

(2001) 03 MAD CK 0035
In the Madras High Court
Case No : W.A. No. 25 of 1993

Kasi M.

APPELLANT

Vs

Management of Indian Bank and Another

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Bank Officer Employees (Discipline and Appeal) Regulations, 1979 — Regulation 15(1),
4
Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 89
Income Tax Rules, 1962 — Rule 71A

Citation : (2001) 2 LLJ 617

Hon'ble Judges : P. Shanmugam, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Anna Mathew, for Row and Reddy, for the Appellant; Reeta Chandrasekhar, for Aiyar and Dolia, for the Respondent

Final Decision : Allowed

Judgement

P. Shanmugam, J.—Petitioner in the writ petition is the appellant herein. He had prayed for the issue of a writ of certiorari by calling for the

records of the General Manager, Indian Bank and quash the order dated July 23, 1984, confirming the order of the disciplinary authority, dated

December 30, 1983, removing the petitioner from the services of the bank as Branch Manager at that time at Pondicherry.

2. The facts of the case are given below:

The appellant joined the services of the bank as clerk-cum-godown keeper in the year 1960. After 12 years of service and after successful

completion of examination and interview for promotion as an officer, he was promoted as an officer of the bank on April 15, 1972 to the post of

Accountant. He was further promoted to the post of Manager in the month of September as Branch Manager, Pondicherry Branch. After four years of his service in that post, he was placed under suspension on March 24, 1980 on the basis of an enquiry in relation to contravention of norms laid down by the bank and finally, an article of charges, dated February 24, 1982 was issued to the appellant and he submitted his explanation on March 13, 1982. An additional charge, dated May 25, 1982, was issued to the appellant. The appellant submitted his explanation for all the charges, but departmental proceedings were continued by appointing an enquiry officer. Before the enquiry officer, oral evidence was let in and the petitioner was interrogated and documents were filed on behalf of the bank, written arguments were submitted on March 31, 1982 and the petitioner submitted his defence on April 13, 1983. The disciplinary authority, on the basis of the report of the enquiry officer, the copy of which was not furnished to the petitioner, awarded the penalty of removal from service in terms of Regulation 4(g) of the Indian Bank Officer Employees (Discipline and Appeals) Regulations, 1979. The appeal preferred by the petitioner before the General Manager was dismissed by an order, dated July 28, 1984, confirming the order of removal. The learned Judge declined to interfere with the punishment of removal from service in view of the findings of fact on the charges made against the petitioner and dismissed the writ petition. Hence, the present appeal.

3. Learned counsel Ms. Anna Mathew arguing on behalf of the appellant submitted that this Court has got jurisdiction to interfere even with the findings if there was no evidence or if the evidence available was perverse and that no reasonable person could have come to the conclusion on the basis of the materials.

According to her, the irregularity, if any established, is only a technical lapse and it cannot be stated that the petitioner had failed to discharge his duties with utmost integrity, honesty, devotion and diligence so as to bring it within the meaning of misconduct under Regulation 3(1) of the Regulations, 1976. She had taken us through the charges and the findings and submitted that the charges were not established and there was no loss to the bank. According to her, the disciplinary authority and the appellate authority failed to apply to the pleadings of appellant and has simply

accepted the defending of the enquiry officer which were not furnished to the petitioner. The authorities below have failed to consider the proportionality of the nature of allegations and its proof of guilt and his clean, meritorious record of service before imposing the major penalty of removal from service. The same error has crept in the order in the writ petition as well.

4. Learned counsel Smt. Reeta Chandrasekhar appearing on behalf of the respondents fairly submitted that there is no monetary loss to the bank;

but it is the conduct of the petitioner in exceeding his power which has brought about the punishment. She further submitted that the case is of

acting beyond the discretionary power granted to the Manager and contrary to the specific code of conduct in reference to acceptance of gifts.

