
(2014) 03 AP CK 0095
In the Andhra Pradesh High Court
Case No : W.P. No. 7281 of 2007

C.R. Damodara Reddy

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 ALT 564

Hon'ble Judges : D. Seshadri Naidu, J

Bench : Single Bench

Advocate : D. Prakash Reddy, Advocate for the Appellant; C.V.Rajeeva Reddy, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dama Seshadri Naidu, J.—In this writ petition, the petitioner sought a writ of certiorari to set aside the punishment of removal inflicted on him by the respondent-bank through its order dated 22.07.2005, as was confirmed by the departmental appellate authority through order dated 01.02.2006. The petitioner has also sought a consequential direction to the respondents to reinstate the petitioner in the respondent-bank with all consequential benefits, including the back wages.

2. The facts of the case, as pleaded by the petitioner, are that the petitioner is an ex-serviceman having served in the Indian Air Force. After the completion of his service in Indian Air Force, the petitioner joined the respondent-bank on 07.06.2006; later he was promoted in 1980 to Management Specialist Scale-I; and subsequently, transferred to Hyderabad Zonal Office in January, 1982.

3. When he was working in Hyderabad Zonal Office, the petitioner was entrusted with the work of credit cards, since the respondent-bank started credit card system known as "Central Card" in the month of August, 1980. In course of time, the petitioner was also promoted from Scale-I to Scale-II in 1991. Given

his earlier experience in the credit cards, the petitioner was once again entrusted with the work in Central Card Department at Zonal Office, Hyderabad to look after the business of credit cards, both in Andhra Pradesh and in Karnataka States.

4. In August, 2002, the respondent-bank introduced electronic credit card scheme for the first time among the nationalized banks and undertook a drive to issue maximum credit cards by fixing targets to the officers to canvass for the business for a huge number of electronic credit cards. Though the petitioner was given charge of the entire zone for canvassing and enrolling the names of the credit card holders, no guidelines were fixed for processing the applications.

5. As part of the drive, the petitioner has processed and forwarded several applications to the Chief Manager, Credit Cards Division, Zonal Office, Hyderabad, who is the competent authority. The practice indicates that the Chief Manager, after going through the process of examining the applications, was required to sanction the cards and further recommend to the Central Card Department, Mumbai for issuance of the electronic credit cards.

6. In this process, on 29.12.2003, the petitioner received a memo informing that the petitioner received 40 applications for issuance of cards without taking prudent care and verification of the details in the application form. He was asked to submit within seven days his explanation why action should not be initiated for the lapses said to have been committed by him. The petitioner in turn gave a detailed explanation on 08.01.2004. Not satisfied with the explanation given by the petitioner, the disciplinary authority issued a charge memo dated 29.09.2004, which contained the following charges:

a) Mr. C.R. Damodara Reddy while working as Manager, Central Card Dept., ZO., Hyderabad is alleged to have committed the following acts of omissions as processing officer while recommending for issuance of Central Card (Electronic) to 40 persons during August, 2002.

He failed to take all prudent care to verify the details furnished in the applications. Knowing fully well the various glaring irregularities and discrepancies in such information, he failed to bring these aspects to the notice of the Sanctioning Authority but chose to recommend the proposals, thereby acted detrimental to the interest of Bank and there is no recovery in these and the overdue position as on 18.11.2003 is Rs. 22.13 lac.

He is thus alleged that the above acts of omissions is a gross dereliction in discharge of his duties and as a dealing officer he failed to discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of an officer and exposed Bank's funds to serious financial risks.

b) Mr. C.R. Damodara Reddy is alleged to have mis-utilized his official position in orally requesting the Central card dept. to deliver 17 cards to one Sri B.V.Reddy, Director, SVS Pharmaceuticals Limited in violation of delivery norms for such

cards which were eventually misused and exposed Bank's funds to financial risk. Thus he is further alleged to have failed to discharge his duties with utmost integrity, honesty, devotion and elegance and acted in a manner unbecoming of an officer.

The charges enumerated herein above, the charge sheet reads, constitute misconduct under Reg 3(1) read with Reg 24 of Central Bank of India Officer Employee (Conduct) Reg. 1976 attracting penalty under Reg 4 of Central Bank of India Officer Employees (Discipline & Appeal) Reg. 1976.

