
(2004) 07 DEL CK 0034
In the Delhi High Court
Case No : WP (C) No. 3991 of 1999

Mr. B.D. Luthra

APPELLANT

Vs

Chairman and Managing Director, Punjab National Bank

RESPONDENT

Date of Decision : 05-07-2004

Acts Referred:

Punjab National Bank (Employees) Pension Regulations, 1995 — Regulation 43, 45, 46, 47
Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 — Regulation 6, 6(10), 6(13), 6(5)
Punjab National Bank Officer Employees Conduct Regulations, 1977 — Regulation 24, 3(1)
Punjab National Bank Officers Service Regulations, 1979 — Regulation 20(3)

Citation : (2004) 112 DLT 822 : (2004) 76 DRJ 90 : (2005) 1 LLJ 279 : (2005) 1 SLJ 451

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Ashok Bhalla, for the Appellant; Jagat Arora, for the Respondent

Judgement

Pradeep Nandrajog, J.—By order dated 24.4.1998 penalty of removal from service not being a disqualification for future employment was passed by the Disciplinary Authority against the petitioner. Appeal filed against the said order was dismissed by the Appellate Authority vide order dated 12.1.1999. The said two orders are in challenge in the present petition. Petition also prays that Regulation 20(3)(iii) of Punjab National Bank Officers Service Regulations 1979 be quashed as being unconstitutional. However, during arguments said prayer was given up by counsel for the petitioner.

2. Petitioner last served as Chief Manager in the branch office of the respondent bank at Jangpura Extension. He was to superannuate on 31.3.1996. On 25.3.1996 a charge sheet was issued to the petitioner which was received by him through post on 2.4.1996. As per the charge sheet, charges related to the period 1991-95 when petitioner was working as Manager of Minto Road Branch. Four articles of charge were listed against the petitioner. The same reads as under:-

ARTICLE - I

He abused his official position and extended undue favor to the borrowers while sanctioning/enhancing credit facilities in their favor detrimental to Bank's interest.

ARTICLE - II

He indulged in unauthorised business and jeopardised bank's funds.

ARTICLE-III

He neglected post-sanction control to safeguard Bank's interest.

ARTICLE-IV

He did not exercise proper administrative control over the branch resulting in shortage of S.F.F. Items.

Shri Luthra failed to discharge his duties with utmost devotion, diligence and integrity and failed to take all possible steps to ensure protect bank's interest. He has thus committed misconduct in terms of Regulation 3(1) read with regulations 24 of PNB Officers Employees (Conduct) Regulation,1977."

3. Statement of imputation in support of charge No. 1 was that the petitioner abused his official position and extended undue favor to several borrowers as follows:-

(i) M/s. Nitin Wires Industries

Party was stated to be enjoying fund based facilities at branch office Minto Road where the petitioner was previously working. On 17.1.1992 a note was put up to him that the party was absconding and the account was showing a debit balance of Rs.25,58,439.51 against sanction limit of Rs.10 lakhs. Note recorded that the party was not in a position to get the documents under LC retired from their own sources. Petitioner, inspired by the aforesaid, established fresh LCs for Rs.15 lacs on 22.10.1992 and continued to purchase cheques from the party which were returned unpaid. Total amount under the said unpaid cheques was about Rs.18 lakhs. It was alleged that these cheques were issued by a sister concern of the party.

(ii) M/s Vikas Leasing Finance Co.

It was alleged that the party opened a current account on 11.6.1992. Immediately, on 20.6.1992 petitioner purchased two cheques for Rs.1.5 lacs each without collection of CR on them. The cheques were received back unpaid. Thereby, he allowed the account to be overdrawn and as on 12.2.1996 overdraft of Rs3.08 lacs had become a doubtful recovery.

(iii) M/s Bhuwan Furniture Works

It was alleged that petitioner sanctioned and released two limits to the firm on

14.11.1992. It was a condition of the sanction that the party would create equitable mortgage of a property valuing Rs.4.5 lacs within six months. Mortgage was not got created and the limit was enhanced by the petitioner on 20.5.1994. It was alleged that the overdraft in the sum of Rs.6,49,486.57 was a doubtful recovery.

(iv) M/s Kankashi Exports Pvt. Ltd.

It was alleged that the firm was enjoying credit facility sanctioned on 18.1.1991. Erstwhile New Bank of India advised the branch that the proprietor of the firm Shri Ravi Manchanda, as a guarantor owed a sum of Rs.8,45,943.50. The firm was placed on caution list by ECGC. Aware of the said facts, petitioner enhanced the bank credit facility as also the FOBP facility twice. While enhancing the limit he ignored the poor turnover in the account and serious irregular nature of accounts in the light of valuation of the stock.

(v) M/s Inter Modes

It was alleged that the account of the firm and the group concern being highly irregular, on 7.5.1992 petitioner enhanced packing credit limit. Limit was sanctioned without getting the proposal prepared and recommended by any officer in the bank.

(vi) M/s Vasu Bhatta Company

It was alleged that without proper pre-sanction appraisal, cash credit limit of Rs.4 lacs was sanctioned on 26.6.1992. Said company was a part of the group of which M/s. Inter Modes was a part. It was alleged that the petitioner ignored that the group companies were running highly irregular accounts and had bank dues of over Rs.70 lacs It was alleged that a sum of Rs. 3,24,318.89 had become a doubtful recovery.

(vii) Le-Diffusion

It was alleged that this firm was a part of group family concern of which M/s Inter Modes was also a part. It was alleged that the petitioner's predecessor sanctioned this limit beyond his powers. When petitioner took charge he did not bring this illegality to the notice of the Zonal Office, instead he enhanced packing credit. Further, Rs.5,61,728.97 was diverted by this firm to its sister concern M/s Inter Modes. It was alleged that recovery of Rs.24.59 lakhs had become doubtful.