She submitted that the charges have been proved and both the disciplinary authority as well as the appellate authority have considered the case of

the appellant and therefore, the appellant cannot call upon the writ Court to go into the sufficiency of the material and the nature of punishment that

could be imposed. She submitted that the order of punishment is commensurate with the established charges and does not call for any interference

at this stage.

5. We have heard the counsel for both sides elaborately and both of them have referred to a number of decisions in support of their respective stand.

6. The main contention of the appellant right from the beginning is that his defence and plea in each one of the charges were not taken note of,

resulting in miscarriage of Justice and hence it is a case of no evidence. Therefore, it has become necessary for us to go through each of the

charges and the conclusions.

7. For the purpose of convenience, the charges, the defence and the findings can be formulated as follows:

(1) Charge : On May 25, 1976, the appellant borrowed a sum of Rs. 5,000 from Sri K. Panju. After this, he had granted temporary overdrafts

totalling Rs. 21,586 of 1998 to the firm Coastal Line Company, in which K. Panju was a partner.

Defence : The amount was borrowed as hand loan on a valid pronote to fulfil the family obligation of meeting the expenses towards marriage of his

daughter and to meet unforeseen expenses during the marriage. The overdraft was granted on the basis of the firm's trustworthiness from the year

1975 and the same was duly informed to the head office. Besides, it was a temporary accommodation and the overdrafts were also adjusted then

and there in their account. The limit of the discretionary power of the branch Manager up to Rs. 10,000 came into existence as per the circular,

dated February 25, 1978, whereas the overdraft facility was given prior to this circular.

Finding : The overdrafts exceeded beyond the discretionary powers. The defence that the circular was subsequent was not considered.

(2) Charge : O.K. Exporters was granted open cash credit advance of Rs. 3,14,163 of 1987 between June 8, 1978 and February, 9 1980 ; one

of the partners of the firm was Sri K. Panju from whom the appellant had borrowed Rs. 5,000 on promote.

Defence : The firm came under Export Priority Sector and therefore, the limit of Rs. 25,000 will not apply to this case. Further, a written brief on

behalf of the management says that the limit does not preclude advances separately to each of the associate firms if they are worthy of advance

according to its own business, custom and status. The firm is an independent concern having their own business, independent of partners.

Finding : This is against the authorised limit of Rs. 25,000. The defence that O.K. Exporters is a priority sector was not considered.

(3) Charge : Grant of advance to O.K. Exporters to the tune of Rs. 2,88,256 of 1986 and the bank had to file a suit for recovery due under the

O.C.C. facility.

Defence : There is no proof regarding the risk value of the firm or the account books were not properly allowed.

No finding.

(4) Charge : Purchase of bills totalling Rs. 3,80,581 exceeding his power of Rs. 1,00,000.

Defence : The foreign exchange business routed all the transactions through the Central Office (Foreign Exchange Department).

Finding of no irregularity.

(5) Charge : Bookland Proprietrix concern was given overdraft amounting to Rs. 95,775 without prior permission. The liability was not subsisting

and has been completely adjusted.

Defence : The party had made a deposit of Rs. 60,000 and further deposits assured and therefore T.O.D. was allowed in the account. The same has been reported in return to the Audit Department.

Finding : Exceeded the limit of Rs. 10,000, but the defence that the accounts stand completely adjusted was not considered.

(6) Charge : Granting of OCC loan to India Agencies to the tune of Rs. 1,70,405 of 1933 without permission of the head office and exceeding the discretionary powers.

Defence: The amount stands completely adjusted and the facilities was allowed after assessing the business requirement and their standing. Both the firms had independent business and it was reported.

Finding: Exceeded the limit.

(7) Charge : Grant of a temporary overdraft in the current account of Smt. Victoria Krishnaraj who had a total sum of Rs. 1,70,000 without any

power to sanction TOD for the purpose of constructing a community hall,

Defence : The client was maintaining deposits from 1973 and her credit worthiness was sound and the advance was secured by sufficient property.