7. Though the petitioner gave a detailed explanation answering the charges, the respondent-bank decided to hold a departmental inquiry against the petitioner in terms of the said charge memo. In fact, the inquiry officer, having conducted an inquiry, submitted his report/findings on 05.03.2005, holding that the charge No. 1 is proved to the extent that the petitioner has failed to work with utmost devotion and diligence, apart from holding that there was no ulterior motive on petitioner's part. The second charge is held to have not been proved. The disciplinary authority, however, differed with the findings of the enquiry officer and issued memo dated 29.12.2003 seeking an explanation from the petitioner, holding that all the charges have been proved. In response thereto, the petitioner submitted his explanation on 11.07.2005 pleading that he was not guilty of any of the charges levelled against him. Eventually, the disciplinary authority, i.e., the 3rd respondent, passed the final orders on 22.07.2005 holding that both the charges were proved and consequently awarded punishment of removal from service, which shall not be a disqualification for future employment.

8. The petitioner preferred an intra-departmental appeal on 09.09.2005 to the 2nd respondent, the appellate authority, but to no avail, as the said appeal also was dismissed on 01.02.2006. Aggrieved by the said concurrent orders, the petitioner approached this Court by filing the present petition.

9. Sri D.Prakash Reddy, learned Senior Counsel, representing Sri P.Radhive Reddy, learned counsel for the petitioner, has made his submissions to the effect that as the respondent-bank had a drive to issue credit cards to the maximum number of persons, it set a target to the petitioner and issued deadlines, but without providing any supporting staff or infrastructure. Despite the petitioner's making several requests to the management to provide sufficient staff, his requests were not heeded; and on the other hand, he was compelled to work under trying circumstances with constant pressure of work. All the applications were received and processed in good faith and without any negligence on the petitioner's part. The learned Senior Counsel states that even the Chief Manager, who is the Sanctioning Authority, went through the process of examining the particulars of the applications forwarded by the petitioner before sanctioning cards. Had there been any glaring or patent irregularities in the applications or the documents annexed in support thereof, at least the sanctioning authority would have noticed them.

10. The learned Senior Counsel has contended that the petitioner, functioning well within the knowledge of the sanctioning authority, processed all the applications based on the information provided by the applicants and forwarded them for further scrutiny and sanctioning by the Chief Manager of the Credit Card Department. It is strenuously contended that initially the Management had placed before the enquiry authority the audit report dated 13.03.2003 as one of the documents to prove their case. It has, however, not mentioned the reply given in the audit report by the Zonal Manager, Hyderabad as one of the documents. When the petitioner has insisted on the management to produce the reply given by the Zonal Manager, Hyderabad, to the above said audit report, the management has conveniently withdrawn the said documents from the enquiry proceedings. The learned Senior Counsel has submitted that when audit report has pointed out, rather questioned the procedure adopted by the respondent-bank in processing and eventually sanctioning the credit cards, the issuing authority, i.e., the Zonal Manager, Hyderabad, in fact, defended the method of processing and sanctioning the credit cards. Having placed on record that there was nothing wrong with the process of scrutiny or sanctioning adopted by the officers of the respondent-bank, who include the petitioner as well, only with a view to penalizing the petitioner, the said document was withdrawn and the reply issued by the Zonal Manager, Hyderabad, was not seen the light of the day. Even when the petitioner sought the information under the provisions of the Right to Information Act, through his letters dated 14.11.2005 and 23.12.2005, the Management of the respondent-bank has stubbornly refused to part with the information only with a view to denying a fair opportunity to the petitioner. Accordingly, the learned Senior Counsel has contended that non-production of material evidence, which is in favour of the petitioner has resulted in substantial prejudice to the interests of the petitioner, thereby offending the principles of natural justice.

11. The learned Senior Counsel has submitted that, as a processing officer, the petitioner was only required to verify whether the application forms are properly filled in and enclosures are kept to establish the identity, address, and proof of income as per the procedure in vogue at that time. There was neither any mechanism nor any means in form of support staff or necessary infrastructure for the petitioner to verify the genuineness or otherwise of the applications, as well the information provided therein, including the annexures given by the applicants in support of their claim to have the credit card.