4. Allegations pertaining to statement of imputation qua charge no. 2 were:-

(i) Petitioner allowed clean overdraft to M/s. Inter Modes Mfg. & Exporters Pvt. Ltd., M/s.Raj Kamal Sharma, M/s. Inter Modes, M/s. AVON Standard Bricks and M/s. Shubham Agencies. Total amount was about Rs.3 lacs.

(ii) Petitioner allowed clean overdraft to M/s. Kankashi Exports Pvt. Ltd. and M/s. Vikas Leasing Company. Amount involved was about Rs.4 lacs.

(iii) Petitioner gave unauthorised accommodation to M/s. Capri Impex India. Net

worth of party as per balance sheet dated 31.3.1992 was negative. Rs.17.42 lacs was diverted to the family concerns. ECGC had black-listed the firm. Huge bills were overdue and payments were not forthcoming. Yet, as against sanctioned limit of Rs.75 lacs, accommodation of purchase of export bills was sanctioned to the extent of Rs.151.57 lacs.

(iv) Pertaining to the firms M/s. Silver Tone Gravo Flax and M/S. S.B. Packaging Pvt. Ltd. it was alleged that petitioner sanctioned working capital limits beyond his loaning powers. Amount involved was Rs.30 lacs.

(v) It was alleged that petitioner exceeded his financial powers and incurred expenditure under different heads beyond the prescribed limits. Amount involved was about Rs.50 thousand.

5. Statement of imputations pertaining to Charge No. 3 were:-

(i) M/s. Nitin Wires

Petitioner did not review/renew the credit facility due for renewal on 16.2.1991. He did not ensure periodical checking of stocks regularly, there being no inspection after 12.9.1992. As on 31.12.1995 dues to the bank aggregating Rs.21 lacs plus had come a doubtful recovery.

(ii) M/s Kirti Cables & Wires Ltd.

It was alleged that on 27.9.1991 SIDBI wrote a letter to the branch seeking details of overdraft in the account of the firm. It was advised that the branch should follow up/monitor the accounts effectively. Petitioner did not supply the information to SIDBI and also did not follow up the accounts. Outstanding amount in the account of the firm had become doubtful recovery.

(iii) M/s Tankers & Carriers Pvt. Ltd.

It was alleged that the petitioner did not ensure that the Tankers which were financed by the bank were insured.

(iv) M/s Modi Carpets Ltd.

It was alleged that after 25.11.1991 petitioner did not inspect the stock nor did he obtain the stock statement after 31.12.1991. The factory stopped functioning with effect from 17.4.1992. Petitioner failed to take any effective step to safeguard bank's interest. One file of the party was misplaced. Petitioner did not follow up claim of Rs.64.30 lacs with ECGC.

(v) M/s Capri Impex India

It was alleged that the petitioner did not observe post sanction control evidenced by the fact that the stock statement had not been obtained, nor physical inspection was carried out. No balance sheet after 31.3.1993 was obtained.

(vi) M/s Stuber Engineering Pvt. Ltd.

It was alleged that he sanctioned credit facility to the company with a stipulation in the terms of sanction that second charge on Plant & Machinery be created after obtaining consent of UPFC by executing Tripartite Agreement. Petitioner did not ensure compliance of terms and conditions of sanction at the time of release of limit. On 10.1.1993 he renewed the limit, even at that time he did not ensure compliance of the terms of sanction. Rs.12.81 lacs had become a doubtful recovery.

(vii) M/s Aditya Industries

It was alleged that the petitioner failed to follow up with the party to liquidate the outstanding amounts in their various packing credit limit in the sum of Rs.3,13,708.00.

(viii) M/s MKML International

It was alleged that the unit was a sole proprietorship concern and had been enjoying ILC limit for Rs.10 lacs and Document DD limit for Rs.10 lacs. The party had committed fraud on the bank. Petitioner transferred the account to PA category after 10 months. He did not lodge a FIR, nor did he lodge a claim with DICGC. It was alleged that that borrower and proprietor were absconding. Rs.5.29 lacs had become a doubtful recovery.

(ix) M/s Kankashi Exports Pvt. Ltd.

It was alleged that the petitioner neither obtained stock statement nor conducted physical verification of the securities hypothecated to the bank. No stock inspection was conducted after 31.12.1992. Rs.18 lacs had become a doubtful recovery.

(x) M/s Fancy Industries

It was alleged that the petitioner did not lodge a claim with the Official Liquidator pertaining to the amount outstanding in the account of the firm.

(xi) It was alleged that petitioner did not periodically verify the stock position of M/s Inter Modes, M/s Aditya Inds. and M/s Le-Deffusion.

(xii) Pertaining to 2 firms M/s Royal Sales Corporation and M/s Sachdeva Footwear, it was alleged that petitioner failed to obtain the BC letters in borrower account to keep the limitation alive as a result of this, limitation in the accounts has expired and bank's funds had been jeopardised.

(xiii) Pertaining to the vehicles financed by the bank to M/s Royal Tours and Travels, General Transport Company, M.M. Bhalla, Rajni Bhalla and Suresh Sethi. It was alleged that the petitioner failed to inspect the vehicles thereby jeopardising the interest of the bank.

6. Pertaining to charge No. 4 it was alleged that the petitioner did not exercise proper administrative control over the branch resulting in shortage of various SFF items, the details whereof were provided in the statement of imputation.

7. Under cover of his letter dated 25.4.1996, petitioner submitted his reply to the charge sheet. Preliminary objection was taken that the charges pertained to the period 1992-93. It was stated that the charge sheet issued on 25.3.1996 suffered from delay.

