

(2006) 09 DEL CK 0073
In the Delhi High Court
Case No : Writ Petition (C) 154 of 2000

K. Raj Arora

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309, 311(2)

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 49, 52, 67, 68(3)

Citation : (2006) 91 DRJ 485

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : S. Balakrishnan, I.C. Kumar, K. Misra and S.N. Jha, for the Appellant; Sanjay Kapur and Rajiv Kapur, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—Writ Petition (C) No. 154 of 2000 by Shri K. Raj Arora and Writ Petition (C) No. 1302 of 2000 by Shri C.D. Gupta involve similar questions of law and have been heard together. Both petitioners, erstwhile employees of the Respondent No. 1 Bank, were found guilty of certain charges of misconduct leading to their dismissal from service. They challenge their dismissal essentially on grounds of procedure and in the alternative pray for any lesser punishment. This Court finds no grounds to interfere with the orders of dismissal. The detailed reasons are set out below.

Facts of Shri Arora's case

2. To begin with, the facts of each of the two cases may be noticed. Shri K. Raj Arora commenced his employment with Respondent No. 1 State Bank of India as a clerk on 24.12.1960. Between October 1980 to November 1982 he was the Branch Manager at the Sarai Khawaja branch, Faridabad. It is stated that on receipt of a special inspection report dated 1.5.1986 and a preliminary investigation report dated 28.5.1986, departmental action was contemplated against him in respect of certain irregularities leading to a detailed investigation

which was concluded on 4.7.1987. Shri Arora was suspended from service on 19.8.1987. The Respondent No. 1 bank sought an Explanation from Shri Arora on 9.4.1988 and a further Explanation on 2.12.1988. Shri Arora submitted his reply on 5.3.1989. Since the irregularities committed involved a vigilance angle, a reference was made to the Central Vigilance Commission (CVC) through the central office of the bank, on 5.12.1989. Thereafter on 3.1.1990 the central office sought certain clarifications from the local head office on 31.7.1990. A further Explanation was sought from Shri Arora, to which he replied on 20.8.1990. On receipt of the advice from the CVC on 31.7.1991, Shri Arora was served with a charge sheet on 17.12.1991. As many as nine articles of charge were framed in respect of the various transactions involving certain customers of the bank during the period during Shri Arora was the Branch Manager at the Sarai Khawaja branch of the Respondent No. 1 in Faridabad.

3. The Inquiry Officer submitted a detailed report on 29.9.1993 holding three charges fully proved, two charges partly proved and four charges as not proved. The Inquiry Officer's Report was served on Shri Arora by a letter dated 16.2.1994 written to him by the Chief General Manager, who was also the Disciplinary Authority. Shri Arora was permitted to make a representation in respect of the Report of the Inquiry Officer within 15 days. Shri Arora did not reply to this letter immediately. Meanwhile, on 2.4.1994 the Disciplinary Authority sent a further letter informing Shri Arora that after considering the records pertaining to the enquiry, the Disciplinary Authority tentatively differed with the findings recorded by the Inquiry Officer as regards the charges held not to be proved and was of the view that these charges were also proved. Enclosed to this letter was a detailed tabular statement setting out the reasons for the Disciplinary Authority differing with the Inquiry Officer charge-wise. Shri Arora was informed that he could make a representation within 15 days of the receipt of the letter. Shri Arora gave his representation thereto on 11.4.1994.

4. The Disciplinary Authority, by a detailed order dated 20.12.1994 held Shri Arora guilty of all the charges and observed that the Respondent No. 1 bank was likely to suffer a loss of over Rs. 70 lakhs with interest on account of the acts of misconduct committed by the petitioner. The Disciplinary Authority imposed a punishment of dismissal in terms of Rule 49(h) State Bank of India (Supervising Staff) Service Rules corresponding to Rule 67(h) of the State Bank of India Officers Service Rules ("Rules"). Meanwhile, Shri Arora filed Writ Petition (C) No. 4997 of 1994 in this Court challenging the charge sheet and enquiry proceedings. At the hearing of the writ petition on 29.11.1996, this Court was informed that an order of dismissal had already been passed on 20.12.1994 and that Shri Arora had an alternative remedy by way of a departmental appeal. Accordingly the writ petition was dismissed, reserving the right of Shri Arora to prefer the said appeal.