12. The learned Senior Counsel has strenuously contended that no policy guidelines were given by the respondent-bank for issuing electronic credit cards. But now post-factum, the respondent-bank wanted to justify its action based on the check-list and the guidelines that were issued subsequently. It is contended that even one of the officers of the bank, who was examined as M.W.2, has also confirmed that no procedure has been laid down for methodology of verifying the documents. It is specifically contended by the learned Senior Counsel that though the management has failed to establish and prove both the charges

against the petitioner, the disciplinary authority has awarded the punishment of removal from service. The said punishment is grave, unreasonable, disproportionate and cruel.

13. The learned Senior Counsel has submitted that the disciplinary authority has acted in a pre-meditated manner and awarded the maximum punishment without application of mind and without any material basis, even going by the findings rendered by the inquiry officer. In any event, the alleged negligence, as was found by the inquiry authority, in attending to the particulars provided in the applications, is not a misconduct warranting punishment of removal from service. The respondent-bank, strenuously contended the learned Senior Counsel, has failed to take into account that the petitioner has completed 28 years of unblemished service in the respondent-bank and has not faced even the slightest allegation of either dereliction of duties or of any misfeasance during the course of his employment. Even the appeal was dismissed in a very mechanical manner without adverting to any of the pleas raised by the petitioner.

14. The learned Senior Counsel has brought to the notice of this Court that though the petitioner took a specific plea in the affidavit filed by him in support of the writ petition that the petitioner was asked to look after the entire department singularly without providing any necessary infrastructure or the supporting staff, the said contention of the petitioner remained un-rebutted. The respondent in its counter, it is contended, has only denied the allegation of pressure of work but has not answered the specific charge as to the lack of infrastructure and support staff for proper verification of the applications or the documents filed in support thereof.

15. The learned Senior Counsel has contended that when the Officer in Mumbai, having been examined as M.W.1, stated that he never spoke to the petitioner earlier and that he could not be sure that it was the petitioner himself who called from the Zonal Office asking to hand over 17 credit cards to a person, who would approach him in Mumbai, still the disciplinary authority has held that it was the petitioner himself who telephoned the said officer and asked him to hand over the credit cards. It is further contended that the disciplinary authority has come to an erroneous conclusion that the charge No. 2 has been proved in spite of the enquiry authorities categorically holding that it is not proved based on the evidence made available during the course of enquiry. According to the learned Senior Counsel there is no material, much less cogent material, for the disciplinary authority to differ with the findings of the inquiry authority, who held that charge No. 1 alone is partly proved. It is stressed by the learned Senior Counsel that there is no mala fide intention on the part of the petitioner in processing and forwarding the applications, and that the disciplinary authority has not taken into account the depositions of their own officers who spoke very clearly that there were no guidelines issued to the petitioner to process the applications.

16. The learned senior counsel has brought to the notice of the Court another

interesting aspect. It was pointed out that out of 40 applications said to have been processed without proper verification, only 39 applications were forwarded by the petitioner. Without giving reasons how the 40th application was approved by the sanctioning authority, the authorities have simply confined the charges to 39 applications. It is thus amply established, contended the learned Senior Counsel, that there was only a uniform system of forwarding the applications by the officers by examining the applications physically to ensure that they have properly been filled in and that all the requisites annexures have been attached, but without any mechanism in place to conduct a field enquiry. Had there been a definite system in place and such procedure was violated by the petitioner, the other application would not have been sanctioned at all.

17. Sri C.V. Rajeeva Reddy, learned Standing Counsel appearing for the respondent-bank, has strenuously submitted both on the merits of the case and also the limitations that are to be kept in mind by this Court in exercising its jurisdiction under Article 226 of the Constitution of India, especially under writ of certiorari. To begin with, the learned Standing Counsel for the respondent-bank has submitted that by all counts it has come on record that the petitioner was guilty of major misconduct and the punishment meted out to him or the punishment awarded to him is absolutely just and proper. He has submitted that by the time the applications were processed, there had been in place the guidelines issued by the bank, that the petitioner processed all the applications and forwarded them mechanically to the sanctioning authority without any care or concern, despite glaring irregularities and discrepancies patently observable on the face of the applications themselves, and that as the enquiry authority has rendered findings partly holding that the first charge was partly proved and the second charge was not at all proved, the disciplinary authority, having appreciated the entire material and evidence gathered during the course of enquiry, has justly differed with the findings of the inquiry authority and accordingly has held that both the charges were proved.

