.S.Prabhu and to this extent, the charge against him has been proved and that he has failed to perform his duties with honesty, integrity, etc. In regard to the charge of impersonation of Shri.K.V.Prabhu as K.S.Prabhu and his knowledge about this, the same has been held to be not proved by the Inquiry Officer to the effect that

K.V.Prabhu and K.S.Prabhu are one and the same.

8. The third appellant/Disciplinary Authority, by his order dated 06.03.1995, has agreed with the findings of the Inquiry Authority to the extent that "the respondent/writ petitioner has intentionally caused opening of an account in the name of Shri.K.S.Prabhu and in order to accommodate Shri.K.V.Prabhu, Proprietor of M/s.Share Service Centre, he allowed TOD in the account of Shri.K.S.Prabhu" and in regard to the impersonation charge has held that "the respondent/writ petitioner himself has stated that he knew K.S.Prabhu as Proprietor of M/s.Share Service Centre and as per records, the Proprietor M/s.Share Service Centre is actually Shri.K.V.Prabhu and that it is clearly established that K.S.Prabhu and K.V.Prabhu are one and the same and inspite of knowing this fact he had informed Shri.Nagesh Pai to introduce the account as K.S.Prabhu, and further allowed overdrawings that too for passing cheques issued in favour of Share Service Centre etc. and disagreed with the findings of the Inquiry Authority.

9. However, the third appellant after considering the representation of the respondent dated 15.4.1995 has imposed the punishment of reduction to a lower cadre i.e. from scale IV to scale III on the delinquent officer as per regulation 4(e) of Canara Bank Officer Employees" (Discipline and Appeal) Regulations, 1976.

10. The respondent has preferred an appeal to the Board of Directors of the Bank, through proper channel and the Committee of the Board has rejected the appeal on 30.08.1996 and confirmed the punishment which was challenged by filing W.P. No. 6015 of 1997 before this Court.

11. According to the learned Counsel for the appellants, the learned single Judge erred in re-appreciating the evidence recorded in the Domestic Enquiry, which is beyond the scope under Art.226 of the Constitution of India and that there is overwhelming evidence to show that the respondent knew K.V.Prabhu of M/s.Share Service Centre, which has not been taken note of by the learned single Judge and the fact that the respondent took a demand draft from his personal account to clear the liability, exhibits his involvement in accommodating Shri.K.V.Prabhu and that Shri.K.V.Prabhu posed himself as K.S.Prabhu to open the current account and the respondent being aware of the same has allowed opening of the current account in the name of Shri.K.S.Prabhu, thereby knowingly permitted impersonation which has not been appreciated by the Inquiry Authority and the learned single Judge in their proper perspective, inspite of sufficiency of evidence available in the Domestic Enquiry and the fact that the object to accommodate a customer against the Bank Rules and the resultant risk that the Bank has been exposed to, has not been borne in mind primarily by the learned single Judge at the time of passing of the order and that though the third appellant/Managing Director is the Appellate Authority in so far as the respondent is concerned, the punishment has been inflicted by him being the next higher authority as per Regulation 5(3) of Canara Bank Officer

Employees" (Discipline and Appeal) Regulations, 1976 and this fact has not been taken into consideration by the learned Single Judge and the appeal filed by the respondent has been placed before the Committee of the Board, i.e. next authority to the third appellant and inasmuch as the respondent's appeal has since been considered by an Authority higher than the Managing Director, in any event, no prejudice has been caused and this has not been looked into by the learned single Judge and therefore, prays for allowing the Writ Appeal.

12. The learned Counsel for the respondent urges that there is no evidence in the domestic enquiry to show that the respondent admitted that he knew K.V.Prabhu and that the respondent has only stated that he knows K.S.Prabhu, having an establishment by name Share Service Centre and that equally there is no evidence about the very existence of K.V.Prabhu and that the said Prabhu has not been seen by any of the Management witnesses and inasmuch as the very existence of K.V.Prabhu has not been established, the question of his knowing K.V.Prabhu at the time of opening the current account for K.S.Prabhu or his nexus with K.V.Prabhu as K.S.Prabhu is unsustainable and therefore, the question of impersonation does not arise and there is no iota of evidence that the respondent has abetted impersonation to accommodate the party and exposed the Bank to financial risks.