5. Shri Arora filed an appeal on 6.1.1997 before the Appellate Authority which was rejected by an order dated 29.11.1997. This was followed by a review

petition which was rejected by an order dated 23.9.1999 passed by the Review Committee of the Respondent No. 1 Bank. Thereafter Shri Arora filed the present writ petition.

Facts of Shri Gupta's case:

6. As regards the facts in Shri Gupta's case, he joined the Respondent No. 1 bank as a clerk on 27.5.1965. He was posted as a Field Officer at the Sarai Khwaja branch at Faridabad between September 1982 and April 1986. Pursuant to the preliminary investigation as in Shri Arora's case, Shri Gupta was suspended from service on 19.8.1987. Following a clearance from the CVC, he was served with a charge sheet on 28.11.1991 detailing nine articles of charge. The Inquiry Officer submitted a report dated 17.9.1993 holding three charges proved, two partly proved and the others not proved. By a letter dated 13.5.1994, the Disciplinary Authority forwarded to Shri Gupta the Report of the Inquiry Officer along with a tabular statement showing the reasons for his differing with the Report of the Inquiry Officer and holding Shri Gupta guilty of all the charges. It was stated in the said letter dated 13.5.1994, that the Disciplinary Authority/Appointing Authority would take a suitable action after examining the Shri Gupta's representation which was permitted to be made within 15 days from the receipt of the said letter.

7. Shri Gupta made a representation on 6.7.1994. By letter dated 20.12.1994, the Appointing Authority informed him that the penalty of dismissal had been imposed. The detailed order of the Appointing Authority was enclosed to the letter. Initially, Shri Gupta filed Writ Petition (C) No. 4995 of 1994 in this Court seeking the quashing of the charge sheet, enquiry proceedings and the Report of the Inquiry Officer. At the hearing on 27.11.1996, this Court was informed that on 20.12.1994 an order of dismissal had been passed. Accordingly, writ petition was dismissed with liberty to Shri Gupta to file a departmental appeal. Shri Gupta's appeal was rejected by the Appellate Authority on 16.9.1997. His review petition was rejected by the Review Committee on 23.9.1999. Thereafter the present writ petition was filed. Submissions of counsel:

8. Shri S. Balakrishnan, learned Senior Advocate appearing for both the petitioners made the following submissions:

(a) The charges in both the cases pertain to events that had taken place more than four to seven years prior to the date of the charge sheet. This, coupled with the fact that each of the petitioners remained under suspension for over four years prior to the commencement of the disciplinary proceedings, vitiated the entire proceedings. The inordinate delay was itself a denial of a reasonable opportunity and vocative of natural justice. In this connection reliance was placed on a decision of the Gujarat High Court in Mohanbhai Dungarbhai Parmar v. Y.B. Zala 1979 (3) SLR 130.

(b) Under Rule 68(3)(ii) of the Rules, it was incumbent on the Disciplinary Authority, if it was disagreeing with the findings of the Inquiry Officer, to record

its reasons for such disagreement and also record its findings on the charges, if the evidence on record was sufficient for the purpose. It was submitted that there was a requirement of personal hearing of the charged official at this stage and that such a requirement was implied in Rule 68(3)(ii). In support of this submission, reliance was placed upon the decisions of the Hon''ble Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and Yoginath D. Bagde Vs. State of Maharashtra and Another,

(c) The impugned order imposing the penalty of dismissal in Shri Gupta's case was made by the Appointing Authority although the representation against the Report of the Inquiry Officer had been made to the Disciplinary Authority. Moreover, the noting by the Appointing Authority in the impugned order of dismissal, below the order of the Disciplinary Authority, indicated that there was total non-application of mind by the Appointing Authority to the facts and circumstances of the Shri Gupta's case. This vitiated the order of dismissal.

(d) The findings of the Inquiry Officer on some of the charges were based either on no evidence or were perverse and accordingly vitiated the Inquiry Officer's report and subsequent proceedings.