18. The learned Standing Counsel has submitted that while issuing a charge memo to the petitioner, the disciplinary authority has set out the cogent grounds based on which he was constrained to differ from the findings of the enquiry authority and has further provided to the petitioner every opportunity to defend himself against the charges. It is the contention of the learned Standing Counsel that despite all his experience in one department, the petitioner has deliberately and with an ulterior motive ignored or overlooked by turning a blind eye to all the glaring discrepancies, irregularities in the applications and the documents submitted by the applicants.

19. Adverting to the second charge, the learned Standing Counsel has submitted that there is every justification for the disciplinary authority to differ with the findings of the inquiry authority that the said charge was not proved. The officer of the respondent-bank working in Central Cared Department at Mumbai, who was examined as M.W.2, has clearly deposed that he was familiar with the name

of the petitioner, that he received a telephone call through the PBX of the Zonal Office at Hyderabad, that the caller identified himself as the petitioner and requested the said officer to deliver all 17 credit cards to one person who would come to Mumbai to collect them.

20. The learned Standing Counsel has vehemently contended that the petitioner cannot make a grievance out of having no access to the reply submitted by the Zonal Manager, Hyderabad Zone, to the audit report, since no reliance was placed on it. In any event, once no reliance is placed on the material, contended the learned Standing Counsel, it is not obligatory to provide information to the delinquent relating to the said issue, as it has not formed part of the record. Conceding, without admitting, that there were no guidelines, the learned counsel has submitted that even in the absence of the said guidelines, the petitioner, being a responsible officer with enormous experience, is expected to act diligently in processing the applications. It is a matter of common sense that once any information is provided in application, one is to exercise a proper check to ascertain the genuineness of both the information and the documents filed in support thereof. The petitioner cannot escape responsibility, being an officer working at middle management level, on a mere excuse that there were no guidelines. In any event, the discrepancies in the applications are too glaring to miss the attention of the petitioner, if only the said officer was diligent enough to go through the applications with a quizzical eye. The learned Standing Counsel has made valiant efforts to repel the contentions of the petitioner that the punishment awarded to him is based on no evidence, that it is pre-determined and that even otherwise the punishment is grossly disproportionate. It is the specific contention of the learned Standing Counsel that all the applications were directly received by the petitioner without any other person scrutinising them at the lower level. Ipso facto, more onerous responsibility was cast on the petitioner to subject the applications to proper scrutiny before forwarding them to the sanctioning authority. The petitioner should not have been oblivious to the fact that the sanctioning authority would be acting on the recommendation of the petitioner, without further checks, given the position and experience of the petitioner in the respondent-bank.

21. The learned Standing Counsel for the respondent-bank has also stated that it is not invariable that once an inquiry authority has given some findings, they should automatically bind the disciplinary authority, who has always got the right to differ from the said findings, provided there is cogent material brought on record during the course of inquiry, compelling a different conclusion. It is the specific contention of the learned Standing Counsel for the respondents that despite overwhelming evidence available on record the inquiry authority has erroneously held that the first charge was only partly proved and that the second charge was not proved at all. Strenuously supporting the findings rendered by the disciplinary authority, as confirmed by the appellate authority, the learned Standing Counsel has submitted that the order under challenge is a very reasoned one, not calling for any interference.

22. Adverting to the scope of judicial review, the petitioner has submitted that in the matters of disciplinary proceedings the scope of interference is severely restricted. There cannot be any re-appreciation of evidence, neither can there be substitution of punishment, merely because this court can come to a different conclusion based on the same material.

23. Placing reliance on the decisions rendered by the Hon''ble Supreme Court in State Bank of India Vs. Ram Lal Bhaskar and Another, , State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, , State Bank of Patiala and others Vs. S.K. Sharma, , Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha, , and State of Meghalaya and Others Vs. Mecken Singh N. Marak, the learned Standing Counsel for the respondent-bank has contended that in a proceeding under Article 226 of the Constitution of India, this Court does not sit in appeal over the findings of the disciplinary authority, and so long as the findings of the disciplinary authority are supported by some evidence, this Court does not interfere with the findings.

