

(2013) 10 DEL CK 0345
In the Delhi High Court
Case No : Writ Petition (C) No. 8072 of 2010

K.S. Sethi

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) 1 AD 513 : (2014) 1 AD 166

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Ashok Bhasin and Mr. Vivek K. Singh, Mr. Sunklan Porwal and Mr. Arav Kapoor, for the Appellant; Jagat Arora, for the Respondent

Final Decision : Partly Allowed

Judgement

Suresh Kait, J.—The present petition is preferred against the impugned order dated 12.08.2008 passed by the Disciplinary Authority, order dated 06.04.2009 passed by the Appellate Authority and order dated 14.09.2010 passed by the Reviewing Authority, whereby the petitioner has been removed from service under Regulation 4(1) of the Punjab & Sind Bank Officer Employees' (Discipline and Appeal) Regulations, 1981 as amended upto date. Vide this petition, the petitioner seeks quashing of the aforementioned orders dated 12.08.2008, 06.04.2009 and 14.09.2010 with consequential benefits. Also seeking a direction to declare and strike down the rules of the respondent Bank, whereby an officer much lower than the rank than the Appointing Authority has been designated as the Disciplinary Authority as unconstitutional and arbitrary.

2. Case of the petitioner is that he joined the respondent Bank as a Probationary Officer on 04.04.1983. In the year 1995, the petitioner was actively espousing the cause of his fellow officers and became the General Secretary of the All India Punjab and Sind Bank Officers' Union, which is affiliated to AIBOC. Due to his sincerity and devotions, he became the Deputy General Secretary of AIBOC.

3. On 07.09.1997, the petitioner was promoted as Manager Grade-II. On

01.10.2003, the petitioner was awarded membership of the Chairman Club due to his outstanding performance in achieving the target when he was posted at Moti Nagar Branch. Till then, all went well.

4. On 16.10.2003, 400 loan accounts including 325 personal loan accounts were disbursed by Hamirpur Crossing Branch of the respondent Bank at Kanpur and the loan accounts were disbursed in illegal manner and with mala fide intent and without adhering to the sanctioned norms laid down by the Bank as per the respondent Bank's own evaluation.

5. Thereafter, on 12.05.2004, the petitioner was further promoted as Senior Manager Grade III and joined Hamirpur Bench, Kanpur as Branch-in-charge.

6. In September, 2004, the petitioner observed that most of the said loan accounts were turning into Non-Performing Assets (NPA) and he was getting complaints from the public. He also found that most of the loan documents were blank. Thereafter, he immediately informed the Zonal Office to appoint an officer to do fact finding into the matter.

7. On 07.02.2005, although he was Branch Manager, but the officer who was appointed to do the fact-finding, without informing him, submitted his reports directly to the Zonal Office. The said officer was also trying to remove the anomalies in the documents surreptitiously without the knowledge of the petitioner to which he objected. The irregularities observed by the said officer were pointed out to the Zonal Office in his report and not to the petitioner.

8. On 21.02.2005, the Zonal Office advised the petitioner to depute Sh. T.S. Bagga, Manager for recovery of non-performing accounts, including the said irregular 325 personal loan accounts.

9. On 25.02.2005, while relying upon the inspection report dated 01.05.2004 and the report of the concurrent audit, the petitioner wrote to the Zonal Office that the default in documents relating to 325 personal loan account and other loan accounts sanctioned and disbursed prior to his joining could not be rectified as the original officials concerned were under suspension.

10. On 01.03.2005, one Shri R.P. Singh, joined the respondent Bank as an officer on special duty and later on he was designated as the Chairman-cum-Managing Director. The said officer was of vindictive attitude and wanted to run the organisation in a high handed/whimsical manner by ignoring the interest of the Bank. The petitioner, being the General Secretary of the Union, resisted the high handed manner of functioning of said R.P. Singh.

11. On 27.03.2005, the petitioner wrote to the Zonal Office about lodging of FIR in cases of loan obtained (out of above noted 325 personal loan accounts) on the basis of forged and fabricated documents by the borrowers. Copy of the letter dated 27.03.2005 is enclosed as annexure P-4.

12. On 21.04.2005, the officer, who proceeded the said 325 personal loan

accounts and Sh. R.S. Marwah, Senior Manager, who sanctioned the said loans were chargesheeted in that case.

13. On 29.05.2005, the petitioner got lodged an FIR in respect of 74 personal loan accounts (out of above 325 personal loan accounts) where loans had been obtained on the basis of forged documents.

14. It is pertinent to mention here that in the year 2006, the petitioner through his applications filed under the Right to Information Act exposed number of irregularities in the functioning of the top management of the Bank. He was able to expose the faulty lending policies, whereby the deposits were taken at a high rate and lent at Below Prime Lending Rate (BPLR) causing loss to the Bank. Similarly, he exposed the dismal standard of computerization in the Bank when the Management was claiming 100% computerization before the RBI and CVC. Numerous fraudulent accounts were exposed which were sought to be concealed from the RBI, CVC and CBI by the Management. Ultimately, the petitioner became a marked man in the eyes of the said CMD.