(e) Without prejudice to above, it was submitted that in each of the cases the punishment of dismissal from service was disproportionate and unreasonable. Considering the fact no monetary loss had been caused to the Respondent No. 1 Bank on account of these transactions, and the fact that Shri Arora had rendered 34 years of service whereas Shri Gupta had 29 years of service, both without any blemish till the present disciplinary proceedings were commenced, any lesser penalty would have been appropriate in the facts and circumstances of the cases. Reliance was placed on the decisions of the Hon''ble Supreme Court in Union of India and another Vs. G. Ganayutham (Dead) by LRs., and Om Kumar and Others Vs. Union of India,

9. In reply, Shri Sanjay Kapur, learned Counsel for Respondent No. 1 bank submitted as under:

(a) The scope of interference by the High Court in its discretionary jurisdiction under Article 226 of the Constitution in matters involving in disciplinary proceedings is well settled in a number of decisions of the Hon''ble Supreme Court. The Court will not sit in appeal over the findings of the Inquiry Officer or Disciplinary Authority on facts. In support of this he relied upon the recent judgment of Hon''ble Supreme Court in State Bank of India v. Ramesh Dinkar Punde 2006 (8) SCA 11.

(b) The delay in initiating the disciplinary proceedings would not, in the facts and circumstances of the present case, vitiate the proceedings since there was a reasonable Explanation for the said delay. Moreover, the matter was investigated as a vigilance case since it involved serious charges and the delay in such cases has not been held to be unreasonable. Reliance was placed on the judgments of the Hon''ble Supreme Court in State of Punjab and Others Vs. Chaman Lal

Goyal, , B.C. Chaturvedi Vs. Union of India and others, , Food Corporation of India and Another Vs. V.P. Bhatia, and, P.D. Agrawal v. State Bank of India 2006 (5) SCA 54.

(c) Rule 68(3)(ii) only envisaged giving the charged official an opportunity to make a representation to the Disciplinary Authority. There was no need to afford a personal hearing in addition at this stage.

(d) All the objections of the charged officials had been considered carefully at every stage and rejected by the concurrent elaborate orders of both the Appellate Authority as well as the Review Committee. In the circumstances, no interference was called for with the Inquiry Report or the order of dismissal.

(e) Lastly, it was submitted that the scope of interference by this Court with the quantum of punishment was narrow. The High Court would not interfere with the punishment unless it shocked the judicial conscience and neither case fell in this category. Reliance was placed on the judgments in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, and V. Ramana Vs. A.P.S.R.T.C. and Others, . The fact that there was no actual loss to the bank in terms of money will not detract from the seriousness of the charge. Reliance was placed on the decision in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik,

Delay in initiating the disciplinary proceedings

10. As regards the issue of staleness vitiating the enquiry, the facts reveal that the Respondent bank was obliged to take a clearance of the Central Vigilance Commission (CVC) in terms of Rule 52 of the State Bank of India (Supervisory Staff) Service Rules. The Explanation offered by the Respondent No. 1 Bank is that in case of this nature, which is preceded by a very detailed investigation involving the seeking of Explanations from the delinquent officials pertaining to certain old transactions, some amount of delay is inevitable. This Explanation for the delay, to my mind, cannot be construed as being wholly unreasonable. At first blush, it does appear that placing an employee under suspension for over four years without commencing any disciplinary proceedings seems unreasonable. In fact, in Mohanbhai Dungar Bhai Parmar (supra), the Gujarat High Court held that a delay of even one and a half years in initiating the disciplinary proceedings was fatal to the disciplinary proceedings. However, the law has evolved differently since then. In State of Punjab v. Chaman Lal Goyal (supra), while holding that even a delay of five years was, on the facts of the case not unreasonable, it was observed that "how long a delay is too long always depends on the facts of the given case." The requirement that the charged official should show that prejudice was caused to him on account of the delay was explained in Additional Superintendent of Additional Superintendent of Police Vs. T. Natarajan, where it was held:

In regard to the allegation that the initiation of the disciplinary proceedings was belated, we may state that it is settled law that mere delay in initiating

proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer.