24. In the end, the learned Standing Counsel, as a matter of alternative submission, by repeatedly stressing that it should not be taken as any admission on his part, has submitted that if there is any deficiency in the findings rendered by the disciplinary authority, and accordingly if this Court is to come to a conclusion that the punishment of removal is disproportionate, the only course left open for the Court is to remand the matter to the disciplinary authority, but not to dilute on its own the punishment awarded.

25. Heard the learned Counsel for the petitioner, and the learned Standing Counsel for the respondent Bank, apart from perusing the record.

26. To appreciate the rival contentions in their proper perspective, it is apposite to examine the charges the petitioner has faced:

Charges:

CHARGE: 1

Shri C.R. Damodara Reddy while functioning as Manager, Central Card, Zonal Office, Hyderabad has committed the following acts of omissions while recommending for issuance of Central Cards (Electronic) to 40 persons during August 2002.

As a processing officer, Shri Damodara Reddy failed to take all prudent care to verify the details declared by the applicants, listed in Annexure - A, in their application forms. Knowing fully well the various glaring irregularities and discrepancies in the information furnished by the applicants, he failed to bring these aspects to the notice of the Sanctioning Authority, but chose to recommend for issuance of Central cards (Electronic) to the 40 applicants, thereby acted detrimental to the interest of the bank. There is no recovery in these 40 cards from the beginning and the overdue position as of 18.11.2003 is Rs. 22,13,663.92 ps.

The above acts of omission on the part of Sri Damodara Reddy is a gross dereliction in discharge of his duties. As dealing officer, he failed to discharge his duties with utmost integrity, honesty devotion and diligence and acted in a manner unbecoming of an officer. He by his aforesaid acts of omissions has exposed the Bank's funds to serious financial risk.

CHARGE 2:-

Shri C.R. Damodara Reddy, as Manager, Central Card Department, Zonal Office, has misused his official position in orally requesting the Central Card Department, to deliver 17 Central Cards (Electronic) as detailed in Annexure C to Shri B V Reddy, Director, SVS Pharmaceutical limited, Sanath Nagar, in violation of delivery norms for Central Cards, which were eventually misused and exposed the Bank's funds to financial risk.

Shri C.R. Damodara Reddy, failed to discharge his duties with utmost integrity, honesty devotion and diligence and acted in a manner unbecoming of an officer.

The charges enumerated hereinabove constitute misconduct under regulation 3(1) read with Regulation 24 of Central Bank of India Officer Employees (Conduct) Regulation 1976 attracting penalty under Regulation 4 of Central Bank Officer Employees (Discipline & Appeal) Regulation, 1976.

27. At the outset, we may not lose sight of the limitations hemming in a judicial review of the administrative action, especially, while examining an order passed by a disciplinary authority in departmental inquiries. Accordingly, I propose to examine the above issues in the light of those settled principles. This Court hastens to add that under writ of certiorari examining the records does not amount to re-appreciation of the material evidence. It is too well entrenched to be caviled about that in a judicial review a decision of the authority can be examined to determine whether the authority concerned has rendered the findings well within its jurisdiction; whether the order is based on the material available on record; whether it is based on material which is not part of the record; or whether any material which ought to have been considered has been omitted from being considered, as well as other concomitant parameters. If such a course is undertaken, it does not amount to re-appreciation.

28. It is to be noted that, at the earliest point of time, when the respondent bank served on the petitioner a memo dated 29.12.2003, through his reply dated 08.01.2004, the petitioner has submitted his explanation, relevant parts of which are as follows:

Advertisements were released in news papers asking the public to apply for credit cards and from Zonal Office the PRO, P.Venugopala Rao, Manager at Regional Office, Hyderabad and I have moved all over Hyderabad and left number of application forms and other material at different places viz., IGNOU, ISB and their Associate Offices, NGRI, National Dairy Development Board, several software companies in around Hyderabad, and several government

departments to enable the employees to apply for cards. I have also accompanied the branch managers to help them in enrolment of cards holders.

...