15. On 10.03.2006, the petitioner issued an office order deputing one Sh. T.S. Bagga, Manager to obtain revival letters in the cases of the above mentioned 325 personal loan accounts. Copy of the said letter is enclosed as annexure P-5.

16. On 20.03.2006, the petitioner issued another office order whereby one officer, namely, Sh. Uttam Chand was deputed to assist Sh. T.S. Bagga in obtaining revival letters in the above mentioned personal loan accounts. Such an action was necessitated because 325 personal loan accounts were not lent to genuine borrowers and they were not available at the addresses as they had changed their houses. The borrowers were cunning, deceptive and wilful defaulters, who could not be reached even after making 8-10 visits. Copy of the office order dated 20.03.2006 is enclosed as annexure P-6.

17. On 16.05.2006, after an enquiry was conducted in the matter of opening of 325 personal loan accounts, the loan officer who processed the said loan accounts was given the punishment of compulsory retirement.

18. Thereafter, on 03.06.2006, the petitioner wrote to the Zonal Officer for permission to visit the Zonal Office for discussing about taking action in the above said personal loan accounts. However, the Zonal Office refused the permission to the petitioner to travel to the Zonal Office for discussion. Thereafter, on 08.06.2006, he deputed Sh. Uttam Chand, who visited the Zonal Office and discussed about taking action in the above said personal loan accounts.

19. On 14.06.2006, Sh. R.S. Marwah, who opened the aforesaid 325 personal loan accounts, was awarded punishment of reduction to lower grade/scale.

20. On 23.06.2006, the petitioner again issued a comprehensive office order deputing Sh. T.S. Bagga to obtain revival letters wherever necessary in case of 325 personal loan accounts cases. Copy of the same is enclosed as Annexure P-7.

21. On 19.10.2006, the petitioner issued an office order to Sh. T.S. Bagga for filing suits in cases where the limitations were going to expire as he did not have power of attorney in his favour for instituting the legal proceedings in a court of law. Copy of the aforesaid office order dated 19.10.2006 is enclosed as Annexure P-8.

22. Since the petitioner was a whistle blower, he became an eyesore to the Management, especially the CMD. Therefore, on 18.11.2006, during a Branch Review Meeting with Branch Managers attended by the CMD, when the petitioner wanted to give a representation about his Branch, he was insulted by the CMD and was told that he should close the shop of the Union otherwise he will be subjected to harassment and may face consequences of dismissal. To the utter surprise of the petitioner, CMD was so annoyed with him that he insultingly said that "you have obtained this job by growing a beard and being a Sikh". It was really a shocking state of affairs for him and having no option; he reduced the said experience into writing on 19.11.2006 in the capacity of a Union Functionary and wrote to CMD that his conduct on 18.11.2006 was most objectionable and improper. Copy of the said communication is enclosed as annexure P-9.

23. On 30.12.2006, petitioner wrote to the Zonal Office requesting one time open permission for filing the suits wherever necessary in cases of the personal loan accounts as taking permission in individual case would be cumbersome and would consume unnecessary time. Despite, the Zonal Office did not grant permission and ignore the same. Copy of the letter dated 30.12.2006 is enclosed as annexure P-10.

24. However, on 07.02.2007, the Zonal Office authorized Sh. T.S. Bagga to institute cases as he had a power of attorney in his favour.

25. On 23.02.2007, the petitioner submitted a proposal to the Zonal Office for consortium of Rs. 25 crores lending to M/s. Global Smelters Ltd. while asking for a speedy decision in the matter. However, the Zonal Office failed to respond the same in time as a result the efforts of the petitioner came to a naught. Similarly, the proposal of the petitioner to take cash deposits from ING Vyasa Bank was not allowed by the Zonal Office, although it was allowed in case of other Branches. Thus, the targets fixed for the petitioner could not be achieved due to non-cooperation from the Zonal Office.

26. On 28.03.2007, the petitioner wrote to the Zonal Office giving a point wise comments regarding FRC of inspection report dated 02.01.2007 and in effect complied with the requirements of submitting FRC in substance but probably not in the form. Copy of the same is enclosed as annexure P-12.

27. On 30.04.2007, as term of three years of the petitioner came to an end at Hamirpur Branch, therefore, another officer on promotion as Senior Manager was transferred to the said Branch. Although, the petitioner no longer remained Branch Manager, yet he was not transferred out as he had been singled out by the higher Management for harassment.

28. On 08.06.2007, though the Senior Manager deputed in place of the petitioner was relieved and in his place a Manager level officer was handed over the charge as Branch Manager, however, the petitioner was still not relieved or transferred so that he may remain under a junior just to humiliate and harass him.