Admits the exceeding of the power in granting the amount; but, no loss to the bank.

Finding : Exceeded the discretion to grant such advance.

(8) Charge : Janatha Furniture Emporium was sanctioned overdraft to the extent of Rs. 3,390. The partner of the firm Sri Syed Basha was working

on daily-wages and had vacated the shop without paying the rent and his whereabouts were not known. The appellant granted loan without

diligency.

Defence : The advance loan was granted only after consideration of the business needs and after satisfying that he was actually carrying on business.

Finding : The granting of the temporary over-draft to a party who became untraceable.

(9) Charge : Lack of diligence in allowing short credit as interest in ten accounts.

Defence : Lack of adequate staff and the error has been rectified and no loss to the bank has been caused on this account. Leakage towards

interest on some accounts not being charged.

Finding There was leakage on interest on some accounts.

(10) Charge : Appellant granted advances amounting to Rs. 69, 119 on February 18, 1980 in favour of O.K. Exporters, violating the norms.

Defence : By February 18, 1980, the appellant was relieved and there is no evidence.

Finding : Not proved.

(11) Charge : Appellant had allowed himself to be entertained by Sri Panju at Madras.

Defence : Admitted to have stayed with him on two occasions and states that his share of the bill had been paid by him.

Finding: Stayed at Madras with Sri Panju on two occasions, who was a customer of the bank.

(12) Charge : Appellant received Rs. 5,000 from Sri Panju on May 25, 1976 to meet his daughter's marriage on pronote and another Rs. 5,000

from K. Panju in violation of the regulations.

Defence : Denied and stated that the first loan taken has been discharged.

Finding : Not proved.

(13) Charge : Appellant obtained loan from Venkatachalam, Thangavelu and Seenu, constituents of the bank.

Defence : Loans taken from three of his friends were discharged.

Finding : Proved excepting the loan of Rs. 5,000 from K Panju to pay his cousin Sri Somasundaram.

(14) Charge : A medium term loan of Rs. 6,750 on February 20, 1973 was granted; repayment has been irregular. A TOD was granted to them

on October 24, 1976.

Defence : Denied grant of any fresh loan it was granted prior to his joining the branch and hence, he cannot be held responsible.

Finding : No increase in T.O.D. Industry's account was unsatisfactory.

Thus, by going through the enquiry report, it is seen, that the appellant has exceeded his discretionary limit in granting overdraft facility and loan.

Charge Nos. 1, 2, 5 to 8 and 13 were found against the appellant. There is a different category of charge on the appellant that he had borrowed a

sum of Rs. 5,000 from a person having dealings with the bank and that he had

been entertained by the said person.

8. The sum and substance of the defence of the appellant in reference to exceeding his discretion is that if the borrower is worthy of the advance

according to their business and status, he could exercise his discretion and further, in reference to export concerns, there is no limit for the grant of

facilities on the basis that they are priority sectors. On the second set of charges, it is submitted that Sri K. Panju is a close friend of the appellant

and that he had helped him when he was in difficulties during the time of the marriage of his daughter and that he had borrowed money from him on

the basis of a promissory note and that he had not, in any way by that conduct, done anything contrary and reciprocally. In his appeal petition, the

appellant has stated that he was working as Manager for four years from 1975 to 1979 and during this period, advances increased from Rs. 91.15

lakhs in the year 1975 to 464 lakhs in the year 1979. There was no simultaneous increase in the strength of supervisory staff. For the purpose of

his excellent work, he was recommended for a higher post on the basis of his sincere service for the cause of the bank. Pondicherry, branch was

awarded the Merit Certificate during his period for his splendid performance in the various branches of banking and Pondicherry, branch was also

named as the Model Bank for base year 1979. Therefore, while granting advances to the tune of Rs. 464 lakhs, he should have acted in reference

to hundreds and thousands of loan transactions and granting of facilities. It is not disputed that he had increased the advances by fourfold from

1975 to 1979. From the instances charged, the main allegation is that in these five or six cases, he had exceeded his discretion in the granting of

facilities, and in some cases, the limit of Rs. 10,000 and other limits were exceeded. It is the specific case of the appellant that not a single rupee

has been lost in the advances made by him and on behalf of the bank and even in reference to the charge, only in one case they have referred to

the instance of filing of a case for recovery of the amount. Even in this case, it was submitted by the appellant that the amount had been realised.