8. On merits, petitioner stated that the allegations relate to the period when he was working as branch manager of Minto Road Branch. He stated that he took charge of the branch on 14.2.1992 and was relieved on 5.8.1994. Petitioner relied upon the bank circular No. 1016 and stated that within six months of the new incumbent taking charge, nothing adverse was reported, there was a presumption that every thing was normal and regular in the branch during his tenure of service in the branch.

9. After raising two preliminary objections aforesaid, which are inter related to each other, petitioner responded to the allegations on merits.

10. By order dated 2.7.1996, the Disciplinary Authority held that considering the allegations in the charge sheet and the response of the petitioner thereto, he was of the opinion that an inquiry officer should be appointed to look into the truth of imputations leveled against the petitioner. Inquiry officer was appointed who proceeded with the inquiry.

11. Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977 stipulate the manner in which the inquiry has to be conducted. Regulation 6 details the procedure to be followed in case of major penalty proceedings. Sub Regulations 1 to 14 of Regulation 16 may be noted as they were referred to by the counsel. The same are as under:-

6. Procedure for imposing Major Penalties:

(1) No order imposing any of the major penalties specified in clauses (f), (g), (h), (i) and (j) of Regulation 4 shall be made except after an enquiry is held in accordance with this regulation.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an officer employee, it may itself enquire into, or appoint any other Public servant (herein after referred to as the inquiring authority) to enquire into the truth thereof.

Explanation: When the Disciplinary Authority itself holds the inquiry any reference in sub regulation (8) to sub regulation (21) to the inquiring authority shall be construed as a reference to Disciplinary Authority.

(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 of the allegations, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit within such time as may be

specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defense.

(4) On receipt of the written statement of the office employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or if it considers it necessary so to do appoint under Sub-regulation (2) an Inquiring Authority for the purpose.

Provided that it may not be necessary to hold an inquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record its findings on each such charge.

(5) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority:

- i) a copy of the articles of charges and statements of imputations of misconduct or misbehavior;
- ii) a copy of the written statement of defense if any, submitted by the officer employee;
- iii) a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;
- iv) a copy of statements of the witnesses, if any;
- v) evidence of proving the delivery of the articles of charge under sub-regulation (3);
- vi) a copy of the order appointing the 'presenting officer' in terms of sub-regulation (6).

(6) Where the Disciplinary Authority itself enquires or appoints an inquiring authority for holding an inquiry, it may, by an order, appoint a public servant to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

(7) The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the presenting officer, appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority, having regard to the circumstances of the case so permits.

NOTE: The officer employee shall not take the assistance of any other officer employee who has two pending disciplinary cases on hand in which he has to give assistance.

(8)(a) The Inquiring Authority shall by notice in writing specify the day on which the officer employee shall appear in person before the inquiring authority.

(b) On the date fixed by the Inquiring Authority, the officer employee shall

appear before the Inquiring Authority at the time, place and date specified in the notice.

(c) The Inquiring Authority shall ask the officer employee whether he pleads guilty or has any defense to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the officer employee concerned thereon.

(d) The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the officer employee concerned pleads guilty.

(9) If the officer employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the Inquiring Authority.

(10)(a) The Inquiring Authority shall, where the officer employee does not admit all or any of the articles of charge, furnish to such officer employee a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be proved.

(b) The Inquiring Authority shall record an order that the officer employee may for the purpose of preparing his defense-

(i) inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents listed;

(ii) submit a list of documents and witnesses that he wants for the inquiry;

(iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority;

(iv) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of the documents referred to in item (ii).

NOTE: The relevancy of the documents and the examination of the witnesses referred to in item (ii) shall be given by the officer employee concerned.

(11) The Inquiring Authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents, on such date as may be specified.

(12) On receipt of the requisition under sub-regulation (11), the authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the Inquiring Authority on the date, place and time specified in the requisition;

Provided that the authority having the custody or possession of the requisitioned

documents may claim privilege if the production of such documents will be against the public interest or the interest of the bank. In that event, it shall inform the Inquiring Authority accordingly.

(13) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses produced by the Presenting Officer shall be examined by the Presenting Officer and may be cross-examined by or on behalf of the officer employee. The Presenting Officer shall be entitled to re-examine his witnesses on any points on which they have been cross examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(14) Before the close of the case, in support of the charges, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge sheet or may itself call for new evidence or recall or re-examine any witness. In such case the officer employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned. The Inquiring Authority may also allow the officer employee to produce new evidence, if its is of the opinion that the production of such evidence, is necessary in the interests of justice."

12. Before the Inquiry Officer was appointed, as is evident from the above, charge sheet was served upon the petitioner and his reply was received by the Disciplinary Authority. Considering the reply and the allegations, Inquiry Officer was appointed. Sub-regulations 1 to 4 stand complied with. As per sub-Regulation 5, the Disciplinary Authority forwarded to the Inquiry Officer charge-sheet along with statement of imputations, copy of the reply sent by the petitioner to the charge sheet, as also a copy of the order appointing the Presenting Officer. List of documents by which and list of witnesses by whom the articles of charge were proposed to be substantiated were not sent.

13. In terms of Sub-Regulation 8 aforesaid, Inquiry Officer was to notify a date for the petitioner's appearance. The Inquiry Officer notified 16.8.1996 as the date of first hearing. In terms of clause (c) of Sub-Regulation 8 aforesaid, Inquiry Officer was to ask the petitioner where he pleads guilty or not and record the same. It was so done. Order dated 16.8.1996 records:- " CO confirms that he has received the Charge Sheet and he denies the charges."