This has been recently reiterated in *P.D. Agrawal v. State Bank of India* (supra), where it has been held that "delay itself may be a ground for arriving at a finding that enquiry proceeding was vitiated in the event it is shown that by reason thereof the delinquent official has been prejudiced" (SCALE, p. 62, para 17). The appeals filed by the petitioners before the Appellate Authority or their petitions before the Review Committee do not specifically plead the exact prejudice caused to each of them on account of the delay in the commencement of disciplinary proceedings. In any event, considering the steps required to be taken by Respondent No. 1 prior to the commencement of disciplinary proceedings, which involved primary investigations followed by a vigilance clearance, it cannot be said that the delay in the commencement of the disciplinary proceedings vitiated the enquiry.

Requirement of a personal hearing before the Disciplinary Authority

11. The contention of the petitioners that the Disciplinary Authority was required to give them a personal hearing has to be examined in the light of Rule 68(3), Sub-clauses (i) and (ii) of which read as under:

68.(3)(i) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority-whether the Inquiring Authority is the same or different-for fresh or further inquiry and report, and the Inquiring Authority shall thereupon proceed to hold further inquiry according to the provisions of Sub-rule (2) as far as may be.

(ii) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

The submissions on behalf of the petitioners is that since in the instant case the disciplinary authority was differing with the Inquiry Officer and returning a finding of guilt on all the charges which he felt were fully proved on the basis of the existing evidence on record, grave prejudice would be caused to the charged official if the Disciplinary Authority merely proceeded on a written representation without affording him a personal hearing. It was further submitted that a similar rule governing employees of the Punjab National Bank came to be interpreted by, the Hon"ble Supreme Court in *Kunj Behari Misra* (supra) as requiring such an opportunity of hearing to be given.

12. In *Kunj Behari Misra* the relevant rule read as under:

7. Action on the inquiry report:

(1)The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority

for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 6 as far as may be.

(2)The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

In the said case the Disciplinary Authority disagreed with the Inquiry Officer and straightway proceeded to impose the penalty of dismissal on the charged official. The question then arose whether in terms of the above Regulation, it was incumbent on the Disciplinary Authority to give an opportunity of being heard to the charged official before imposing the penalty. The Hon"ble Supreme Court answered the question in the following manner (AIR p.2720, para 17): "The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favor of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority.

If one went only by the above observations, what the petitioners contend may be right. However, the Hon"ble Supreme Court did not stop there and proceeded to make further observations in the succeeding paras as under (AIR page 2721, paras 18 and 19):

18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary

Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case 1994 AIR SCW 1050 (supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer.

13. The wording of the present Regulation 68(3)(ii) and the Rule 7(2) in Kunj Behari Misra is in pari materia. The Hon'ble Supreme Court ultimately held that the said Rule only required the Disciplinary Authority to give an "opportunity" to the charged officer to file a representation before the Disciplinary Authority before the latter could impose the penalty. The said observations do not mandate that in addition to an opportunity of making a representation, the charged official must also be given a personal hearing by the Disciplinary Authority.

14. The decision in Yoginath D. Bagde v. State of Maharashtra (supra) follows the judgment in Kunj Behari Misra. Here again the delinquent official had not been given a prior opportunity to represent to the Disciplinary Authority which had differed with the findings of the Inquiry Officer. The Hon'ble Supreme Court held as under (AIR page 3745, para 33):

33. A delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges leveled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favor of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in a rank except after an enquiry in which he has been informed of

the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment of Service Rule including Rules made under Article 309 of the Constitution.

15. In the first place it requires to be noticed that the relevant Rule in Yoginath D. Bagde reads as under:

(4) (i) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the major penalties should be imposed on the Government servant, it shall"

(a) furnish to the Government servant, a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge expressly stating whether or not it agrees with the findings of the inquiry authority, together with brief reasons for its disagreement, if any, with the findings of the inquiring authority; and

(b) give to the Government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under Rule 8 of these Rules.