Therefore, the admitted case of the respondent-bank is that it is the conduct of the appellant in acting contrary to the instructions and granting loan

beyond his discretionary power.

9. The appellant had submitted his detailed explanation for each and every

charge made against him before the enquiry officer. Whereas the disciplinary authority in his dated December, 30 1983, while imposing the punishment, states, after referring to the charges as follows:

Thus, it has been found that you had, while functioning as Manager of our Pondicherry branch granted T.O. Ds. far beyond your discretionary

powers indiscriminately without taking into consideration the merits of the parties and similarly, you had exceeded O.C.C. limits. You had also

accepted hospitality from one of the constituents and placed yourself under pecuniary obligation with persons having dealings with the bank. In

view of the above charges having established, I impose you the following punishment"".

The order proceeds to state that he has gone through the entire proceedings of the enquiry and accepted the findings of the enquiring authority. As

a matter of fact as regards charge No. 1 in reference to the grant of temporary overdraft for Rs. 21,586 of 1998, he has stated that the limit to the

Manager came into existence only by the circular dated February 25, 1978, and the facility was granted before that. In reference to O.K.

Exporters, he has submitted that there is no bar to grant the facility to an export business concern and in reference to the balance outstanding, there

is no finding that the bank had to file the suit. There is no leakage of income due to the lack of charging interest and failure to check the accounts

properly. The loan to Murugan Trailers was granted by his predecessor and not by the appellant himself and there is no finding that any pecuniary

advantages were given to Venkatachalam, Thangavelu and M. Seenu. Even in reference to the charge for discounting of foreign bills the findings

were in favour of the appellant. The order itself extracts that there is ""irregularity in this."" Yet, however, the disciplinary authority proceeds on the

basis that there is a finding against him. Apart from the fact that the disciplinary authority did not furnish a copy of the enquiry report and the

findings were not considered along with the defence of the appellant and even in cases where there was no finding and the charges were not

proved, the disciplinary authority has proceeded as though all the charges set out in that order have been established. Thus, there is a total lack of

application of mind by the disciplinary authority in imposing a major punishment.

10. Similarly, we find that the appellant has submitted a detailed appeal in

reference to each and every charge framed against him. The appellate authority, though has extracted the grounds of appeal of the appellant, has found that the contentions are unacceptable and proceeds as though in his reply, dated March 13, 1982, the appellant has admitted indirectly that he has exceeded his powers and when the powers of the Manager were reduced, he had not taken steps to recover the excesses and bring the balance under permissible limit. Thereafter, he proceeds to refer to three instances and imposed the penalty to dismiss the appeal. It is seen that in the explanation, dated March 13, 1982, he has stated as follows:

The conduct regulations for bank officers were passed unilaterally. But, however, coming to know of the borrowing by an officer is prohibited, he immediately repaid the loan.

As seen earlier, he has stated that there have been procedural lapses and over-enthusiasm exhibited by him in order to build deposit of funds of the Pondicherry branch. The development of the branch and the growth has already been submitted and therefore, he prayed for a lenient view in reference to his procedural lapses. The charge against him is that he has failed to protect the interests of the bank and failed to discharge his duties with utmost integrity, honesty, devotion and diligence. Nowhere he has admitted that he has committed misconduct on those lines. The plea of technical lapse cannot be construed as admission of guilt in reference to the conduct of the officer. This assumes importance because even according to the counsel for the bank, they are concerned with his exceeding the limit of discretion, though no loss on that account, but only by the conduct of the officer.