As far as the applications of the persons listed in the enclosure to the memo, apparently there was no occasion to suspect, since they have mentioned that they are in employment and attached necessary documents and it was never the practice to investigate and find out the genuineness of the documents enclosed and to verify details with Income Tax Department and Road Transport Authorities, etc.

Since the verification of details in the applications was never a practice, while recommending for issuance of cards, question of verifying the details given in these 40 applications alone does not arise and these are put up for approval in usual course and in good faith.

29. To appreciate the scope of the disciplinary proceedings, especially the nature of the charges, statement of imputation of misconduct in support of articles of charge levelled against the petitioner would go to show that the addresses that were provided in 40 applications were found to be false. Accordingly, the petitioner has been charged with the misconduct of not personally visiting those places and ascertaining the correctness of the residential addresses provided by the applicants. The primary allegation thus is concerning the failure of the petitioner to examine and to personally verify all the details that have been provided in the credit card applications. In other words, the petitioner ought to have subjected every information provided by the applicants to personal verification and physical inspection.

30. What assumes importance is that the petitioner has not only processed these 40 or 39 applications, based on which the misused credit cards were given, but he also processed many hundreds of other similar applications. It is not the case of the respondent bank that the petitioner has not undertaken the personal and physical verification of the particulars provided by the applicants concerning all applications. The charges were confined only to 40 applications, since out of hundreds of applications, the fraud was committed by using the cards issued based on those 40 applications. Though much stress has been laid on the instructions said to have been given by the Central Office even before the petitioner could process the applications, in the first place, circular containing instructions is not part of the material documents on which the management has relied. Secondly, the findings of the disciplinary authority do not reveal that the misconduct of the petitioner is in relation to the violation of those norms. However, what cannot be lost sight of is that re-appreciating evidence is altogether different from holding that there is no evidence at all to bring home the misconduct of the delinquent. A finding based on no material is a matter of perverse finding, the judicial interference in case of which has the imprimatur of the Hon'ble Supreme Court with unfailing regularity.

31. At this juncture, the learned Standing Counsel has placed reliance on State Bank of Patiala and others Vs. S.K. Sharma, , in support of his submission that no prejudice has been caused to the petitioner on account of not providing a copy of the document which he has sought, inasmuch as the respondent bank has not relied on the said document at all. Reiterating the same principle is the judgement in Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha, . In State Bank of Patiala and others Vs. S.K. Sharma, , the Hon"ble Supreme Court has held that principles of natural justice cannot be reduced to any hard and fast formulae, and that their applicability depends upon the context and the facts and circumstances of each case, since the objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. In that process, their Lordships have also distinguished between "no notice"/"no hearing" and "no adequate hearing"; or to put it in different words, "no opportunity" and "no adequate opportunity". Eventually, after examining a catena of decisions, the Hon"ble Supreme Court held that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed cannot be held to be altogether void.

32. In fact, on the issue of not providing access to a document sought for by the petitioner, it can be seen that, as a matter of drawing adverse inference, even in the absence of non-application of the provisions of Indian Evidence Act to the departmental proceedings, as a matter of common law canon, the well entrenched equity principle of adverse inference has application to the disciplinary proceedings as well. Initially the respondent bank has relied on investigation report as one of the management exhibits. The General Manager of the Bank submitted his explanation to the allegations contained in the investigation report. Though the very charge No. 1 was framed based on the investigation report, when the petitioner asked for a copy of the reply given by the General Manager, the management chose to withdraw the investigation report from management exhibits, but the very charge which was framed based on the said investigation report remained intact. Accordingly, it does not lie in the mouth of the respondent bank to say that at their own sweet will they can rely on a particular document and when they have found it adverse to their interest, they could as well withdraw it insouciantly. It is one thing to say that a particular material document has never been pressed into service, and it is entirely different to say that, having introduced it, the management is at liberty to withdraw it only to ward off the consequences flowing there from.

33. When the management witness No. 2 was subjected to cross-examination, his reply threw ample light on the first charge. Without adding anything further, it is profitable to extract a portion of his deposition, which is as follows:

DQ 11. Please refer DE-1 and confirm whether any procedure has been laid down for the methodology of verifying documents.

Ans: No.