29. On 24.07.2007, the petitioner was served with a charge sheet containing five articles for having allegedly committed certain lapses/irregularities due to which interest of the Bank had been jeopardized. In brief, the same read as under:-

(I) He failed to follow up on 58 loan account (out of the 325 accounts as mentioned above) in which the security documents became time barred.

(II) He failed to follow instructions of the higher office and did not submit the final rectification certificate of quarterly concurrent audit report for certain quarters.

(III) He has violated the norms of Head Office guidelines and did not deduct three days salary for the medical leave refused.

(IV) He failed to discharge basic duties of Branch-in-charge.

(V) He failed to achieve the targets fixed for the Branch.

30. Mr. Ashok Bhasin, learned senior counsel appearing on behalf of the petitioner has submitted that there was no allegations that the petitioner had acted in mala fide manner at any time or caused any loss to the respondent Bank whatsoever. The charge sheet was neither accompanied by the documents or its list nor the statements of the witnesses and/or the list of witnesses for proving the charges and thus the mandatory requirement of the rules for conducting the disciplinary proceedings violated by the Bank showing their mala fide intent.

31. Learned senior counsel further submitted that the disciplinary proceedings were conducted in violation of the Rules. Rule 6 (3) of the Punjab & Sind Bank Officer Employees" (Discipline and Appeal) Regulations, 1981 prescribed that the charge sheet should be accompanied with statement of allegations, list of documents relied upon with copies thereof and list of witnesses along with copies of the statement of the witnesses.

32. To support his contention, the learned senior counsel has relied upon a case of State of U.P. and Others Vs. Saroj Kumar Sinha, , wherein the Apex Court has held that if the documents are not supplied, the enquiry proceedings are vitiated.

33. In the present case, no such documents or statement of witnesses were provided to the petitioner by the respondent Bank and he was compelled to submit a written statement of his defence without the said documents having been provided to him. This fact has been admitted by the respondent Bank in their counter-affidavit.

34. He further submitted that on 14.08.2007, the petitioner denied the charges and asked for the documents, however, he submitted his explanation to the

respondent Bank. On 08.09.2007, the respondent Bank rejected the explanation and appointed an enquiry officer and presenting officer to conduct the departmental proceedings.

35. On 11.10.2007, the enquiry officer wrote to the Disciplinary Authority seeking to recuse himself from the matter as he had personally dealt the files relating to the charge sheet. However, the Disciplinary Authority rejected the plea of being recused.

36. Learned senior counsel further submitted that the proceedings were held at Lucknow although all the files were at Kanpur and the petitioner was also posted at Kanpur, which shows the mala fide intent of the higher authorities of the respondent Bank.

37. During the proceedings (30.11.2007 to 11.12.2007), the presenting officer submitted 64 Management Exhibits, i.e., documents exhibited by the Management and most of the documents were of a later date than the charge sheet. For example, Management Exhibit 1 (MEX1) was the reply of the petitioner to the charge sheet. Similarly, MEX2 is extension of annexure A of the charge sheet and MW2 was instructed to put his signature on this document. Hence, the Management did not have sufficient documents prior to the framing of the charge sheet as mentioned above.

38. Learned senior counsel further submitted that the respondent Bank had already made up their mind, therefore, the Inquiring Authority (IA) gave a finding that all the allegations were proved. The contradictions in the findings by the IA is apparent as it is claimed that the accounts had become time barred and at the same time, it is stated that suits were filed by the successor of the petitioner in respect of the said accounts.

39. The petitioner has submitted his reply on 13.06.2008 to the enquiry report and submitted that the same is contradictory for the reason that as per the guidelines of the Bank itself, submitted a chart showing the actual date when the accounts would become time barred and that the same extended to after his tenure as Branch Manager. He has pointed out that for proving the documents were time barred, examining the files of the said loan accounts were required but that was not done. Rather enquiry was conducted at Lucknow whereas the files of the loan accounts were at Kanpur. He stated that the suits had been filed by the petitioner in every case where it was required.

40. Learned senior counsel further submitted that the documents could not be provided because there was no such document in existence to prove any such charge. The Management, during the course of enquiry, manufactured and produced the documents, which could not have been relied upon at all to base any finding of guilt.

41. Further submitted that while dealing with the allegation number (III), the petitioner had been representing to the higher authorities to reconsider the

refusal of medical leave and when the response was not favourable, he had ultimately instructed the salary clerk and officer to deduct his three days salary and had himself in the month of March, 2007 made an entry in the salary register to this effect. Inadvertently, the deduction was not made by the concerned person in March, 2007, but later on in June, 2007, i.e., much earlier to the date of the charge sheet. Therefore, for this charge, the IO has wrongly held him guilty of the charge.