11. Ultimately, of the eleven grounds, the appellate authority takes note of only three instances. Firstly, grant of excess O.C.C. to O.K. Exporters, which is an export company, where specific defence was raised that there is no limit, and no consideration was shown in the appellate authority's order. Secondly, in respect of T.O.D. to Bookland and India Agencies, who are also export business concerns the only finding is that the balance exceeded Rs. 10,000, which was the discretionary power of the appellate authority as per the circular. There is no finding that he has exceeded the limit in granting the facility. Thirdly, the appellate authority has found that though the appellant has enclosed a receipt from Sri Panju towards the bill

for his stay at Hotel Woodlands, for his stay at Madras, he rejects the same that no amount has specifically been mentioned and that the receipt is

after the date of punishment. Thus, in our view, the appellate authority also has not considered the plea raised by the appellant in reference to the

three charges and even in those charges, the defence pleaded by him was not considered. Though this Court is not sitting in appeal over

disciplinary authorities, the Supreme Court, in *Kuldeep Singh Vs. The Commissioner of Police and Others*, : has held that the Court cannot sit in an

appeal over the findings and assume the role of an appellate authority. However, their Lordships observed as follows:

But, this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this

Court under the Constitution takes in its stride the domestic enquiry well and it can interfere with the conclusions reached therein if there was no

evidence to support the findings or if the findings recorded were such as could not have been reached by an ordinary prudent man or the findings

were perverse made at the dictates of the superior authority.

In *Bank of India and Another Vs. Degala Suryanarayana*, : the Supreme Court held that in departmental enquiry, the only requirement of law is that

the allegation against the delinquent officer must be established by such evidence, acting upon which a reasonable person acting reasonably and

with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot

sustain the findings of guilt even in departmental findings. It was further held that the Court exercising the jurisdiction of judicial review would not

interfere with the findings of fact arrived at in a departmental enquiry except in a case of mala fides or perversity, i.e., where there is no evidence to

support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot

embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the

conclusion arrived at by the departmental authority, the same has to be sustained.

12. We are alive to the limitation that we cannot reappraise the evidence or go into the sufficiency of the evidence and have taken independent

finding on the evidence. However, in this case, we find that the disciplinary authority did not consider the contentions in the defence raised by the appellant and has simply accepted the finding of the enquiry officer with no independent assessment to its own before coming to the conclusion of the guilt of the appellant. Similarly, the appellate authority, though extracted the defence of the appellant once again, has not considered the points raised by the appellant in reference to those three charges which he has chosen to consider. Therefore, we are of the view that the decision of the disciplinary authority is an arbitrary decision since no reasonable person could have arrived at the conclusion of the guilt considering the evidence available in reference to those three instances.

13. On the nature of punishment imposed considering the nature of the charges established, it is argued that the punishment is wholly disproportionate and did not warrant an extreme, penalty of dismissal from service. In *Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others*, : their Lordships held that disproportionate severe punishment is arbitrary and open to Court's interference, and the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. Their Lordships followed the said principle laid down in *Ranjit Thakur Vs. Union of India (UOI) and Others*, : and extracted the said observation as follows, in Para. 25, at pages 47 and 48:

...The question of choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But, the sentence has to suit the offence. and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review ...

Their Lordships also further referred to an observation in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, : wherein it was observed as follows:

..... It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of Constitution of India....