The above Rule was not at all complied with in the sense that the Disciplinary Authority proceeded to impose the penalty without earlier informing the charged official of the points of and reasons for the difference with the Inquiry Officer. There was no occasion for the Hon''ble Supreme Court there to consider whether giving the charged official an opportunity to make a representation would have been sufficient compliance with the said Rule. Therefore, the decision in Yoginath D. Bagde, which is incidentally is by two Hon''ble Judges, cannot come to the aid of the petitioner here since the facts in the present case are more or less covered by the decision of three Hon''ble Judges of the Hon''ble Supreme Court in Kunj Behari Misra. Likewise, the decision in State Bank of India and Others Vs. K.P. Narayanan Kutty, also was a case where no opportunity at all was given to the charged official to make a representation to the Disciplinary Authority prior to the imposition of the penalty. The facts of the instant cases, however, reveal that

Rule 68(3)(ii) was complied with. Each of the charged officials was given an opportunity of making a representation against the report of the Inquiry Officer as well as the tentative points of disagreement of the Disciplinary Authority, both of which were communicated to them. They availed of this opportunity by making detailed written representations which were considered and rejected by very detailed orders. No personal hearing of the charged officials in addition was required to be given under Rule 68(3)(ii). In this view of the matter applying the law laid down in Kunj Behari Misra it is held that an adequate opportunity was indeed given to the charged officials in terms of Rule 68(3)(ii). The point is answered accordingly.

Hearing by one authority decision by the other

17. The next issue to be considered is whether, as far as Shri Gupta is concerned, the order of dismissal stands vitiated on account of the fact that it was passed by the Appointing Authority whereas the representation against the enquiry report and the points of disagreement was made to the Disciplinary Authority. The petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, to contend that it is an anathema to a fair procedure when the hearing is by one authority and the decision by another. The following passage in the said decision is pressed into the service (AIR page 327, para 31):

31. The second objection is that while the Act and the Rules framed there under impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We Therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.

18. While there can be no doubt about above settled position of law, the facts of the instant case show that an Appointing Authority had also applied its mind to the findings of the Inquiry Officer as well as the Disciplinary Authority before coming to its conclusion. The Disciplinary Authority has made detailed order of 17 paragraphs dealing with every objection raised by the charged official and ultimately took the view that the punishment of dismissal must be awarded. Thereafter the Appointing Authority appended his note. The concluding paragraph of the note of the Disciplinary Authority and the subsequent note of the Appointing Authority reads as under:

Keeping in view the above facts, I after applying my mind independently, hold Shri C.D. Gupta Officer MMGS II guilty of the lapses enumerated herein above and I am of the view that ends of justice would be met if Shri C.D. Gupta is inflicted upon the punishment of "DISMISSAL" in terms of Rule 49(h) of State Bank of India (Supervising Staff) Service Rules corresponding to Rule 67(h) of State Bank of India Officers Service Rules treating suspension period as such and order accordingly.

GENERAL MANAGER (OPERATIONS)

(DISCIPLINARY AUTHORITY)

I have considered the records pertaining to the enquiry, submissions made by Shri Gupta and other relevant papers in their entirety. I agree with the findings recorded by the Disciplinary Authority and decide to impose upon Shri C.D. Gupta, Officer MMGS II, the penalty "Dismissal" in terms of Rule 49(h) of State Bank of India (Supervising Staff) Service Rules corresponding to Rule 67(h) of the State Bank of India Officers Service Rules. The period of suspension of Shri Gupta be treated as such and I order accordingly.

CHIEF GENERAL MANAGER

APPOINTING AUTHORITY

19. The learned Senior counsel for the petitioner contends that even a cursory examination of the above note reveals total non-application of mind by the Appointing Authority, who has merely signed below a typed note in a casual manner without actually examining the records of the case. Moreover, it is submitted, the Disciplinary Authority has already taken the final decision and the Appointing Authority has merely okayed it. It is submitted that this vitiates the order of dismissal.

20. It is not possible to agree with these submissions on behalf of the petitioner Shri Gupta. The examination of the record reveals that the Disciplinary Authority prepared a detailed note and place it before the Appointing Authority. After examining the note and all other papers, the Appointing Authority agreed with the findings of the Disciplinary Authority. The decision to impose the penalty of dismissal from service is indeed that of the Appointing Authority which accepted the recommendations of the Disciplinary Authority. It cannot be said that the Appointing Authority did not apply his mind to the materials on record. Since the written representation of the charged official was on record and, as already held, there was no requirement of giving a personal hearing in addition in terms of Rule 68(3)(ii), there was no question of one authority hearing the matter and another deciding. The written representation made by the charged official was also examined by the Appointing Authority. In the circumstances, it is held that there is no infirmity attaching to the dismissal order on this score. The submission of Shri Gupta is accordingly rejected.