42. The admitted fact is that the respondent Bank had filed suits in cases where the accounts had become time barred. This itself is contrary to the finding of IA that the account had become time barred and in a time barred account, suit cannot be filed because it is hit with the provisions of the Limitation Act.

43. The petitioner had filed 14 FIRs and various suits had also been filed by him in every case where it was required. The IA ignored the Concurrent Audit Report of August, 2006, wherein the petitioner had obtained revival letters and taken proper steps in 250 accounts out of 325 loan accounts.

44. It is submitted that when the loans had been disbursed contrary to the norms and procedure by some other officials and the departmental proceedings had been initiated against the concerned loan disbursing officers, henceforth, it was not at all in the reach of the petitioner to prove such facts.

45. It is clear from the various instances stated above that the present case is of victimisation. Furthermore, not achieving the target could not be the subject matter of a departmental proceeding.

46. In support of his case, learned senior counsel has relied upon a case of Colour-Chem Ltd. Vs. A.L. Alaspurkar & Ors., (1988) 3 SCC 192, wherein the Apex Court has held that victimization may consist of diverse acts of employers who are just to drive out punish an employee for no real reason and for extraneous reasons.

47. In the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, , it is held that if there existed a real danger of bias, administrative action could not be sustained. The doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.

48. In the case of State Bank of India and Others Vs. Samarendra Kishore Endow and Another, , it is held that even though false claim for reimbursement was proved but charge that the loan sanctioned by him did not become irregular or any loss was caused to the bank, the punishment for removal was harsh. In the present case, there is no allegation of loss caused to the respondent Bank.

49. In the case of Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, , it is held that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere, unless it is found that either the enquiry, proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural

justice or denial of reasonable opportunity to defend, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee.

50. In the case of V. Ramana Vs. A.P.S.R.T.C. and Others, , the Apex Court has considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible, only if it is found to be "shocking to the conscious of the court, in the sense that it was in defiance or logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to reconsider the penalty imposed. However, in order to shorten the litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.

51. In the case of Gopal Kumar Mathur Vs. State of U.P. and Another, , it is held that if the punishment is found to be shocking, the court in exercise of limited power of judicial review, can also interfere with the quantum of punishment.

52. Learned senior counsel for the petitioner has submitted that in the instant case there is no whisper even of misappropriation or embezzlement of public money or corrupt motive and in fact no loss has been incurred to the respondent Bank and the charge which stood proved against the petitioner is that he had not taken due care of the directions of the higher authorities. In such eventuality, the punishment of removal from service imposed upon the petitioner is disproportionate to the delinquency and thus liable to be quashed.

53. On the other hand, Mr. Jagat Arora, learned counsel appearing on behalf of the respondent Bank has submitted that the petitioner has suffered the punishment order as he committed various acts of misconduct while working as a Senior Manager of the respondent Bank. The petitioner has produced his oral evidence, while respondent Bank examined its witnesses and produced the documentary evidence. The enquiry officer has given a report while finding the petitioner guilty of the charges levelled against him. Thereafter, the Disciplinary Authority passed a detailed and speaking order and slapped the petitioner with punishment of removal from service. The same was confirmed by the Appellate Authority and Reviewing Authority.

54. He submitted that the order of removal is based on proved misconduct against the petitioner. The enquiry officer, the Disciplinary Authority and the Appellate Authority, being departmental authorities, are the best judge to consider the punishment to be imposed upon a delinquent officer.

55. The petitioner was working as a Senior Manager and was heading a Branch and, therefore, had to be fully responsible for the acts of commission and omission attributed to him. The enquiry officer and the concerned authorities have found the charges proved. There was no violation of principles of natural justice while conducting the enquiry. The petitioner participated in the same and

gave his defence, examined the documents etc.

56. The Bank Officer has to be of the highest calibre to maintain purity in public service. No inefficiency or slackness can be tolerated on the part of a Bank Officer.

57. To strengthen his arguments, learned counsel for the respondent Bank has relied upon a case of Apparel Export Promotion Council Vs. A.K. Chopra, wherein it is held as under:-

17. The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities...

58. He has also relied upon a case of The General Manager (P) Punjab and Sind Bank and Others Vs. Daya Singh, , wherein it is held as under:-

17. We are rather amazed at the manner in which the High Court has dealt with the material on record. The Inquiry Officer is an officer of a Bank. He was considering the material which has placed before him and thereafter, he has come to the conclusion that the misconduct is established. He was concerned with a serious charge of unexplained withdrawals of huge amounts by a Branch Manager in the name of fictitious persons. Once the necessary material was placed on record and when the charge-sheeted officer had no explanation to offer, the Inquiry Officer could not have taken any other view. The order of a bank officer may not be written in the manner in which a judicial officer would write. Yet what one has to see is whether the order is sufficiently clear and contains the reasons in justification for the conclusion arrived at. The High Court has ignored this aspect. Absence of reasons in a disciplinary order would amount to denial of natural justice to the charge-sheeted employee. But the present case was certainly not one of that category. Once the charges were found to have been established, the High Court had no reason to interfere in the decision. Even though there was sufficient documentary evidence on record, the High Court has chosen to hold that the findings of the Inquiry Officer were perverse. A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in M/s. Triveni Rubber

and *Plastics Vs. Collector of Central Excise, Cochin*, . Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in *Arulvelu and Another Vs. State* represented by the Public Prosecutor and *Another*, . The decision of the High Court cannot therefore be sustained.