14. In this case, the article of charges is that the appellant had done acts, which if proved, would constitute misconduct under Regulation 3(1) of

the Indian Bank Officer Employees" (Conduct) Regulations, 1976, in that he had failed to take all possible steps to ensure and protect the interests

of the bank at all times and failed to discharge his duties with utmost integrity, honesty, devotion and diligence. From the proved charges, we are

unable to find that the misconduct as set out in the article of charges has been found proved. There is no proof that in any of the instances cited, the

bank's interest has suffered or that any loss has occurred to the bank. Further, there is no proof that he had failed to discharge his duties with

integrity, honesty and devotion. All, but one of the charges relate to his action of exceeding his limit. In the absence of any loss caused to the bank

or that the appellant has gained any pecuniary advantage or that he had not given sufficient devotion to the working of the bank it cannot be

brought under allegation of misconduct. As pointed out earlier, in the course of four years of his service at the Pondicherry branch when he has

granted loan facilities to the tune of of 464 lakhs, in three or four instances, there is an allegation of excess facility provided and they cannot be

termed as indiscriminate exercise of discretion. In the light of the hundreds or may be thousands of transactions, the instances cited have to be

taken into account for the purpose: of assessing the proportionality as well as the gravity for the purpose of imposing the penalty.

15. The Constitution Bench of the Supreme Court in Jagdish Prasad v. State of Madhya Bharat (Now Madhya Pradesh) AIR 1961 S.C. 1070 :

1963 I LLJ 325 has held that the statements made by the appellant did not amount to clear or unambiguous admission of his guilt and therefore, the

dismissal without an enquiry constituted a serious infirmity. It was also doubted whether the statements amounted to admission and whether he

could be removed from the service on the strength of the alleged admission without holding a formal enquiry as required by the rules. The Supreme

Court, in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, : has held that proof of any loss is not necessary

when it is found that the delinquent is acting beyond his authority and it would constitute a misconduct. In that case, the officer acted in spite of the instructions by the regional office to stop such practice and the officer continued to indulge in such acts. The enquiry officer recorded a clear finding that the respondent did flout the said instructions and thereby committed acts of disobedience of lawful orders and similarly, in spite of reminders the officer would not submit the returns, and all these could not be corrected as errors of judgment and not as misconduct as defined by the Regulations. In our case, not a single case of instruction or reminder about the alleged exceeding of the limit by the officer has been pointed out. As seen earlier, in order to bring under the degree of misconduct, he should have failed to protect the interests of the bank and discharged his duties without integrity, honesty, devotion and diligence. It is argued that the appellant had a clean record of four years of service as Manager and that he had been found to be meritorious and the branch, during his period, was considered to be a model branch. All these things were not taken into account when there was finding on exceeding his discretionary power. It is further argued that his past conduct and his meritorious service should have been taken into account before awarding an extreme penalty.

16. Taking into account all these facts, we are of the clear view that the findings of guilt could not have been reached in the circumstances of the case and that the punishment is disproportionate to the charges established. Hence, the punishment imposed on the appellant is liable to be set aside. The attention of the learned Judge was not properly drawn on the non-application of mind on the part of the disciplinary authority and the appellate authority and the disproportionality of the punishment imposed. A reference was made by the learned single Judge in his judgment on the contention on behalf of the appellant that he is not guilty of mala fide, and the record of his service proves that he has always acted in the best interest of the bank, for the growth and expansion of business of the bank. The complaint of the counsel that the explanation offered by the appellant dated March 13, 1982 in the first instance and the written brief filed at the close of the enquiry have not at all been considered by the enquiry officer. The Counsel has also relied on the decisions in Union of India (UOI) and Others Vs. J. Ahmed, : R. Srinivasan Vs. Union of India

and Another, ; A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., :
Rajinder Kumar Kindra Vs. Delhi Administration through

Secretary (Labour) and Others, : Bhagwati Prasad Dubey Vs. Food Corporation of
India and Another, : in support of the contention that these

lapses will not come under misconduct. The learned Judge, referring to the
admission made by the appellant before the enquiry officer on

December 16, 1982 that he had given excess advances beyond his discretionary
powers, concluded. by saying that the four charges namely

Charge Nos. I(i), (ii), II and III are not merely procedural lapses and they are
substantive charges, which have been proved by indisputable

evidence including the admissions of the appellant. Therefore the learned Judge
concluded that it is futile to contend that there is a bona fide error

of judgment on the part of the appellant and that the findings, even if accepted
on facts, do not make out a case of misconduct. The learned Judge

also found that a perusal of the report of the enquiry officer and the order of the
disciplinary authority proves beyond doubt that the explanations

offered by the appellant and the relevant evidence on record have been fully
considered and duly weighed by the officers.