14. Sub-Regulation 8 required the Inquiry Officer to adjourn the case to a later date not exceeding 30 days and while doing so, in terms of Sub-Regulation 10, was required to furnish to the petitioner a list of documents and the list of witnesses by which/by whom the articles of charge were proposed to be proved. Since the two lists had not been received by the Inquiry Officer, he directed the Presenting Officer to supply the two list to the petitioner by 16.9.1996. It was

directed that the documents so relied would be supplied by the Presenting Officer to the petitioner and confirmation would be obtained in writing. It was further directed that by 30.9.1996 petitioner could submit the list of defense documents/witnesses. 10.10.1996 was fixed as the date of inspection of permitted documents. Order dated 16.8.1996 records that further direction/ hearing would be held on 1.11.1996.

15. Record of the inquiry would reveal that the petitioner received list of documents along with photocopies of the documents as per list relied upon by the management. He also received a list of witnesses. On 18.3.1997 petitioner moved an application to the Senior Manager of the respondent bank at Minto Road Branch seeking permission to inspect the documents/files specified in the said letter. Said inspection was granted on 18, 19 and 20.3.1997. On 12.4.1997 petitioner confirmed that he had inspected all the record, inspection whereof was sought by him under letter dated 18.3.1997, save and except:-

- a) Attendance Register from January 1992 to August 1994.
- b) Office Order Register containing Office Orders issued from January 1991 to August 1994.
- c) T.P.O. Received Register for out station branches for the year 1992.
- d) Files containing correspondence relating to claim lodged with ECGC in the account of M/s Modi Carpets Ltd.

16. Order dated 17.4.1997 records that the petitioner moved an application seeking production of 114 documents as defense documents. Request was allowed. The next order dated 28.5.1997 records that except document at Serial No. 5, 113 out of 114 defense documents were supplied to the petitioner.

17. At the next hearing held on 9.7.1997 the 113 defense documents were taken on record and marked as Ex.D-1 to D-113. It was also recorded that four documents listed in petitioner's letter dated 12.4.1997 for inspection could not be made available.

18. Petitioner participated in the inquiry through a defense assistant. Report was submitted. As per the report some of the allegations were fully proved, some were partly proved and some were not proved. Conclusion of the Inquiry Officer as per report dated 31.12.1997 is:- " on the basis of overall assessment, it is held that the CO failed to discharge his duties with utmost devotion, diligence and integrity as he failed to take all possible steps to ensure protecting bank's interest".

19. Imputations (ii), (iii) and (vi) pertaining to charge No. I were held proved. Imputations (iv) and (v) pertaining to Charge No. II were held proved. Imputations (iii), (ix) and (xii) pertaining to Charge No. III were held proved. Imputations (i), (v) and (vii) pertaining to charge No. I, imputation (iii) pertaining to charge No. II and imputations (ii), (v), (vii), (viii) and (xi)

pertaining to charge No. 3 were held partially proved. Rest of the imputations were held not proved.

20 Report of the Inquiry Officer would reveal that the Inquiry Officer has relied upon documentary evidence wherever he held the imputations proved or partly proved.

21. Taking cognizance of the report of the Inquiry Officer and agreeing with the same, the Disciplinary Authority, invoking Regulation 20(3)(iii) of the PNB Officers Service Regulations, 1979 imposed the penalty of removal from service.

22. It may be recorded that before the order of penalty was passed, the petitioner was supplied a copy of the report of the Inquiry Officer under cover of letter dated 16.2.1998 for making his submissions. On 28.2.1998 petitioner made his submissions to the Disciplinary Authority in writing.

23. The order passed by the Disciplinary Authority reads as under:-

"The Enquiry Officer, in his findings, has held that imputation of charge I(ii), (iii), (vi) : II(iv), (v); and III(iii), (ix), (xii), (xiii) as proved. The imputation of charges I(i), (v), (vii); II(iii) and III(ii), (v), (vii), (viii), (xi), have been held as partially proved. However, charges I(vi); II(i), (ii); III(i), (iv), (vi), (x) and IV have not been held proved by the Enquiry Officer.

Shri Luthra vide his representation dated 28.2.98 has made the following submissions on the findings of Enquiry Officer:

- Enquiry Officer being a non-banker could not assess and appreciate evidence due to lack of knowledge of banking law & practice and the systems and procedure of PNB.
- Enquiry Officer has held a few allegations as proved stating that charged Officer failed to disprove the same by producing evidence.
- In respect of allegations, which the Presenting Officer has failed to prove, the Enquiry Officer has commented that benefit of doubt has gone to charged Officer. This comment is absolutely unwarranted and unjust.
- Enquiry Officer ignored evidence adduced through exhibits D-1 to D-4 through which factual position relating to M/s. Nitin Wire Industries was informed to Zonal Office while moving the case for transfer of account to BO: Parliament Street, New Delhi.
- Presenting Officer could not prove that CR on M/s Vikas Leasing Finance Company was not collected.
- As regards M/s Vasu Bhatta Company, the Enquiry Officer has held the allegation as proved on the basis of his inference relating to manufacturing season.
- There is no provision under Regulation 6 of PNB Officer Employees" (D&A)

Regulations to enable the Enquiry Officer to examine the witnesses but the Enquiry Officer has put questions to one of the witnesses.

- The Enquiry Officer has placed reliance on the deposition of SW-5 that the affairs of the branch as well as the business and securities available with the bank is the ultimate responsibility of the incumbent in charge.