59. Further submitted, the petitioner, during his tenure failed to get the security documents renewed in 58 accounts, thus, rendering them time barred. He failed to submit the final rectification certificate of quarterly concurrent audit reports and even after getting various letters from Zonal Office did not do so and thereby violated the Head Office guidelines.

60. The petitioner was on unauthorized leave w.e.f. 31.08.2006 to 02.09.2006 and was directed to deduct three days salary, which was only done on 11.07.2007, i.e., after a period of approximately nine months after giving him many reminders.

61. The petitioner submitted monthly statements to the Zonal Office belatedly by four-five months, while the instructions are to submit the same by 7th of the following month.

62. The petitioner failed to achieve the target given in the budget regarding document, advances, profit/loss, Non Fund Business and NPA (Non Productive Assets).

63. Learned counsel further submitted that the grievance of the petitioner against the enquiry is that the charge sheet was given in violation of the Regulations 6(3) and 6(4) of the Punjab & Sind Bank Officer Employees" (Discipline and Appeal) Regulations, 1981 as copies of documents were not supplied with the issuance of the charge sheet and his explanation was asked without supplying the same.

64. He submitted that the above procedure has not resulted in any prejudice to the petitioner as the management documents were supplied during the initial stage of the enquiry. In fact, the petitioner after being aware of the documents and examination of management witnesses submitted his written brief and had filed voluminous evidence. There has been no prejudice caused to him and principles of natural justice have been observed.

65. He further submitted that the petitioner being head of the Branch failed to achieve the targets, to let the security documents lapse and Bank's funds/ advances would be jeopardized as no recovery suits could be filed being time barred is sufficient to come to the conclusion by the Banking Authority about the misconduct of the petitioner.

66. To strengthen his arguments, learned counsel has relied upon a case of *Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik*, , wherein the Apex Court has observed as under:-

7. It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the Bank to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is "misconduct" within the meaning of Regulation 24. The findings of the Enquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. 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. If each officer/employee is allowed to act beyond his authority the discipline of the organisation/bank will disappear; the functioning of the Bank would become chaotic and unmanageable. Each officer of the Bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority-that too a course of conduct spread over a sufficiently long period and involving innumerable instances-is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks which deals with public funds. If what we hear about the reasons for the collapse of Brings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore the very discipline of an organisation and more particularly, a Bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and over-drawls allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit-huge profit, as the High Court characterises it-they are no less blameworthy. It is wrong to characterise them

as errors of judgment. It is not suggested that the respondent being a Class-I officer was not aware of the limits of his authority or of his powers. Indeed, Charge No. 9, which has been held established in full is to the effect that inspite of instructions by the Regional Office to stop such practice, the respondent continue to indulge in such acts. The Enquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge No. 8, which has also been established in full is to the effect that inspite of reminders, the respondent did not submit "Control returns" to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24.

67. He has also relied upon a case of Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , wherein it is held as under:-

10. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

11. In the case at hand the High Court did not record any reasons as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in M.L. Keshwani's case. As was observed by this Court in Balbir Chand Vs. Food Corporation of India Ltd. and others, , even if a co-delinquent is given lesser punishment it cannot be a ground for interference. Even such a plea was not available to be given credence as the allegations were contextually different.

12. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to project the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court In Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, . It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were

not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

68. Learned counsel further submitted that though the petitioner was leader of the Officers' Association of the Bank, but action is based on proved charges in the enquiry. The Disciplinary Authority took the decision not on the basis of any prejudice but it is purely based on the material on record. The allegation of mala fide or victimization can only be considered by the Court on the basis of reliable and cogent material. The petitioner has not produced any document at any stage, even before this Court that his complaints to any higher authority had not borne any fruits. A proven misconduct is antithesis of victimization or mala fide. The petitioner has been granted his due promotions in regular course of events even during pendency of the present petition. Therefore, the allegations of mala fide against the respondent are baseless. The petitioner, being an office bearer as alleged by him, cannot shirk from his responsibility as an officer of the respondent Bank.