17. In the explanation to the relevant Regulation 3(1) Note 1 states that a casual
meal, lift or other social hospitality shall not be deemed to be a gift.

Note 2 says that an office employee shall avoid acceptance of lavish or frequent
hospitality from any individual or concern having official dealings

with him. Regulation 15 (1) says that no officer shall borrow or place himself
under a pecuniary obligation from a person having dealings with the

bank. As far as the admission said to have been made by the appellant before
the enquiry officer is concerned what is stated by him before the

enquiry officer on December 16, 1982 as set out by the officer is as follows:

He does not plead guilty to the charges. But, he admits that his defence at this
stage will continue to be his reply given to the Deputy General

Manager on March 13, 1982. Sri Kasi also admits that he had given excess
advance beyond his discretionary powers as given in the statement of

allegations.

The statement given by the appellant on March, 13, 1982 is as follows:

Lastly, I wish to most respectfully submit that the conduct regulations for bank
officers, although unilaterally passed in our Board, the Regulations

as such have been challenged by many officers organisations in the country. No doubt, ignorance of law is no excuse. However, having come to

know that borrowing by an officer is prohibited in the Bank's rules, I immediately repaid the loans. This will evidence that I have been honest in

understanding and rectifying my conduct when once I have been found by my superiors as wrong. As represented earlier there have also been

procedural lapses and over-enthusiasm exhibited by me in order to build deposit potential of Pondicherry Branch.

Therefore, it cannot be fully corrected to say that the appellant had admitted the allegations and charges.

18. In reference to the four charges, which the learned Judge found that they are substantial and that they have been proved by indisputable

evidence including the admissions, and that all the explanation submitted by the appellant was properly considered, it is pointed out that in

reference to charge No. 1 (i), the appellant had sanctioned temporary overdrafts indiscriminately between July 9, 1976 and October 26, 1977

totalling to Rs. 25,586/98 to the firm Coastal Line Company, of which Sri K. Panju and Sri G.P. Murthy were partners and that the charge is, in

effect, that the appellant had sanctioned temporary O.D. as a quid pro quo to the personal benefit from Sri Panju. The defence of the appellant that

the limit of discretionary, power to the Branch Manager came into existence as per the circular, dated February 25, 1978, prior to the grant of the

O.D. facility was not at all considered. Besides, the plea of the appellant is that he borrowed Rs. 5,000 on a pronote to meet his urgent family need

during the time of the marriage of his daughter and, without knowing that there is a bar against such borrowing. The lender Sri K. Panju happens to

be one of the partners of the firm, to whom loan was granted before he joined the branch and an O.D. facility was given prior to the circular

restricting discretionary power.

19. The second charge that the appellant had indiscriminately granted open cash credit advance to O.K. Exporters to the extent of Rs.

3,14,163/87 between June 8, 1978 and February 9, 1980 was replied to by the appellant stating that there is no restriction in reference to the

grant of advances in reference to export concerns was also not considered by the authorities.