The records reveal that Enquiry Officer did not cross examine the management witness. In terms of Regulation 6(13) of PNB Officer Employees (Discipline & Appeal) Regulations, the Inquiring Authority may also put such question to the witnesses as it thinks fit. Being incumbent in charge of the branch, Shri Luthra could not escape the direct responsibility for loaning functions of the branch. A such, there is no merit in the contention of Shri Luthra in this regard. The Enquiry proceedings were conducted in accordance with provisions of PNB Officer Employees (Discipline & Appeal) Regulations. The Enquiry Officer has arrived at his findings after making assessment of evidences adduced by both the sides in the compartmental enquiry other sub missions made by Shri Luthra are devoid or merit.

I, Therefore, concur with the findings of the Enquiry Officer and hold Shri Luthra responsible for the proven charges and keeping in view the seriousness and gravity of such proven charges, I decide to impose upon him the major penalty of "Removal from service which shall not be a disqualification for future employment."

24. Appeal filed by the petitioner was dismissed by the Appellate Authority. Inter alia, the order dated 12.1.1999 passed by the Appellate Authority reads as under:-

"Shri Luthra has mainly raised following points in his appeal:

That he was due to retire on 31.3.96 and no communication about invocation of Regulation 20(3)(iii) of Service Regulations or charge sheet was received by him till retirement. The communications were received by him on 2.4.96 after retirement. He was lawfully retired on 31.3.96 and disciplinary proceedings could not have been initiated against him.

That the Disciplinary Authority has discussed only few points raised by him in his presentation and summarily rejected the entire representation. He ignored the allegation-wise position explained in his representation and did no assign any reason for rejecting the points given below:

- a) The Enquiry officer being a non-banker failed to judiciously assess the evidences on record.
- b) Some allegations have been held as proved by the Enquiry Officer because he failed to disprove the same whereas Presenting Officer failed to prove the same.
- c) The Enquiry Officer made some uncalled for remarks beyond his jurisdiction.

d) The Enquiry Officer heavily relied upon the deposition of Shri IJ Gaba (SW-5), who stated that ultimate responsibility relating to the affairs of the branch rested with the Incumbent in charge. He was denied the opportunity of inspection of office order which could have revealed the names of the officials who failed in discharge of their duties.

e) A number of documentary evidences in his support were ignored by the Enquiry Officer stating that the same were made subsequent to his transfer.

That the order of the Disciplinary Authority is not a speaking order.

That the Disciplinary Authority has been influenced by the findings of enquiry Officer in respect of Articles of charge ignoring the allegations contained in Statement of Imputations of lapses and position explained in his representation. Out of 40 allegations leveled against him, 10 were held as proved while 8 were held as partly proved. None of these allegations can be considered as serious or grave.

That in respect of the account of Nitin Wire Industries, permission to transfer the account to BO Parliament Street, New Delhi was granted by the Zonal Manager who was fully convinced. The file containing correspondence with the party and the Zonal Office was sent to BO Parliament Street, New Delhi while transferring the account. Not only operations in the account were continuously allowed at BO Parliament Street, New Delhi, but also the limits were enhanced.

That as regards A/c Tankers and Carriers Pvt. Ltd., the Enquiry Officer ignored the statement of Shri IJ Gaba (SW-5) that in spite of repeated requests the tankers were never produced for inspection the borrower informed about the tankers being in Assam with Indian Oil Co. It is abundantly clear that due efforts were made to inspect vehicles but borrowers did not cooperate which was beyond his control.

That his representation dated 28.2.98 be considered as part of his appeal.

Further, Shri Luthra has requested to set aside the order of penalty.

I have examined the various points raised by Shri Luthra in his appeal Along with the records of the case. The records reveal that Shri Luthra was due to retire on 31.3.96. As such, provisions of Regulation 20(3)(iii) of PNB (Officers) Service Regulations, 1979 were invoked and orders were issued by the Disciplinary Authority on 29.3.96 i.e before the date of superannuation of the appellant. The disciplinary proceedings are not vitiated due to receipt of orders by the appellant after his date of superannuation. The points raised by Shri Luthra in his representation were duly considered by the Disciplinary Authority before deciding the case. The Disciplinary Authority agreed with the findings of the Enquiry Officer which are based on the assessment of evidences adduced in the departmental enquiry. The charges proved against Shri Luthra are grave in nature.

As regards the A/c of M/s Nitin Wire Industries, the contention of Shri Luthra that the Zonal Manager, Delhi had permitted transfer of account after all facts were brought to his notice and that BO Parliament Street, New Delhi continued the operations in the A/c do not belie the charge that he did not disclose the irregularities in the A/c while transferring the same to BO Parliament Street, New Delhi. As regards the A/c of Tankers & Carriers Pvt. Ltd. the deposition of Shri IJ Gaba (SW-5) referred to by the appellant also confirms that securities (Tankers) were not inspected. I also observe that there is an apprehended loss of Rs.334.69 lac in 21 accounts incorporated in the charge sheet.

In view of the foregoing, I do not find any merit in the points raised by Shri Luthra in his appeal and reject the same. Major penalty of "Removal from service which shall not be a disqualification for future employment" imposed upon him by the Disciplinary Authority is confirmed hereby."

25. Arguments of the petitioner were concluded on 17.2.2004 and thereafter matter was adjourned from time to time for reply by the respondent. Learned counsel for the petitioner had urged 12 points which were noted in the order dated 17.2.2004. Contentions of the petitioner as recorded in the order dated 17.2.2004 are as under:-

"1. As per circular dated 28th July, 1984, reiterated vide circular dated 3rd May, 1988 (pages 207 to 210 of the paper book), disciplinary proceedings could not be initiated against the petitioner for alleged lapses beyond the period of 6 months of the petitioner being transferred from the concerned branch. It is urged that the allegations pertained to the working of the petitioner as Chief Manager at Minto Road Branch from where the petitioner was transferred on 5.8.1994. Charge-sheet was issued on 25.3.1996 but was served on 2.4.1996.