69. To strengthen his arguments, he has relied upon a case of Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others, , wherein it is held as under:-

9. A word of caution is necessary. Victimization is a serious charge by an employee against an employer, and therefore, it must be properly and adequately pleaded giving all particulars Upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof is, per se, no crucial instance Collective bargaining being the Order of the day in a democratic social welfare State, legitimate trade union activity which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activity can flow in healthy channel only on mutual co-operation between employer and employee and cannot be considered as irksome by the management in the best interest of the concern. Dialogues with representatives of a union help striking a delicate balance in adjustment and settlement of various contentious claims and issues.

70. Learned counsel further submitted that the Discipline and Appeal Regulations are statutory regulations and the Disciplinary Authority is defined therein. No averment made in the writ petition to establish that the vires of the Regulations are bad in law or unconstitutional. Nowhere it was pleaded that the Appointing Authority of the petitioner was higher than the rank of Zonal Manager. In any event, the petitioner has filed an appeal against the disciplinary order and thereafter a review. Since the remedies were taken by him under the same Statutory Regulations, therefore, it would be too late in the day to contend that the Regulations are contrary to the tenets of Service Jurisprudence.

71. Lastly, learned counsel submitted that this Court has the jurisdiction to adjudicate the instant petition on a judicial review and not as an Appellate Court. Moreover, the Disciplinary Authority and the Appellate Authority had taken a conscious decision after considering the enquiry report and other material on record. Therefore, the instant petition deserves to be dismissed.

72. I have heard the learned counsel for the parties.

73. Admittedly, on 16.10.2003, 400 loan accounts including 325 personal loan accounts were disbursed by Hamirpur Crossing Branch at Kanpur of the respondent Bank and the loan accounts were disbursed in illegal manner and with mala fide intent and without adhering to the sanctioned norms laid down by the Bank.

74. Thereafter, on 12.05.2004, the petitioner was promoted as Senior Manager, Grade-III, and posted at aforementioned Branch, as Branch Manager. In September, 2004, the petitioner observed that most of the said loan accounts were turning into Non-Performing Assets (NPA) and was getting complaints from the public. He found that most of the loan documents were blank. Accordingly, he immediately informed the Zonal Office and requested to appoint an officer to find out the factual position. Thereafter, on 21.02.2005, the Zonal Office advised the petitioner to depute Sh. T.S. Bagga, Manager, for recovery of non-performing accounts, including the said irregular 325 personal loan accounts.

75. Though the petitioner was Branch Manager, however, the above said officer was trying to remove the anomalies in the documents surreptitiously without the knowledge of the petitioner to which he objected to. The irregularities observed by the said officer were pointed out in his report to the Zonal Office and not to the petitioner.

76. On 25.02.2005, while relying upon the inspection report dated 01.05.2004 and the report of concurrent audit, the petitioner wrote to the Zonal Office that default in documents relating to 325 personal loan accounts and other accounts sanctioned and disbursed prior to his joining could not be rectified as the original officials concerned were under suspension.

77. On 27.03.2005, the petitioner informed the Zonal Office about lodging of FIR in cases of loan obtained (out of above noted 325 personal loan accounts), on the basis of forged and fabricated documents, by the borrowers.

78. Sh. R.S. Marwah, Senior Manager, who sanctioned the above said 325 personal loans was charge sheeted on 21.04.2005.

79. Thereafter, in the year 2006, the petitioner had exposed number of irregularities in the functioning of top management of the Bank. He also exposed the faulty lending policies, whereby the deposits were taken at a high rate and lent at Below Prime Lending Rate (BPLR) causing loss to the Bank. Similarly, he exposed the dismal standard of computerization in the Bank when the Management was claiming 100% computerization before the RBI and CVC.

Numerous fraudulent accounts had also been exposed which were sought to be concealed from the RBI, CVC and CBI by the Management.

80. On 10.03.2006, the petitioner issued an office order deputing one Sh. T.S. Bagga, Manager, to obtain revival letters in the case of above mentioned 325 personal loan accounts. On 20.03.2006, the petitioner issued another office order whereby one officer, namely, Sh. Uttam Chand Jain was deputed to assist Sh. T.S. Bagga in obtaining revival letters in the abovementioned personal loan accounts. Such an action was necessitated because 325 personal loan accounts were not lent to genuine borrowers and they were not available at the given addresses.

81. On 16.05.2006, after an inquiry was conducted in the matter of opening of aforesaid personal loan accounts, the loan officer, who processed the said accounts was given the punishment of compulsory retirement.

82. On 03.06.2006, the petitioner sought permission to visit the Zonal Office for discussing about taking action in the above said accounts, however, the Zonal Office refused the same. Thereafter, on 08.06.2006, the petitioner deputed Sh. Uttam Chand, who visited the Zonal Office and discussed about taking action in this regard. On 14.06.2006, Sh. R.S. Marwah, who opened the aforesaid 325 personal loan accounts, was awarded punishment of reduction to lower grade/scale. On 23.06.2006, the petitioner again issued a comprehensive order deputing Sh. T.S. Bagga to obtain revival letters wherever necessary in cases of aforesaid loan accounts. On 19.10.2006, the petitioner issued an office order directing Sh. T.S. Bagga for filing suits in cases where the limitations were going to expire as he did not have Power of Attorney in his favour for instituting the legal proceedings in a court of law.