13. The further plea raised on the side of the respondent is that the authority to impose penalty is the Executing Director as the Managing Director is the Appellate Authority according to the Schedule 2 D and A Regulations (as it then was), though regulation 5(3) enjoins that any authority higher in rank than the third appellant can impose penalty, the Managing Director being the Appellate Authority ought not to have imposed the penalty, thereby depriving the right of appeal to the respondent and that the "Committee of Board" has no authority to deal with the appeal as per D and A Regulations and on this ground, the entire proceedings is a nullity.

14. According to the learned Counsel for the respondent, the Disciplinary Authority is the Executive Director and the Appellate Authority is the Managing Director (3rd appellant) and the Reviewing Authority is the Board of Directors (4th appellant) and therefore, the Committee of Directors is not a forum to deal with the disciplinary matters relating to scale IV as per D and A Regulations.

15. Another contention put forward by the learned Counsel for the respondent is that the third appellant has consulted the Central Vigilance Commission and that neither the enquiry proceedings nor the findings of the third appellant has any reference to the said consultation and that the respondent has not been put on notice in this regard.

16. We have heard the learned Counsel for the parties and noticed their rival contentions.

17. We are conscious of the fact that the charges in a disciplinary proceedings are not required to be proved like, the criminal case i.e. proof beyond all

reasonable doubt and what is required is only preponderance of probabilities.

18. It is relevant to point out that the term of "misconduct" is a generic term and its synonyms are: (1) Misbehaviour; (2) Misdemeanour; (3) Mismanagement; (4) Misdeed; (5) Delinquency; and (6) Offence. In Shroud's Judicial Dictionary, the term "misconduct" means arising from ill-motive; acts of negligence, errors of innocent mistake do not constitute such misconduct. The omission to do what is expected of a person to do constitutes misconduct. Whereas, if such failure is directed to intentionally, cause mischief or loss to any person; then it is called "wilful misconduct". Therefore, misconduct is a definite word with a specific connotation. In fact, the concept of misconduct in an employer and employee relationship is based upon the nature and relationship itself and implied and express conditions of services.

19. A perusal of the orders passed in the writ petition to the effect that "when a clear finding is given by Enquiry Officer, the Disciplinary Authority did not accept the inquiry report and without assigning any convincing and cogent reason and without any evidence has issued notice, reducing the rank of the petitioner from the Category Grade IV to III and thereafter, the Managing Director of Bank has issued the final orders" etc. indicates that the learned single Judge has made an endeavour to reappraise the entire matter as if exercising appellate jurisdiction.

20. At this stage, it is to be pointed out that the report of the Inquiry Officer is intended to assist the Disciplinary Authority in coming to a conclusion about the guilt of delinquent. The findings of the Inquiry Officer or recommendations are advisory in character and are not binding on Disciplinary Authority, who can disagree with them and come to his own assessment of evidence forming part of record of inquiry. It cannot be gainsaid that on receipt of report and record of inquiry, the Disciplinary Authority will have to examine them carefully and dispassionately and after satisfying itself that the delinquent has been given a reasonable opportunity to defend himself has to record its findings in respect of each Article of Charge saying whether in his opinion it stands proved or not. However, if Disciplinary Authority disagrees with the findings of the Inquiry Officer on any Article of Charge, it will, while recording its own findings, also record reasons for disagreement.

21. For the better appreciation of the entire gamut of the matter in the Domestic Enquiry, as seen from the material papers placed on record, it is pertinent to point out that M.W.1-Vaidhyanathan has stated that he and M.W.2-Parthasarathy met Satish Prabhu (a Share Broker of Jai Ganesh and Co. or Ganesh and Co. and a brother-in-law of Ganesh) who informed him that he is not that Satish Prabhu, who borrowed money from the Bank and that one K.V.Prabhu, his brother might have obtained this facility and further that Ganesh also has informed that there is no Satish Prabhu in their family, but there is one K.V.Prabhu and furnished the Bombay address.