2. Petitioner superannuated from service on 31.3.1996 and as per Regulations 43, 45 and 46 of the PNB Employees (Pension) Regulations, 1995, the only penalty which could be imposed, if at all, was withholding or withdrawal of pension or part thereof.

3. Under Regulation 46 of the PNB Employees (Pension) Regulations, 1995, penalty could be imposed only in respect of grave misconduct. Grave misconduct would be such misconduct which entails penalty of dismissal. Petitioner has been visited with the penalty of removal from service. The disciplinary authority has, Therefore, not treated the misconduct to be a case of grave misconduct.

4. The penalty prescribed post-retirement being of withdrawal or withholding of pension has to be inflicted in terms of the pension Regulations which required issuance of a show cause notice before penalty is imposed. No show cause notice was issued.

5. Regulation 6(5)(iii) of the PNB Officers Employees (Discipline & Appeal) Regulations, 1977 require list of witnesses and list of documents relied upon by the management to be supplied to the charged officers by the disciplinary

authority. In the instant case, the documents and list of witnesses were supplied by the presenting officer during the conduct of enquiry before the enquiry officer. Decision of this court reported as Y.K. Singla Vs. Punjab National Bank and Others, was relied upon.

6. List of witnesses and list of documents on the basis of which charges were framed were not supplied along with the charge-sheet. Contention raised was that the disciplinary authority has to form his opinion whether the charges are made out on the basis of documents which he must have before him. This shows that the disciplinary authority has framed the charges without looking at the documents.

7. Report of the enquiry officer was vitiated because onus was wrongly placed on the petitioner and the petitioner was required to discharge the said onus. Law requires that the management must establish the charge against the charged officer. AIR 1968 SC 268 was relied upon. Findings of the enquiry officer at paras 4.25, 4.26 and 4.40 were argued to be, conclusions based on wrong conclusions, surmises and wrong onus respectively.

8. Out of 22 imputations, only 8 stood proved. Law does not recognize the concept of a charge being partly proved. The findings pertaining to the imputations being partly proved are, Therefore, vitiated in law.

9. Four documents listed at page No. 61 being petitioner's letter dated 12.4.1997 to the enquiry officer were not produced, in that, inspection was not granted and, Therefore, fair opportunity of defense was denied to the petitioner.

10. There is non-application of mind in the order passed by the disciplinary authority on 24.4.1998, evidenced by the fact that contentions of the petitioner have not been dealt with.

11. Order passed by the appellate authority also suffers from non-application of mind because the contentions raised in the appeal have not been dealt with. Further, the appellate authority has introduced an unproved concept of loss being occasioned to the bank in the sum of Rs.334.69 lacs. Decisions of the Supreme Court reported as R.P. Bhatt Vs. Union of India and Ors (UOI) ., and Union of India (UOI) and Others Vs. R. Reddappa and Another, have been relied upon.

12. Relying upon averments in the counter affidavit at page 178 to the effect that Best Branch Certificate issued to the Branch cannot be relied by the petitioner to show his good conduct because it was a case of the collective contribution of all the members of the branch, contention urged is that for lapses committed at the branch, there has to be a joint liability on all the staff members and petitioner alone cannot be singled out."

26. Contention No. 1 of the petitioner, as noted in para No. 25 above, be dealt with. Petitioner relies upon circulars dated 28.7.1984 and 3.5.1988 to contend that no charge could be framed against him for alleged lapses beyond the period of six months from the date of petitioner's transfer from the concerned branch.

As held by me in my judgment of even date pronounced in WP(C) No. 4417/99, S.D.Gupta Vs. P.N.B., circulars are mere guidelines and cannot be enforced as a statutory right. They are for the guidance of the bank and require the successor-in-interest, while taking charge, to ensure that his predecessor-in-interest has handed over charge of the bank without any lapses committed by him. As held by me in the said judgment, in a banking industry, a misdemeanor or a lapse would normally surface when an account has become sticky. As held by me in the said decision, bank had thereafter issued circulars on 3.5.1990, 17.6.1990 and 20.6.1990. As per said circulars, it was noted that in spite of checks and controls exercised at various levels, instances of deviations from the prescribed procedures and violations of guidelines were noted, rendering the individuals accountable for such omissions and commissions. Said circulars clarified that earlier circulars were intended to apply to situations of expiry of limits etc and in respect of the liability of recovering advances. It was never intended to prescribe time limit in cases of serious misconduct.

27. Further, in my afore noted decision, I have noted the law on the subject as to when a Court should interdict disciplinary proceedings on the ground of delay in issue charge-sheet. I have noted the following decisions of the Supreme Court:-

- i) The State of Madhya Pradesh Vs. Bani Singh and another, , Registrar of Cooperative Societies, Madras and Another Vs. F.X. Fernando, .
- ii) Registrar of Cooperative Societies, Madras and Another Vs. F.X. Fernando, .
- iii) State of Punjab and Others Vs. Chaman Lal Goyal, .
- iv) Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others, .
- v) Union of India v. Ashok Kacker, 1995 Supp (1) SCC 180 .
- vi) B.C. Chaturvedi Vs. Union of India and others, .
- vii) Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, .
- viii) State Bank of Patiala and others Vs. S.K. Sharma, .
- ix) Secretary to Government and another Vs. K. Munniappan, .
- x) State of Andhra Pradesh Vs. N. Radhakishan, .

