

**(2010) 08 GUJ CK 0241**  
**In the Gujarat High Court**  
**Case No : S.C.A. No. 2220 of 1995**

Manibhai J. Patel

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

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**Date of Decision :** 05-08-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226  
State Bank of Saurashtra (Officers) Service Regulations, 1979 — Regulation 67, 68,  
68(2), 70

**Citation :** (2011) 2 LLJ 414

**Hon'ble Judges :** D.A. Mehta, J

**Bench :** Single Bench

**Advocate :** Vandan K. Baxi, for the Appellant; T.S. Nanavati and Dipak C. Raval,  
for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.A. Mehta, J.—This petition has been preferred with the following prayers:

A. Your Lordships be pleased to quash and set aside the impugned orders of penalty at Annexures J and L to the petition, as being bad in law, illegal, arbitrary, unconstitutional, suffers from non application of mind, against principles of natural justice, and also not in consonance with the Regulations 68 of the State Bank of Saurashtra (Officers") Service Regulations 1979, by issuing a writ of mandamus or any other appropriate writ, order or direction of this Hon"ble High Court.

B. Your Lordships be pleased to declare that Respondent No. 2 has no power in the eyes of law to impose the penalty of compulsory retirement at Annexure J to the petition being an authority lower in rank than the appointing authority and be further pleased to quash and set aside the order at Annexure L to the petition passed by the appellate authority confirming the order of penalty at Annexure J to the petition, as being bad in law, illegal, arbitrary, unconstitutional, suffers from non application of mind, without jurisdiction and suffers from non-

compliance of principles of natural justice by issuing a writ of mandamus or any other appropriate writ, order or direction of this Honourable High Court.

C. Your Lordships be pleased to declare that the impugned orders at Annexure J and L to the petition based on the enquiry proceedings held against the Petitioner cannot be said to be sustainable in the eyes of law, as being in disregard of principles of natural justice, and also suffers from non-application of mind, by issuing appropriate writ, order or direction of this Honourable High Court.

D. Your Lordships be pleased to quash and set aside the impugned orders at Annexure J and L to the petition where the period of suspension has been treated "as such" and be further pleased to declare that the Petitioner is entitled to be reinstated with full back wages along with all the consequential benefits including full salary and allowances during the period of suspension by issuing appropriate writ, order or direction of this Honourable High Court.

E. Your Lordships be pleased to stay the further operation, implementation and execution of the impugned orders at Annexure J and L to the petition and be further pleased to direct the Respondents to forthwith reinstate the Petitioner on his original post of Rural Development Officer and to draw his salaries accordingly, pending the final disposal of this petition.

F. Your Lordships be pleased to grant any such other and further relief's as thought fit and proper in the interest of justice.

The Petitioner came to be appointed as a Technical Officer (Agriculture) by order dated June 1, 1978 by the Respondent-Bank, formerly known as State Bank of Saurashtra and now known as State Bank of India. On December 12, 1984 the post of Technical Officer (Agriculture) was re-designated as Rural Development Officer (RDO) w.e.f. January 1, 1985. This re-designation came about as a part of settlement after bipartite negotiations/discussions held by the management with the representatives of the Associate Banks Officers' Association as recorded in Memo dated December 12, 1984 (Annexure-B). Along with the said memorandum, the duties of RDO Grade-I and Grade-II came to be circulated by way of Annexure-I as enclosure to Head Office Circular No. PER: 156 dated December 12, 1984.

2. In 1986 the Petitioner was transferred from Limbdi Branch of the Bank to Halvad Branch, both falling within Surendranagar District. It appears that the bank undertook investigation through one Shri A.R. Thaker and by an order dated October 29, 1990 the Petitioner was put under suspension, pending departmental inquiry. On July 24, 1991 the Petitioner was charge-sheeted on the footing that while working as RDO at Halvad Branch the Petitioner had committed three acts detailed therein which amounted to grave misconduct. The Petitioner was called upon to state as to why, if the stated charges or any one of them, stand proved, the Petitioner should not be visited with punishment specified in Regulation No. 67 of the State Bank of Saurashtra (Officers') Service Regulations, 1979 (the Regulations). The Petitioner furnished statement of

defense on August 29, 1991. Thereafter regular inquiry was conducted by the department through one Shri N.N. Sheth, who was appointed as an inquiry officer. The inquiry officer tendered his report dated August 3, 1993, which came to be served on the Petitioner under cover of letter dated September 1, 1993. The Petitioner therefore, preferred an appeal on October 9, 1993 before the appellate authority, as required by Regulation No. 70 of the Regulations. The appeal came to be dismissed vide order dated June 28, 1994, which came to be forwarded to the Petitioner under cover of letter dated July 9, 1994. It is the orders made by the inquiry officer and the appellate authority which are under challenge in the present petition.