20. The third charge namely that the appellant had allowed himself to be entertained at Pondicherry, and that his boarding and lodging expenses

were met by Sri Panju when the appellant visited Madras and stayed in hotel on March 4, 1978 and March 5, 1978 and on February 9, 1980 and

February 10, 1980 and thereby accepted a gift, has to be looked in the light of the note to the regulations to the effect that it is only in respect of

lavish and frequent hospitality which has to be avoided and not an occasional hospitality. The enquiry report, while dealing this charge finds that the

hotel bills of Woodlands Hotel Exhibit S. 22 would show that their bill for February 9, 1980 and February 10, 1980 in the name of Sri K. Panju

was for Rs. 96/20 towards lodging and boarding. The bills of boarding mentions the names of Panju and Kasi. The statement of the appellant is

that he had paid in cash towards his share of the charges and that his explanation was that as a Manager, whenever any constituent invites for a

function, they do attend to satisfy him, and more than that, he never allowed himself to be entertained exclusively by Sri Panju. The finding is:

this explanation does not absolve Sri Kasi from the allegation that Sri Kasi on the dates mentioned had accepted the hospitality that was granted

to a group or not is not material. In any case, Hotel Registers as quoted above, do not suggest that a group was entertained by Sri Panju on the

dates quoted.

From this, it is clear that a small amount of Rs. 96/80 paid by Sri K. Panju towards part of the stay of the appellant cannot be construed as the

appellant having allowed to be lavishly entertained and there is no clear finding that by that process, the appellant has received gift from the

constituent and for that reason, facilities were provided by him in the bank.

21. On the last of the charges referred to by the appellate authority relates to Murugan Trailer Industries, the defence of the appellant was that the

loan was sanctioned before he joined as Branch Manager, but the account was not operated satisfactorily. While so, the appellant had allowed

temporary O.D. to this party and the O.D. went up to Rs. 23, 150/80 on June 14, 1982. The case of the appellant was that T.O.D. was allowed

initially for improvement of the company and that the party was instructed to leave 10 per cent of the cheques lodged for the cost of a trailer or a

car delivered. He has also stated that the amount recovered in T.O.D. transfer to

M.T.L. account. Hence, there was no increase in T.O.D The finding was that however, the fact remains that the debt was found increasing during the appellant's time.

22. Thus, in our view, the contention of the appellant that there was only a procedural lapse and there was no proper conclusion after analysing the matter the appellant has committed misconduct either by the enquiry officer or by the disciplinary and appellate authorities, and the same was not properly submitted before the learned single Judge. As a matter of fact, the appellate authority has not considered the instance of Murugan Trailer as a ground for considering the case of the appellant. The appellate authority has taken into account only the first three charges, of which, the first one relates to granting of O.C.C. to O.K. Exporters and T.O.D. to Book Land and the second charge related to entertainment by Sri K. Panju.

All these three charges have been properly explained, but the same was not considered by the appellate authority. Therefore, we are of the view that the disciplinary authority as well as the appellate authority had no evidence to substantiate the charges of misconduct and that they have awarded disproportionate punishment for the alleged charges, assuming they are true, which in our view, are only procedural lapses. Therefore, we are unable to agree with the views expressed by the learned Judge. The impugned orders are liable to be quashed and are accordingly quashed.

23. Inasmuch as the appellant completed his superannuation age of 58 in the year 1998 itself, he cannot be ordered to be reinstated. In O.P.

Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, : having regard to eight years left at the time of illegal termination of the employee as also other factors, the Supreme Court held that compensation equivalent to three years salary including allowances, besides provident fund and Retirement benefits as well as costs would be proper. Though in this case the bank has not suffered any loss, the appellant is entitled to the compensated for the loss of eleven years of his services with prospects of higher emoluments. We are of the view that compensation equivalent to five years salary (last drawn) including allowances besides provident fund and retirement benefits would be proper compensation for the appellant since he could not be reinstated at this stage. The respondent-bank shall pay the appellant the following:

(1) Salary last drawn by the workman including usual allowances for the period commencing from the date of termination of his service and the

impugned order till the date of payment of compensation equivalent to five years salary including usual allowances.

(2) Provident fund amount payable to the appellant and the retirement benefit computed as on the date of his actual retirement would be paid

within a period of three months from this date.

(3) The appellant is entitled to the relief u/s 89 of the Income Tax Act read with Rule 71-A of the Income Tax Rules.

The appeal in (is) accordingly allowed with the above direction. No costs.