83. On 30.12.2006, petitioner sought one time open permission for filing the suits wherever necessary as taking permission in individual case would be cumbersome and would consume unnecessary time. Despite, the Zonal Office did not grant permission. However, on 07.02.2007, the Zonal Office authorized Sh. T.S. Bagga to institute cases as he had Power of Attorney in his favour.

84. On 23.02.2007, the petitioner submitted a proposal to the Zonal Office for consortium of Rs. 25 crores lending to M/s. Global Smelters Limited while asking for a speedy decision in the matter. However, the Zonal Office failed to respond the same in time as a result the efforts of the petitioner came to a naught. Similarly, the proposal of the petitioner to take cash deposit from ING Vyasa Bank was not allowed by the Zonal Office, although it was allowed in case of other Branches. Thus, the targets fixed for the petitioner could not be achieved due to the reasons mentioned above.

85. On 30.04.2007, as term of three years of the petitioner came to an end at Hamirpur Branch, therefore, another officer, on promotion as Senior Manager, was transferred to the said Branch. But the petitioner was still not relieved or transferred so that he may remain under a junior officer.

86. On 24.07.2007, the petitioner was served with a charge sheet containing five articles for committing certain lapses/irregularities as under:-

(I) He failed to follow up on 58 loan account (out of the 325 accounts as mentioned above) in which the security documents became time barred.

(II) He failed to follow instructions of the higher office and did not submit the final rectification certificate of quarterly concurrent audit report for certain quarters.

(III) He has violated the norms of Head Office guidelines and did not deduct three days salary for the medical leave refused.

(IV) He failed to discharge basic duties of Branch-in-charge.

(V) He failed to achieve the targets fixed for the Branch.

87. On perusal of the above noted charges, admittedly, there were no allegations that the petitioner had acted in mala fide manner at any time or caused any loss to the respondent Bank whatsoever.

88. It is also admitted fact that the charge sheet was neither accompanied by the documents or its list nor the statements of the witnesses and/or the list of witnesses for proving the charges which was against the mandatory requirement of the rules for conducting the disciplinary proceedings. Rule 6(3) of the Punjab & Sind Bank Officer's Employee (Discipline and Appeal) Regulations, 1981 prescribes as under:-

6. Procedure for imposing major penalties:

3. Where it is proposed to hold an inquiry, the Disciplinary Authority, shall frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a statement the allegations, list of documents relied on along with copy of such documents and list of witnesses along with copy of statements of witnesses, if any, on which they are based, shall be communicated in writing to the officer employees, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), within such extended time as may be granted by the said Authority, a written statement of his defence.

Provided that wherever it is not possible to furnish the copies of documents, Disciplinary Authority shall allow the officer employee inspection of such documents within a time specified in his behalf.

89. As per the above mentioned Rule, the charge sheet should be accompanied with statement of allegations, list of documents relied upon with copies thereof and list of witnesses alongwith copies of the statements of the witnesses.

90 It is pertinent to mention here that during the proceedings (30.11.2007 to 11.12.2007), the presenting officer submitted 64 Management Exhibits, i.e., documents exhibited by the Management and most of the documents were of a

later date than the charge sheet. For example, Management Exhibit 1 (MEX1) was the reply of the petitioner to the charge sheet. Similarly, MEX2 is extension of annexure A of the charge sheet and MW2 was instructed to put his signature on this document. Hence, the Management did not have sufficient documents prior to the framing of the charge sheet.

91 It is trite that if the documents are not supplied, the enquiry proceedings are vitiated. By not supplying copies of the documents, the employee was not afforded proper opportunity to defend himself.

92 In the present case, no such documents or statements of the witnesses were provided to the petitioner by the respondent Bank and he was compelled to submit a written statement of his defence. This fact has been admitted by the respondent Bank in their counter-affidavit.

93 Regarding the article of charge No. 3, the petitioner had been representing to the higher authorities to consider the refusal of medical leave and when there was no favourable response, he had ultimately deducted his three days' salary in the month of June, 2007, i.e., much earlier to the date of charge sheet.

94 Admittedly, the petitioner had filed 14 complaints and got FIRs registered. Various suits had also been filed by him in cases where it was required. Apart from, the Enquiry Authority and the Disciplinary Authority ignored the current audit report of August, 2006, wherein the petitioner had obtained revival letters and taken proper steps in 250 accounts out of 325 loan accounts.

95 It is also admitted that loans had been disbursed contrary to the norms and procedure by some other officials not by the petitioner, therefore, it was not at all in his reach to rectify the same.