28. I also noted the decision of the Division Bench of this Court delivered on 29.10.2003 in LPA.No. 39/99, DDA Vs. D.P.Bambah & Anr., which decision had noted the aforesaid decisions of the Supreme Court. The Division Bench of this Court, on a review of the decisions on the subject held as under:-

"In our opinion the legal position, when an action is brought seeking quashing of a charge-sheet on grounds of issuance of the charge-sheet or grounds of inordinate delay in completion of the disciplinary inquiry may be crystalised as

under:-

(i) Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is not period of limitation for initiating the disciplinary proceedings;

(ii) Since delay in initiating disciplinary proceedings or concluding the same are likely to cause prejudice to the charged employee, courts would be entitled to intervene and grant appropriate relief where an action is brought;

(iii) If bone fide and reasonable Explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter;

(iv) While considering these factors the court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-a-vis the handicaps which the department may be suffering in the initiation of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defense on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.

(v) In considering the factual matrix, the court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge-sheet unless, of course, the right of defense is found to be denied as a consequences of delay.

(vi) It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay.

(vii) The sword of damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry.

In determination of this, the first question which would have to be answered is whether on facts, is there a delay? If yes, how long? Was the delay inevitable having regards to the nature of the charge? Was the delay beyond the control of the employer? Whether the employee willfully contributed to the delay or was responsible for the delay? Has prejudice caused to the defense?

All questions would have to be answered. In a nutshell, the court would have to weigh all the factors, both for and against the employee and come to the conclusion whether in the facts and circumstances prejudice has been shown as having been occasioned to the employee, justifying quashing of the charge-sheet either on account of delay in issuance of the charge-sheet or on account of delay in completion of the disciplinary proceedings."

29. Charge-sheet was issued to the petitioner on 25.3.1996. The allegations pertained to the years 1991 to 1994. Allegations would reveal that misdemeanor surfaced when the accounts became sticky. In the facts and circumstances, I do not find any delay, much less inordinate delay in issuing the charge-sheet. In any case, the petitioner has neither averred nor established any prejudice caused to him by the issuance of charge-sheet in the year 1996. The first submission made by counsel for the petitioner is accordingly negated.

30. Submissions 2, 3 and 4 noted in para 25 above, would be dealt with by me in the end.

31. Submission No. 5 made by counsel for the petitioner was that Regulation 6(5) (iii) of the PNB Officers Employees (Discipline & Appeal) Regulations, 1977 required list of witnesses and list of documents relied upon by the Management to be supplied to the charged officer by the Disciplinary Authority. It was argued that being supplied by the Presenting Officer, Regulation relied upon was violated. Contention No. 6, as noted above, is related to the same set of facts. It was urged that list of witnesses and list of documents on the basis of which charges were framed were not available with the Disciplinary Authority and this shows that the Disciplinary Authority has framed the charges without looking at the documents. The two submissions are, Therefore, being dealt with together.

32. Regulation 5(iii) requires the Disciplinary Authority to forward to the enquiring authority, the list of documents by which and list of witnesses by whom the Articles of charge are proposed to be substantiated. If, before the enquiry officer, the charged officer pleads not guilty, enquiry has to proceed and under sub-regulation (10) of Regulation 6, the enquiring authority has to forward to the charged officer the documents by which and the list of witnesses by whom the articles of charge are proposed to be proved. The purpose of the regulation is that the charged officer must be aware of the documents relied against him before the enquiry proceeds. Further, he must be aware as to who would be deposing against him as a witness. The regulation does not provide that the disciplinary authority has to supply the documents and the list of witnesses to the charged officer. Regulations provide that the enquiry officer shall supply the same. Whether the enquiry officer supplies the documents and the list of witnesses to the charged officer or the Presenting Officer supplies the same, it hardly makes a difference. In the decision of the Supreme Court reported as *State Bank of Patiala and others Vs. S.K. Sharma*, the Supreme Court observed that "technicalities and irregularities which do not occasion failure of justice cannot be allowed to defeat the ends of justice. Justice means justice between both the parties." Merely because the Presenting Officer supplied the documents relied upon by the management and the list of witnesses to the petitioner is inconsequential. What is relevant is that the petitioner received the same before the evidence of the management commenced.

33. Merely because the petitioner was supplied the documents and the list of witnesses when the enquiry commenced before the enquiry officer and merely

because the enquiry officer did not receive the same at the first instance from the Disciplinary Authority does not lead to the conclusion that the Disciplinary Authority framed the charges without looking at the document.

34. In most of the departmental actions, as noted in the present case, when a misconduct comes to light, a preliminary enquiry is held and the Disciplinary Authority proceeds to apply its mind on further action on the basis of the report of the preliminary enquiry. In this case, a preliminary enquiry was held and on the basis of the said preliminary enquiry, further action was taken. Purpose of the preliminary enquiry is not to hold anyone guilty. Purpose is to decide whether further action is called for or not. This preliminary enquiry is in the nature of fact finding enquiry. Be that as it may, at the enquiry, petitioner did not cross-examine any management witness on the issue of framing of charges. Petitioner did not raise the issue that his Disciplinary Authority had framed the charges without looking at the documents. The contention of the petitioner is, Therefore, rejected.

35. 7th contention raised was that the report of the enquiry officer was vitiated at three places. It was alleged that findings in paras 4.25, 4.26 and 4.40 were vitiated being wrong conclusions, surmises and wrong onus respectively.

36. The finding in para 4.25 of the enquiry officer's report pertain to allegations 1(v) of the Statement of Imputations. This allegation was held to be proved. Finding in para 4.26 pertains to allegations 1(vi) of the Statement of Imputations. These were held to be proved. Findings in para 4.40 of the enquiry report pertain to the allegations 2(iv) of the Statement of Imputations. These were held to be proved.

37. Assuming for the sake of argument that these three findings are vitiated, effect thereof would be that these three findings would have to be excluded and corresponding allegations would be treated to be not proved. Further, the issue would arise as to what is the effect thereof.