22. M.W.2-Parthasarathy, who submitted his investigation report in regard to the

long outstanding TOD of Rs. 24,500/- in the current account of K.S.Prabhu, at Headquarters Road, Coimbatore has stated that one K.V.Prabhu was having an OD account at their Oppanakkara Street in M/s.Share Service Centre name with a limit of Rs. 50,000/- and when the said account was outstanding, the said Prabhu opened a current account at their Headquarters Road, Coimbatore Branch in K.S.Prabhu's name and that the said Prabhu signed in the account opening form as K.S.Prabhu and that the handwriting in the account opening forms of M/s.Share Service Centre and K.S.Prabhu are one and the same and that the residential address of the Proprietor of M/s.Share Service Centre i.e. K.V.Prabhu and K.S.Prabhu is also one and the same. He has also further stated that a TOD of Rs. 24,500/- was allowed in the current account of K.S.Prabhu on 17.03.1989, i.e., on the very next day of opening of the account and the account at Headquarters Road was introduced by Nagesh Pai (the then Manager of Headquarters Road, Coimbatore Branch), who stated that he knew K.S.Prabhu for the past two years.

23. From the statement of M.W.2-Parthasarathy, it transpires that a part of the amount was remitted on 13.04.1989 when there was a debit balance of Rs. 2,286.25, further TOD was allowed on 13.04.1989 in order to pass a cheque for Rs. 22,390/- and that the TODs were authorised by the respondent, the then Divisional Manager and since the TOD was not regularised the Branch took the issue with the respondent (while he was DM of Tirunelveli Divisional Office) and that there was a remittance of Rs. 6,450/- by way of DD favouring K.S.Prabhu sent from Tirunelveli and Satish Prabhu, who is the brother of K.V.Prabhu informed him that the respondent is a family friend and he knows his parents and his brothers for many years and that there is no K.S.Prabhu and his brother is K.V.Prabhu and he is Satish R Prabhu known as S.R.Prabhu and signs as "Satish".

24. It is the further statement of M.W.2-Parthasarathy that the said Satish R Prabhu informed him that the respondent handed over a letter to S.R.Prabhu's mother (AOD form) in Mangalore in December 1991 and asked her to get it signed by Shri.S.R.Prabhu and send it to him etc. Moreover, M.W.2-Parthasarathy also is reported to have met A.Ganesan, Coobligant to the OD limit sanctioned to M/s.Share Service Centre at Oppanakkara Street and the brother-in-law of K.V.Prabhu and S.R.Prabhu and that the said Ganesan reiterated the version given by Satish R Prabhu and said that the respondent and Nagesh Pai knew about the transaction.

25. The statement of M.W.3-Venkatachalam is to the effect that the DD for Rs. 6,450/- has been purchased by K.S.Prabhu (at Tirunelveli Junction Branch), drawn on Coimbatore dated 04.05.1990, out of cash cheque for Rs. 14,000/-, adjusted from cash and that the cheque has been drawn by the respondent and that K.S.Prabhu has signed the DD application and the DD has been received by Palani.

26. M.W.4-Palani (sub-staff) in the Regional Office, Tirunelveli has testified that

in the DD challan for the DD purchased by the Divisional Manager, he has signed and that he has handed over the DD to the Divisional Manager in the afternoon and no one has been in the cabin, other than the Divisional Manager and that the DD is for Rs. 6,000/- and that he has received the balance sum against the cheque of Rs. 14,000/- and gave the balance to the Divisional Manager.

27. M.W.5-Nagesh Pai, in his testimony has stated that K.S.Prabhu used to come to his Branch very often to meet the respondent and he knew K.S.Prabhu through the respondent and later came to know his father Prabhu, who was the Divisional Manager of Corporation Bank and his brother-in-law Ganesh Bhat, (Distributor of Mangalore Ganesh Beedi) and since he knew through respondent, he introduced the account. Furthermore, M.W.5-Nagesh Pai has also stated that as soon as the explanation has been called for from Bangalore, SSO he approached the respondent, to help him in giving reply to the letter and then the respondent sent one draft letter from Tirunelveli to his address and requested him to reply in the same line and that the respondent asked him to introduce the account of K.S.Prabhu.