3. The case of the Petitioner is that the acts, which are alleged to be acts of misconduct by the Petitioner, cannot be termed to be so because at the highest, the said acts can be termed to be mere errors or clerical errors, considering the fact that at the relevant point of time the Petitioner was the only officer at Halvad Branch, looking after Development of Rural Finance. That there was no Field Officer at Halvad Branch and there was overall shortage of staff at the said branch requiring the Petitioner to discharge duties of other staff members. The Petitioner thus, being overburdened, might have committed errors but the said errors were bona fide errors and the mistakes had been committed during furtherance of the work of the bank. That the Petitioner had not gained anything in the said exercise nor had the bank been put to any pecuniary loss so as to visit the Petitioner with a major penalty of compulsory retirement.

(1) It was further contended that there was violation of principles of natural justice in as much as though number of witnesses were listed in the charge-sheet the inquiry officer and/or the presenting officer did not examine most of them. That the preliminary inquiry report had not been supplied to the Petitioner, though the departmental proceedings were based on such report of preliminary inquiry.

(2) That statement of witnesses recorded during preliminary inquiry were relied upon in the proceedings of departmental inquiry, without the Petitioner being granted an opportunity of cross-examination.

(3) Referring to Clause (g) and Clause (t) set out in Annexure-I, which lists the duties of RD Os, it was submitted that disbursement of loan was a part and parcel of the duty assigned to the Petitioner, who was an RDO and, therefore, the said act cannot be termed to be a misconduct. Therefore Charge No 1 in the charge-sheet by itself was a case of non-application of mind by the Respondent-Bank. Attention was also invited to Regulation No. 68(2)(x) of the Regulations to submit that the inquiry officer was duty bound to supply copies of statements of witnesses recorded earlier and such statements had to be supplied before the commencement of the examination of the witnesses by the inquiry officer. That even this regulation was not observed.

(4) Lastly, it was emphatically submitted that the Petitioner had merely followed

the practice adopted by the previous RDO at Halvad Branch with full knowledge of the Branch Manager and no objection has been raised by the Branch Manager at the relevant point of time. That in fact the vouchers prepared by the Petitioner were duly checked and verified and authorized by the Branch Manager at the end of every day when the Branch Manager checked the Day Book and Journal Ledger after scrutinizing every day's vouchers. Therefore, the act of the Petitioner could not be termed to be unauthorized. Great emphasis in this connection was also laid on Clause (g) of the document enumerating the duties of RDOs.

4. On behalf of the Respondent-Bank reliance has been placed on the documents on record to submit that whichever witnesses were examined by the presenting officer were offered for cross-examination to the Petitioner and in fact the Petitioner had cross-examined, as could be seen from the case of one Shri Vajubhai Dansang, whose extract of deposition appeared in the petition at Annexure-F. Reliance has been placed on the following two judgments of the Apex Court: (i) Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, and (ii) Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar,

5. In petitions of this nature the Court is not required to enter into re-appreciation of evidence unless and until it is shown that the authority, in the decision making process, has either ignored a relevant piece of evidence or relied upon an irrelevant piece of evidence. Merely because on same set of facts, evidence and circumstances it may be possible to record a different conclusion that by itself would not permit the Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution to undertake a reappraisal of the evidence or record a different conclusion. In the facts of the present case nothing has been brought on record to show that the decision making process is vitiated in any manner so as to be termed to be perverse requiring interference and reversal/ modification by the Court. Hence, it is not necessary to set out the facts in detail as the Court is only reviewing the decision making process.

6. In so far as the plea regarding violation of principles of natural justice is concerned, suffice it to state that the same is entirely misconceived. In the first instance it is not so-called violation of principles of natural justice simplicitor, which would entitle the Petitioner to any relief. The Petitioner is duty bound to not only show what the violation is but assuming such a violation exists, what prejudice has resulted to the Petitioner so as to warrant interference. It is not in each and every case of violation of principles of natural justice that the Court is required to interfere, unless real prejudice is shown to have resulted due to such violation.

7. In the present case, the say of the Petitioner is that the report of preliminary inquiry has not been supplied to the Petitioner. Nothing has been shown as to how such an act on the part of the Respondent authority has prejudiced the case of the Petitioner. In fact the same has wrongly been termed as a preliminary

inquiry report. At a stage prior to the initiation of departmental inquiry if an investigation is carried out to ascertain the facts so as to form a prima facie opinion as to whether departmental proceedings should be instituted or not it cannot be stated that the Petitioner is either required to be heard at that stage or is required to be supplied a copy of such report. In a given case at the end of the investigation the authority may come to conclusion that no departmental proceedings are required to be instituted. Therefore, at this preliminary stage there is no question of either hearing the Petitioner or supplying the Petitioner the report of the investigating authority.