Review of the findings of the Inquiry Officer

21. The findings in the Report of the Inquiry Officer on certain articles of charge, and that of the Disciplinary Authority on certain other articles of charge, can only be interfered with if it is based on no evidence at all or is patently perverse. The scope of interference by the High Court in exercise of its discretionary jurisdiction under Article 226 is extremely narrow. In *State Bank of India v. Ramesh Dinkar Punde* (supra) the following passage in *Union of India (UOI) Vs. Sardar Bahadur*, was quoted with approval [SCALE p.17, para 15]:

A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts.

The Hon''ble Supreme Court found fault with the High Court for re-appreciating the evidence and reversing the findings of the Inquiry Officer, Disciplinary Authority and Appellate Authority. The Court observed (SCALE p.15, para 6):

6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an appellate authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. (See *Govt. of A.P. and Others Vs. Mohd. Narsullah Khan*,

22. It must be recalled that in the instant case the decision of the Disciplinary Authority has been affirmed by a detailed reasoned order of the Appellate Authority who happened to be the Deputy Managing Director. Thereafter the Review Committee comprising of two senior officers both holding the rank of Deputy Managing Director made a detailed order and have dealt with every objection raised by the two charged officials. It is clearly not permissible to this Court to exercise its discretionary jurisdiction under Article 226 and sit in appeal over these concurrent findings. Nevertheless the reports of the Inquiry Officer, the orders of the Disciplinary Authority/Appointing Authority and those of the Appellate Authority and Review committee were examined in some detail by this Court. There is nothing in the any of these orders which can be characterised as being perverse or based on no evidence at all. No ground is made out to interfere with concurrent findings of the Appellate Authority and the Review

Committee which have rejected the very objections of the petitioners raised before this Court.

Proportionality of the punishment

23. On the question of proportionality of the punishment imposed, the scope of interference by this Court is again extremely limited. In *B.C. Chaturvedi Vs. Union of India and others*, , the scope of interference by the Court was explained thus:

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

24. In *Union of India v. G. Ganayutham* (supra) the doctrine of proportionality was explained in detail and it was held as under:

27. We are of the view that even in our country-- in cases not involving fundamental freedoms-- the role of our courts/tribunals in administrative law is purely secondary and while applying *Wednesbury* and *CCSU* principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the courts and tribunals in our country can only go into the matter, as a secondary reviewing court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of *Wednesbury* and *CCSU* tests. The choice of the options available is for the authority; the court/tribunal cannot substitute its view as to what is reasonable.

25. In *Om Kumar v. Union of India* (supra), the scope of interference was further explained as under:

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh

decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment.

More recently in *Ramesh Dinkar Punde* the prayer made on behalf of the charged official of a bank that some leniency may be shown having regard to long years of service rendered by the charged official was rejected. The Hon"ble Supreme Court said:

21. Confronted with the facts and the position of law, learned Counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance with such submission. As already said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.

The decisions in *Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others*, and *Ganesh Santa Ram Sirur Vs. State Bank of India and Another*, , where the Hon"ble Supreme Court appears to have interfered with the punishment imposed, turned on the peculiar facts of each of those cases. The point that no monetary loss was caused to the Bank is also not helpful in assessing the proportionality of the punishment. The Hon"ble Supreme Court in *Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik*, has explained this in the following words (SCC p.73, para 7):

True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a bank" for that matter, in the case of any other organisation "every officer/employee is supposed to act within the limits of his authority. Acting beyond one"s authority is by itself a breach of discipline and a breach of Regulation 3. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdraw allowed by the respondent beyond his authority have become sticky and irrecoverable.

26. Keeping in view the above principles, the punishment of dismissal from service imposed in the present cases cannot be said to be one that" shocks the judicial conscience. In each of the cases the charged official has been found guilty of all the 9 articles of charge, concurrently by the Disciplinary Authority, the Appellate Authority and the Review Committee. In that view of the matter, the punishment of dismissal from service cannot be characterised as being disproportionate.

27. For all of the above reasons both the writ petitions are dismissed, with no order as to costs.