28. At this stage, one cannot ignore an important fact that the respondent in his letter dated 31.03.1992 sent to the Deputy General Manager of Madurai Circle has categorically stated that he knows K.S.Prabhu, a Share Broker of M/s.Share Service Centre and that on 04.05.1990 the said K.S.Prabhu called on him at Tirunelveli in regard to the share transactions, he has entered into with him and after calculating a sum of Rs. 6,470/- payable to him in respect of the said share transaction he wanted to ensure that this amount is to be credited to his TOD balance at Headquarters Road, Coimbatore.

29. It is not out of place to make a mention that in a Domestic Inquiry, strict rules of evidence are not applicable as per Indian Evidence Act. All materials which are logically probative for a prudent mind are permissible. For hearsay evidence there is no allergy, provided it has credibility and reasonable nexus. Admittedly, sufficiency of evidence in proof of the finding by an Inquiring Authority is beyond scrutiny. As a matter of fact, the expression "sufficiency of evidence" enjoins existence of some evidence which connects the charged officer with the misconduct alleged against him.

30. The learned Counsel for the appellant cited the decision in The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, wherein the Hon"ble Apex Court has observed that "in departmental proceedings the guilt need not be established beyond reasonable doubt, proof of misconduct may be sufficient and that the Tribunal committed an error in holding that the finding of the domestic enquiry was based on "hearsay" evidence, and that the law is well settled that strict rules of evidence are not applicable in a domestic enquiry".

31. The aforesaid testimonies of M.W.1 to M.W.5 coupled with the letter dated 31.03.1992 marked as D.E.1 of the respondent play a significant role in the

instant case on hand.

32. Though a plea is taken by the respondent that there is no evidence in the Domestic Enquiry to show that the respondent admitted that he knew K.V.Prabhu and that the respondent has only stated that he know K.S.Prabhu and further that there is no evidence about the very existence of K.V.Prabhu, it is to be pointed out that from the material placed before us it transpires that the respondent knew K.V.Prabhu by means of his business dealings in Share Service Centre at the time of opening of a current account in the name of K.S.Prabhu and since the respondent knows K.S.Prabhu as Proprietor of M/s.Share Service Centre and inasmuch as Shri.K.V.Prabhu is the Proprietor of M/s.Share Service Centre, it is quite evident, circumstantially, that K.S.Prabhu and K.V.Prabhu are one and the same, notwithstanding the fact that the respondent has asked Shri.Nagesh Pai to introduce the account as K.S.Prabhu and therefore, the contention of the respondent in this regard is not accepted.

33. In fact, it is the specific evidence of M.W.2-Parthasarathy before the Inquiry Authority that K.V.Prabhu was having an account at their Oppanakkara Street Branch in the name of M/s.Share Service Centre with a limit of Rs. 50,000/- and that the said account was outstanding when the said Prabhu opened a current account at their Headquarters Road, Coimbatore Branch in K.S.Prabhu's name and that the said Prabhu signed in the account opening form as K.S.Prabhu and that the handwriting in the account opening form of M/s.Share Service Centre and K.S.Prabhu are one and the same and that the residential address of the Proprietor of M/s.Share Service Centre i.e., K.V.Prabhu and K.S.Prabhu is also one and the same and that Satish Prabhu, who is the brother of K.V.Prabhu informed him that the respondent is a family friend and he knows his parents and brothers for many years and that there is no K.S.Prabhu and his brother is K.V.Prabhu and further that A.Ganesan, Coobligant to the OD limit sanctioned to M/s.Share Service Centre at Oppanakkara Street and the brother-in-law of K.V.Prabhu, S.R.Prabhu has also reiterated the version of Satish R Prabhu, who informed that the respondent and M.W.5-Nagesh Pai knew about the transaction. At this stage, it is specifically to be mentioned that the respondent has not examined himself in the Domestic Enquiry and further he has not also produced any witness to be examined on his side. Of course, on the side of respondent, before the Inquiry Authority as many as nine documents D.1 to D.9 were marked.