DQ 12: Please go through DE-1 once again and let us know whether there are instructions/guidelines with regard to verification of details given in the application form for issuance of Electronic cards i.e., with regard to

- 1) Address given by the applicants by personal receipt of the processing officer.
- 2) Salary certificates issued by the employer.
- 3) The handwriting in the application forms.
- 4) Insisting of copy of RC books of Two/Four wheelers and driving licenses.
- 5) Accounts maintained by applicants with their bankers.
- 6) Income, PAN numbers and IT returns with the IT authorities.

Ans: In DE-1, there are no such guidelines.

DQ 13: Please also go through ME-9 consisting of the copies of 40 application forms along with enclosures and let us know whether these applications fulfil the requirement for issuance of Electronic cards as per procedure in DE-1.

Ans: Yes.

34. Despite such categorical answers by the management witness, what weighed with the inquiry officer to hold that charge No. 1 was proved can be seen from the following reasoning of the inquiry officer:

The Defence on the other hand during the course of cross-examination has introduced DE1 and DE II, which are Central Office guidelines issued with regard to launch of Central card (electronic). They though attempted to bring on record that various eligibility criteria with regard to income age and identifiable and clearly spelt out residential or office/business address, as contained in the said Central Office circular DE I and DE II have been fulfilled, it has again come on record that the addresses in the applications are found to be wrong and there are no such persons available in the applications are found to be wrong and there are no such persons available in the addresses mentioned in the applications. The above is based on feedback received from people deputed for the purpose of recovery and otherwise (in reply to DQ 17).

Similarly, though an attempt was made by the defence to bring on record that DE1 does not contain any guidelines/instructions with regard to verification of the details given in the application, the same was rightly countered by the prosecution witness MW-2 during the course of re-examination that issuance of Central card is equal to extending loan facilities to the cardholder, and hence certain minimum precautions like verification of address and other precautions including pre-sanction need to be taken.

35. To illustrate the haphazard approach of the respondent bank in issuing credit cards indiscriminately, it has been brought on record that out of 40 applications (MW-9) one of them was neither processed nor sanctioned at Zonal Office, but

still the card has been issued to the applicant concerned.

36. Though the inquiry officer has held that the first charge has been proved, he is of the opinion that the petitioner can be charged with lack of devotion and diligence, but not with any mala fide intention. It is apt to extract the findings of the said authority:

In view of the above, I hold that the CSO has acted without any ulterior motive but failed to discharge duties with utmost devotion and diligence and allegation to these effects are established. However, no evidence placed before me to enable me to draw the conclusion that the CSO has failed to discharge his duties with utmost integrity and honesty and hence such allegations are untrue.

I hold that the charge No. 1 is proved to the extent that the CSO has failed to work with utmost devotion and diligence.

37. Concerning the second charge, the officer of the respondent bank at Mumbai, who is said to have received a telephonic call from the petitioner requesting him to deliver the credit cards directly to a customer, thereby violating the norms fixed in that regard, was examined as MW-1. It may be appropriate to consider the evidence of the said officer. In cross-examination, in response to charge No. 2, he has answered in the following manner:

DQ1: Mr. Mahapatra, can you tell me was there any other mechanism other than laid down mechanism you have explained.

Ans: If someone comes with proper identification there are instances of delivering the cards.

DQ2: Mr. Mahapatra, how do you prove that Damodara Reddy only called on you over phone.

Ans: I got a call through PBX that I am Damodara Reddy speaking. I presumed that same to be that of Damodara Reddy.

DQ3: Mr. Mahapatra, have you ever talked to Mr. Damodara Reddy over phone and discussed with him on any other matter.

Ans: No.

DQ4: Mr. Mahapatra, on resuming duty did you verify the POD.

Ans: No.

DQ5: Mr. Mahapatra, have you received/obtained any written confirmation to the telephonic talk purported to have been made by Mr. Damodara Reddy.

Ans: No.

38. In the light of the above statements of MW-1, the inquiry officer has held that the said officer confirmed that he did not know the petitioner and never talked to him over phone, thus not being familiar with his voice. The inquiry

officer has also observed that MW-1 presumed the caller as the petitioner, but did not care to cross check the veracity of the communication he received. Thus, based on the said deposition and in view of the non-production of any other evidence to prove the second charge, the inquiry officer has held that the said charge has not been proved against the petitioner.