8. The next grievance in relation to violation of principles of natural justice is that though in the list, enclosed with charge-sheet, as many as eleven persons have been listed as witnesses the presenting officer and/or the inquiry officer have not examined more than four persons, resulting in injustice to the Petitioner. The plea is not only misconceived but appears to be based on a perceived right of the Petitioner that in departmental proceedings the authority conducting the departmental proceedings has to bring on record, through the presenting officer all evidence which, according to the Petitioner, may be helping the cause of the Petitioner. The contention is required to be stated only to be rejected. If the Petitioner was aggrieved in any manner by non-examination of some other persons it was always open to the Petitioner to have such persons summoned and examined as witnesses on behalf of the defense. The Petitioner, not having availed of the said opportunity, cannot be heard to complain. The concept of free and fair trial cannot extend to the prosecution examining witnesses so as to build a case for defense. No such burden can be cast on the prosecution.

9. In fact the witnesses who have been examined have all been offered for cross-examination and the same becomes apparent when one considers report of the inquiry officer when he refers to the transactions in case of Shri Vajubhai Dansang. In the said part, relatable to charge No. 1, the inquiry officer's report categorically records:

... The contents of his statement has been testified and confirmed during his deposition as witness. Further, the witness Shri Vaju Dansang during his cross examination very firmly deposed that signature on drawal form is not his and he has not withdrawn Rs. 5,000/-....

10. In the circumstances, so far as the submission regarding violation of principles of natural justice is concerned, the same does not merit acceptance, both in law and on facts.

11. The contention that the Petitioner was only discharging the duties as per the list of duties required to be discharged by RD Os and if there was any violation the same was with the approval of the Branch Manager has been squarely met as can be seen from the following extract appearing in the order made by the appellate authority:

...I find that Shri Patel has not produced any documentary evidence to

substantiate his plea that the release of advance/loan in question by Shri Patel were confirmed by the Branch Manager. The scheme of delegation of financial powers does not confer any powers to an RDO to release advances without sanction. There is no substance in Shri Patel's argument that the debit vouchers were not unauthorisedly passed by him....

12. The aforesaid extract also takes care of the submission of the Petitioner that disbursement of loan was a part of the duty assigned to the Petitioner as per Clause (g) and as per Clause (t) of the list of duties. Clause (g) reads as under:

(g) To arrange for opening of accounts of borrowers, execution of loan documents and disbursement of loans as per terms and conditions of the loans sanctioned.

A plain reading makes it clear that the duty of an RDO is to arrange for opening of accounts for borrowers, to arrange for execution of loan documents and disbursement of loans as per terms and conditions of loan sanctioned. It is not possible to accept the submission that the phrase to arrange for appearing in the earlier part before the use of comma would mean that the duty was to arrange for opening of accounts of borrowers only while execution of loan documents and disbursement of loans was a separate independent function. In fact all the three acts viz. opening of accounts, execution of loan documents, and disbursement of loans are to be arranged for by the RDO and nothing more. This becomes clear when one reads the preceding and succeeding clauses wherein the duties of RD Os are more in the nature of a facilitator than actual disbursement of loans, etc.

13. In so far as Clause (t) is concerned, it only requires the RD Os to do such other work relating to agricultural financing at the branch, as may be required by the Branch Manager/ Manager of Agricultural Banking Division. The plea that the Branch Manager was ratifying the act of the Petitioner by scrutinizing the vouchers at the time of checking Day Book would mean that the Petitioner was acting as required by the Branch Manager cannot be accepted. There is no direction in writing, either by the Branch Manager or any other superior authority of bank. As the Petitioner was placing reliance on Clause (t), it was for the Petitioner to examine the Branch Manager concerned, who was in-charge of the branch at the relevant point of time as witness of the Petitioner. The Petitioner cannot be heard to make a grievance that the presenting officer and/or the inquiry officer did not summon and examine the Branch Manager.

14. The only contention that would then survive is as to whether the punishment meted out to the Petitioner is disproportionate in so far as the act of misconduct is concerned. On behalf of the Petitioner it was repeatedly emphasized that as no pecuniary loss has resulted to Respondent-Bank, even if it is held that the Petitioner was guilty of any misconduct, the Petitioner should be visited with a minor penalty, instead of the major penalty of compulsory retirement. In this context the following extract from the judgment of the Apex Court is a complete answer to this contention. In the case of Chairman and Managing Director, United

Commercial Bank and Ors. v. P.C. Kakkar (supra), the Apex Court has stated, both in relation to the approach and the quantum of punishment Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar,

10. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

11. 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.

12. In the case at hand the High Court did not record any reason 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.

13. 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 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. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik*, it is no defense 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.

15. Applying the aforesaid ratio to the facts of the case, it is not possible to state

that the decision making process suffers from any legal infirmity so as to warrant interference. It is not possible to either hold that the orders made by the disciplinary authority and the appellate authority are in any manner bad in law, either on merits of the controversy viz. the acts of misconduct, or in relation to the quantum of punishment.

16. The petition, therefore, does not merit acceptance and the same is accordingly rejected. Rule discharged. There shall be no order as to costs.