34. Another important factor that cannot be brushed aside in the case on hand before us is that a DD for Rs. 6,450/- has been drawn by K.S.Prabhu at Tirunelveli Junction Branch payable at Coimbatore, dated 04.05.1990, out of cash cheque for Rs. 14,000/-, adjusted from cash and that the cheque has been drawn by the respondent and that K.S.Prabhu has signed in the DD application, which is not a favourable circumstance in favour of the respondent. Moreover, the act of the respondent sending a draft letter from Tirunelveli to M.W.5-Nagesh Pai's address, requesting him to reply in the same line when explanation was called for from Bangalore SSO will not, in any way, help the case of the

respondent any further.

35. Suffice it to point out that the materials available on record unimpeachably brings home the fact that the respondent has known K.V.Prabhu at the time of opening of an account in the name of K.S.Prabhu. It cannot be in dispute that a departmental proceeding *stricto sensu* is not a judicial proceeding and that the findings in the departmental proceedings can be based on preponderance of probabilities. Undoubtedly, the inferences cannot be drawn based on conjectures or surmises. It is not out of place to make a mention that the respondent has taken a DD from his personal account to clear the liability and therefore, his action in this regard is not above Board, in our considered opinion.

36. It cannot be gainsaid that in *Union Bank of India Vs. Vishwa Mohan*, , the Hon"ble Apex Court has held that "in Banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every Bank employee failing which the Public and the account holders would lose the confidence". As a matter of fact, the Inquiry Authority/Disciplinary Authority cannot reject relevant testimony of witnesses and that he cannot take into consideration irrelevant facts or cannot refuse to consider relevant facts etc. In fact, the Enquiry Officer performs a quasi-judicial function and has to arrive at a decision upon analysing the documents and material evidence on record. It is pertinent to point out that it is not for the Courts to interfere with the decision of Disciplinary Authority in regard to a case of misconduct when the inquiry has been fair and proper and the misconduct has been proved.

37. As far as the present case is concerned, there are sufficient materials, by way of legal evidence, to prove the charges and that the Disciplinary Authority by means of his findings dated 06.03.1995 has come to the conclusion of agreeing with the findings of the Inquiry Authority to the extent that the respondent has intentionally caused opening of an account in the name of K.S.Prabhu etc. and in regard to the impersonation charge has disagreed with the findings of the Inquiry Authority and held that the respondent is guilty of this charge also and therefore, this Court comes to the conclusion that the findings of the Disciplinary Authority are supported by legal evidence and that the sufficiency of evidence in proof of finding lies beyond the scope of scrutiny of Reviewing Court. It is needless to state that in the departmental proceedings, the charges, unless proved, cannot form the basis of any punishment and that the standard of proof is different as against the required standard in the case of a criminal trial, but the charges levelled must stand proved on the basis of relevant material. Of course, the burden to prove the charges rests upon the department and therefore, the department owes its liability first to adduce evidence and take steps for proving the charge. In the case on hand, the Bank, in the Domestic Enquiry, has examined witnesses M.W.1 to M.W.5 and marked Exs.M.E.1 to M.E.20 and on the side of respondent/ Delinquent Officer Exs.D.E.1 to D.E.9 were marked. However, on the side of respondent no one was examined. When the respondent is a family friend of K.V.Prabhu and knows him and his family members, then nothing

prevented the respondent to prove the fact which lies within his knowledge i.e. to prove that K.V.Prabhu and K.S.Prabhu are not the one and the same individual. Equally, it is significant to make a mention that the handwriting of K.V.Prabhu tallies with the handwriting in the account opening form of K.S.Prabhu, which goes to show, clinchingly, that K.V.Prabhu and K.S.Prabhu are and the same individual and that the respondent having known these facts has permitted opening of current account in the name of K.S.Prabhu thereby abetted the impersonation and therefore, the contra contention of the respondent in this regard is unsustainable.