96 However, it is also admitted fact that the petitioner failed to submit the final rectification certificate of quarterly concurrent audit report and even after getting various letters from Zonal Office. He submitted monthly statement to the Zonal Officer belatedly by 4-5 months, while the instructions are to submit the same by 7th of the following month. The petitioner also failed to achieve the target given in the budget regarding document, advances, profit/loss, non-fund business and NPA (Non-Performing Assets).

97 It is required from the Bank officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. It is true 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.

98. Therefore, a Bank officer is required to exercise higher standard of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the

interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank.

99. Though the petitioner has challenged the rules of the respondent Bank, whereby an officer lower than the rank of the Appointing Authority has been designated as the Disciplinary Authority, however, the petitioner did not challenge the same at the very first stage and he continued to make appeal and review under the same Regulations. Since the remedies were availed by him under the same statutory Regulations, hence, this ground is not available to the petitioner at this stage. Therefore, I am not inclined to express any opinion on this issue.

100. The second ground is that the petitioner was not provided documents relied upon as per Rule 6(3) of the Punjab & Sind Bank Officers Employee (Discipline and Appeal) Regulations, 1981. The petitioner ought to have challenged the same when the charge sheet was issued or at the later stage when the respondent Bank refused to supply the copies thereof. It is trite that one has to challenge any wrong at the initial stage without waiting for the result thereof. Therefore, in my considered opinion, at this stage this ground is not available to the petitioner.

101. The petitioner has also made allegations of mala fide against the then CMD of the respondent Bank, however, he has not made him a party in the instant petition. In the absence of the same, there are no comments on this issue from the aforesaid CMD, therefore, this Court does not find any substance in this ground also.

102. In regard to the main allegation against the petitioner that he failed to follow up 58 loan accounts (out of 325 loan accounts), as mentioned above, in which the security documents became time barred and he failed to follow the instructions of the higher office and did not submit the final rectification certificate of quarterly concurrent audit report for certain quarters.

103. Admittedly, the aforesaid loan accounts were not proceeded by the petitioner but by some other officers who have faced departmental proceedings and consequences thereof. The petitioner was posted at the Branch in issue at the later stage and by that time it was not possible to restore and rectify the aforesaid loan accounts which were opened and loans were disbursed on the basis of bogus and forged documents. As discussed above, despite non-cooperation from the Zonal Office, the petitioner had taken all possible steps.

104. The fact remains that the charges have been proved against the petitioner. He participated in the departmental enquiry. He availed all the possible opportunities. After going through the enquiry report and material on record, the authorities concerned have passed the impugned orders. The present petition is on judicial review. This Court is not an appellate Court.

105. In the case of Cement Corpn. of India Ltd. Vs. M.L. Aggarwal and Another, , it is held as under:

The petitioner is guilty of misconduct and has to be suitably punished for the misconduct. However the nature of misconduct is more in the nature of violation of practice and procedure than in the nature of corruption. In view of what is stated in the foregoing paragraphs, it appears that the extreme penalty of removal from service is shockingly disproportionate to the offence.

106. Be that as it may, in view of the above discussion, I am of the considered opinion that imposition of penalty of removal from service against the petitioner is disproportionate to the misdemeanor committed by him.

107. In the eventuality, the proper way would be to remand the case back to the Disciplinary Authority to impose penalty other than removal from service. However, impugned orders were passed on 12.08.2008 06.04.2009 and 14.09.2010 by the Disciplinary Authority, the Appellate Authority and the Reviewing Authority respectively. Therefore, sending the matter back to the Disciplinary Authority would amount to denial of justice.

108. Recently the Division Bench of this Court has dealt with a similar issue in the case of Narender Kumar Bansal Vs. Engineers India Ltd. & Ors. LPA 571/2008 decided on 23.04.2013, wherein held as under:

In that view of the matter, we are of the considered view that the appeal should be allowed to the extent to modify the punishment of removal. Accordingly, we direct that the punishment of removal of the appellant is modified to one of withdrawal of three increments without cumulative effect. The appellant shall not be entitled to any back wages from the date of removal till the date of filing of the appeal. It is informed by Id. Counsel for the appellant that the appellant has since retired, the question of reinstatement, therefore, does not arise. However, we make it clear that by virtue of the order in this appeal, the appellant is entitled to pension, wages regarding the unearned leave and gratuity, as a consequence of this order.

109. Therefore, in view of the above, I direct that the punishment of removal from service of the petitioner be modified to one of withdrawal of three increments with cumulative effect. Accordingly, the petitioner is directed to be reinstated into service with 50% of the back wages from the date of removal from service till the issuance of formal order by the respondent Bank of his reinstatement with all consequential benefits as per rules and regulations of the respondent Bank. Resultantly, impugned orders are modified to the above extent. 112. The instant petition is partially allowed in above terms with no order as to costs.