39. The disciplinary authority, however, through his proceedings dated 24.06.2005, issued a final show cause notice to the petitioner, differing from the findings reached by the disciplinary authority. Concerning the first charge, though he has been in tune with the inquiry officer, the disciplinary authority has held that the conduct of the petitioner betrayed lack of integrity and honesty. The disciplinary authority once again relying on the reasoning supplied in support of charge No. 1, telescoping the same logic on to the second charge, has held that even that charge was proved. In the first place, no reasoning was forthcoming as to how MW-1 could believe that it was only the petitioner who made the telephone call. Secondly, the disciplinary authority presumed the caller to be the petitioner on the ground that since he was not diligent in processing those applications, he alone would have facilitated the delivery of the credit cards to one particular person in violation of the existing norms.

40. On the issue of exercising the power of judicial review in disciplinary matters, the learned Standing Counsel has placed reliance on *In State Bank of India Vs. Ram Lal Bhaskar and Another*, wherein their Lordships, placing reliance on *State of Andhra Pradesh Vs. Sree Rama Rao*, have held:

13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the Respondent No. 1 do not constitute any misconduct and that the Respondent No. 1 was not guilty of any misconduct.

41. To the same effect are the pronouncements in *State of U.P. and Another Vs. Man Mohan Nath Sinha and Another*, and *State of Meghalaya and Others Vs. Mecken Singh N. Marak*, the other two judgements relied on by the learned Standing Counsel for the respondent bank.

42. From the above sequence of events, and from a plain reading of the material that has been brought on record during the course of disciplinary proceedings, this Court observed that it is not a case of re-appreciation of evidence, but that of lack of evidence. Insofar as the second charge is concerned, it does not require much cogitation to hold that the charge was held proved by the

disciplinary authority by differing with the inquiry authority, proverbially on mere surmises and conjectures. As such, the said charge cannot be sustained, as it is indisputably a matter of total lack of evidence to sustain the said charge.

43. Concerning the first charge, though the facts remained the same, both the authorities, i.e., the inquiry officer and the disciplinary authority have decided to draw different inferences therefrom. There is no gainsaying the fact that the disciplinary authority is at liberty to differ from the findings of the inquiry officer. It shall, however, be supported by necessary material and cogent reasoning. I am afraid both the said aspects have been missing from the final show cause notice dated 29.09.2004 issued by the disciplinary authority, differing with the inquiry authority. Accordingly, it serves the interest of justice, if the findings of the inquiry authority are restored to file. Having thus restored the findings of the inquiry authority to file, this Court is of the opinion that the quantum of punishment to be imposed on the petitioner shall be entirely in the discretion of the disciplinary authority. Ipso facto, to impose a suitable penalty commensurate with the findings in the departmental inquiry may take into account all the attendant factors.

44. Once it is held that the findings of the inquiry officer alone can be sustained, what requires to be examined is the proportionality of the punishment. Evidently, the punishment of removal from service, being the gravest, is shockingly disproportionate to the proven charge of dereliction of duty or lack of diligence on the part of the petitioner without anything further.

45. There cannot be any quarrel with the proposition of law referred to above. As has already discussed, a finding based on some evidence is entirely different from a finding based on no evidence. Insofar as the second charge is concerned, there was no evidence at all forthcoming from the respondent-bank to establish the said charge. Even with regard to the first charge, going by the observations of the enquiry authority, it cannot be said that there was any grave dereliction of duty animated by malafides or breach of trust on the part of the petitioner. Accordingly, the second charge is held to have been not proved in its entirety and the first charge only to the extent as was observed by the enquiry authority. In other words, this Court has not ventured into substituting any findings on its own by displacing those of the enquiry authority.

46. Accordingly, the order of the disciplinary authority dated 22.07.2005 and the order dated 01.02.2006 passed by the appellate authority, though the former merges with the latter, are hereby set aside and the matter is remanded to the file of the disciplinary authority to impose the quantum of punishment based on the findings arrived at by the inquiry authority, as well as the observations made by this Court presently.

47. With the above observations, the writ petition stands disposed of. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any pending in this writ petition, shall stand closed.