38. In regard to the plea that the Authority to impose penalty on the respondent is the Executive Director i.e. Disciplinary Authority and in the instant case, the Managing Director, third appellant has imposed the punishment by his proceedings dated 18.01.1996 and therefore, the same is impermissible, it is to be pointed out that since the post of Executive Director viz., Disciplinary Authority has remained vacant, as per Regulation 5(3) of Canara Bank Officer Employees" (Discipline and Appeal) Regulations, 1976, any higher authority, higher than the Disciplinary Authority, may impose any of the penalties specified in Regulation 4 on any employee and as such, there is no illegality in the Managing Director imposing punishment on the respondent in the case on hand and resultantly, the respondent's contention in this regard is rejected.

39. Coming to the plea that since the Managing Director viz., third appellant has imposed the penalty on the respondent, a valuable right of appeal has been lost to the respondent, it is to be mentioned that the appeal filed by the respondent has been placed before the Committee of the Board, being the next higher Authority to the Managing Director viz., third appellant and therefore, the appeal has been considered by an Authority, higher than the third appellant viz., Managing Director and therefore, the contention that the respondent has lost the right of appeal has no legs to stand, in our considered opinion. Moreover, the next higher authority to the Committee of the Board is the Board of Directors of the Bank as Reviewing Authority.

40. Though the learned Counsel for the respondent has relied on the decision in H.M.T. Limited Watch Factory I and II v. R.L. Prasad and Anr. 2005 III L.L.J. 884 at page 887), wherein it is inter alia observed that "we are clearly of the view that if an order is made by an authority or a person who is not competent to make the order of dismissal, the Labour Court or the Industrial Tribunal while considering the claim made u/s 33(2)(b) of the Act seeking accord for approval of the order of dismissal would be fully justified in rejecting the application" for the proposition that the Disciplinary Authority is the Executive Director and that the Appellate Authority is the Managing Director and that in the instant case, the Managing Director i.e., third appellant has imposed the punishment and that the appeal has been dealt with by the Committee of the Board who are not competent to deal with the same, it is pertinent to mention that since the post of Executive Director viz., Disciplinary Authority has remained vacant, as per

Regulations 5(3) of the Canara Bank Officer Employees" (Discipline and Appeal) Regulations, 1976, the Managing Director viz., the third appellant-higher authority than the Disciplinary Authority has imposed punishment on the respondent and therefore, the same is not invalid and illegal, but, on the other hand the same is perfectly legal and justified as per rules and therefore, we opine that the decision cited is not helpful to the respondent.

41. As a matter of fact, on the memorandum of appeal filed by the respondent, the Committee of Board has passed orders on 30.08.1996 rejecting the appeal and confirmed the punishment imposed on the respondent. The Committee of the Board has taken into consideration the memorandum of appeal, findings of the Inquiry Authority, the findings of the Disciplinary Authority and other documents and evidence on record adduced during the enquiry proceedings and has finally passed the orders. It is a well accepted principle that when a Disciplinary Authority/Appellate Authority agrees with the view of the lower authority on evidence, it is not necessary for the concerned higher authority either to restate the effect of evidence or to reiterate the reasons given by the lower Authority/Inquiry Authority.

42. As far as the present case is concerned, in our view that the Disciplinary Authority viz., the third appellant has applied his mind and has given a reasoned findings dated 06.03.1995. Equally, the orders of the Committee of the Board dated 30.08.1996 as Reviewing Authority (while disposing of the appeal) also does not suffer from any infirmity, since the appeal has been dealt with by the next higher authority to the third appellant and in any event, it has not caused prejudice to the respondent. Further, merely because the General Manager has prepared the note administratively and later himself becoming Executive Director of the Bank and as one of the members of the Committee, the same has not affected the decision in the appeal in any way, since it was dealt with by the Committee of the Board of Directors of the Bank. In regard to the contention that the Inquiring Authority has not questioned the respondent on the circumstances appearing against him in evidence in the enquiry as per Regulation 6(17) of D and A Regulations, it is to be pointed that the said omission is not fatal and it will not vitiate the enquiry proceedings, since in the instant case, the respondent has consciously submitted his written brief dated 11.06.1994 after the date of completion of production of evidence as required under Regulation 6(18) of D and A Regulations.

43. The learned Counsel for the respondent relies on the letter dated 28.09.2000 of Government of India, Central Vigilance Commission wherein at para 5 and 6 it is observed as follows:

Para 12.4.4 of Special Chapter on Vigilance management in Public Sector Banks and para 22.6.4 of the Special Chapter on Vigilance Management in Public Sector Enterprises envisage that the inquiring authorities, including the CDIs borne on the strength of the Commission, would submit their reports to the disciplinary authority who would then forward the IO's reports, along with its own tentative

views to the Commission for its second stage advice. The existing procedure in this regard may broadly continue. The disciplinary authority may, after examination of the inquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This, along with the disciplinary authority's views, may be made available to the concerned employee. On receiving his representation, if any, the disciplinary authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration, forward the same, along with the records of the case, to the Commission for its reconsideration.

6. Thus, if on the receipt of the employee's representation, the concerned administrative authority proposes to accept the CVC's advice, it may issue the orders accordingly. But if the administrative authority comes to the conclusion that the representation of the concerned employee necessitates reconsideration of the Commission's advice, the matter would be referred to the Commission

on the pleas of the respondent that the third appellant has consulted the Central Vigilance Commission for the purpose of imposing punishment and the same is bad in law and that the respondent has not been put on notice, it is to be pointed out that in the instant case, the Disciplinary Authority has not imposed punishment on the basis of Commission's advice and it has applied its mind independently, as informed by the learned Counsel for the appellants and therefore, by no stretch of imagination it can be said that the punishment imposed by the Disciplinary Authority on the respondent is bad and resultantly, the question of putting the respondent on notice in this regard does not arise on any score. Resultantly, the reliance placed on the letter dated 28.09.2000 of the Government of India, Central Vigilance Commission cannot come to the aid of the respondent.

44. In regard to the contention of the respondent that the order of the third appellant dated 18.01.1996 is not a speaking order inasmuch as the same does not discuss or cover the point raised by the respondent in his submissions dated 15.04.1995 in reply to his letter dated 16.03.1995, a perusal of the proceedings of the third appellant dated 18.01.1996 awarding a punishment of rejection to a lower Grade from scale IV to scale III do clearly indicate that the third appellant has borne in mind the submissions of the respondent, though the same have not been restated in his proceedings and in any event, it cannot be said that the said order is not a speaking order and in fact, the said order is based on application of mind, which is a reasoned one too and therefore, the said proceedings of the third appellant dated 18.01.1996 does not suffer from any infirmity or illegality in the eye of law.

45. It cannot be gainsaid that an employer losing confidence on his employee is certainly a subjective feeling or an individual reaction to an objective set of facts and motivations. In fact the obligation to work faithfully is assumed because in the absence of any such assumption the contract of service will be unworkable or

in any case, it is an assumption cemented on equitable grounds. It is not out of place to mention that the Sastri Award which by now has become synonymous to the service conditions of a Bank employee has a binding force and it empowers the Management to terminate the services of an employee for loss of confidence, as per decision in SBI, Kanpur v. Vidya Prakash Bajpai 2004 LLR 159. But, in the case on hand, the respondent has not been awarded with the punishment of dismissal.

46. In the light of the foregoing detailed discussions and inasmuch as there is sufficiency of evidence available in the Domestic Enquiry and when the third appellant/ Disciplinary Authority has given a reasoned findings dated 06.03.1995 and when the charges have been proved against the respondent in a fair and proper inquiry, then it is not open to the learned single Judge to interfere with the findings of the third appellant/Disciplinary Authority dated 06.03.1995 or with the order of punishment dated 18.01.1996 or with the orders of the second appellant/ Committee of the Board dated 30.08.1996 and therefore, in that view of the matter, the order passed by the learned single Judge in allowing the writ petition for the reasons assigned therein are not correct, in our view and therefore, we set aside the order of the learned single Judge passed in W.P. No. 6015 of 1997 dated 09.08.2006 and allow the Writ Appeal to prevent aberration of justice. Bearing in mind the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.