38. In the decision reported as Krishna Chandra Tandon Vs. The Union of India (UOI), , the Supreme Court had held:

"12. The learned judges correctly informed themselves that they could not examine the evidence as if they were sitting in appeal over the findings of the Commissioner. All they could do was to consider whether the order was based on no evidence. Except in a few items the learned judges found that the Commissioner of Income Tax had evidence for the findings he had recorded. That, however, did not make any difference to the punishment inflicted by the Commissioner because as pointed out by this Court in the State of Orissa Vs. Bidyabhushan Mohapatra, an order of punishment can be supported on any finding as to the substantial misdemeanor which the punishment can lawfully be imposed and it was not for the court to consider whether that ground alone would have weighed with the authority in dismissing the public servant."

39. On strength of the authority aforesaid, in view of the report of the enquiry officer on other findings which have not been challenged, it would hardly make any difference as the other indictments, being not challenged, would stand against the petitioner.

40. Finding in para 4.25 has been questioned as being a wrong conclusion. Finding in para 4.25 reads as under:-

"4.25 The CO has rightly contended that the PO has not adduced any evidence to establish that the limit was sanctioned without getting the proposal prepared and recommended by the CO, though it is a fact that limits contained in Ex. S.49 were sanctioned by the CO's predecessor but the CO could not adduce any evidence to establish that he obtained the requisite prescribed documents to sanction ad-hoc limit. Therefore, this component of the allegation is held as proved."

41. I do not find anything wrong in the conclusion arrived at. The finding pertains to the allegations pertaining to the firm M/s Inter Modes and Le Defussion which were functioning from one place. Evidence discussed by the enquiry officer in paras No. 4.21 to 4.23 would reveal that the petitioner's predecessor-in-interest had sanctioned the limits and, Therefore, the enquiry officer rightly held that the petitioner was not responsible for the same. However, evidence discussed in the earlier paragraphs would reveal that the petitioner enhanced the limit of Rs.15 lakhs, on ad-hoc basis by another Rs.3 lakhs. Allegation was that this enhancement was done without following the procedure. Indeed, it was for the petitioner to have established, once ad-hoc enhancement was established by the management, to prove that he had sanctioned the ad-hoc limit as per requisite procedure.

42. Finding in para 4.26 was questioned as being surmises. Relevant part of the finding which was attacked during arguments reads as under:

"The position of the a/c of M/s Inter Modes cannot be commended upon for want of evidence, as already mentioned above. However, it was obligatory on the part of the CO to assess/get the assessment made of their financial credit-worthiness before approving CC(H) limit to this firm. There is no strength in CO's contention that there is no evidence produced by PO to prove that during July to September, no manufacturing activity is carried out in view of the admission by the firm itself vide Ex.S-30. It cannot be said that CO was prudent to sanction and release limit in June,1991 just prior to commencement of rainy season when brick kilns stop working. Therefore, this allegation is held as proved."

43. I fail to understand as to how the finding can be labeled as surmises. Perusal of para 4.26 would reveal that it pertains to allegations contained in the Statement of Imputations (VI) for charge No. I pertaining to M/s Vasu Bhatta Company. Allegations were that without proper pre-sanction appraisal, cash credit limit of Rs.4 lakh was sanctioned. The said company was a part of the group of which M/s Inter Modes was a part. Petitioner had ignored that the group

companies were rendering highly irregular accounts and had bank dues of over Rs.70 lakhs. It was alleged that a sum of Rs.3,24,318.89 paise had become a doubtful recovery. Enquiry officer has referred to the loan application being Exhibit S-77 and S-78. He has also referred to the technical feasibility report Exhibit S-80. Enquiry officer has noted in the context of Exhibit S-7, S-78 and S080 that the purpose of cash credit limit was to effect payment to supplier of coal and chimney. It was noted that in the loan application it was not stated that purpose of the credit was purchase of chimney. The enquiry officer has noted that the month of July is a rainy season when bricks kiln industry is closed. It cannot, Therefore, be said that the finding is based on surmises.

44. Finding in para 4.40 which was challenged as being result of wrong onus being placed reads as under:

"4.40 Ex.S-111 shows all the limits shown in the charge-sheet on 3.12.92. It also establishes that the CO has sanctioned the same on 4.12.92. Since the CO has also not adduced any documentary evidence showing his discretionary powers, allegation can be held as proved."

45. The finding relates to the allegation in the Statement of Imputations (IV) pertaining to charge No. II. This allegation relates to the petitioner sanctioning working capital limits and his exceeding his loan powers to the firms M/s Silvertone Grave Flex and M/s S.B.Packaging Pvt.Ltd. Finding would reveal that in the context of Exhibit S-111 it was established that the petitioner had sanctioned the limit. defense of the petitioner was not that he had sanctioned the same within his limits. His defense was that he had discretionary power to do so. In view of the defense, there was no requirement for the bank to establish what were the petitioner's sanctioning powers, because petitioner had accepted that his sanctioning powers were limited, however, he had pleaded discretionary powers being vested in him. The enquiry officer rightly held that it was for the petitioner to establish that he had discretionary powers which were exercised. I do not find it a case of wrong onus being placed.

46. The 8th contention urged was that only 8 out of 22 imputations stood proved. Some were held partly proved. Findings pertaining to the imputations being partly proved are vitiated in law. Decision relied upon was 1984 SC 497, A.L.Kalra Vs. Project & Equipment Corporation of India Ltd.

47. A perusal of the decision would reveal that what was commented upon by the Supreme Court was loose and laconic findings. The authority nowhere holds that law does not recognise the concept of an allegation being partly proved. Following observations in para 22 are relevant:

"Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct."

48. The findings of the enquiry officer pertaining to the allegations partly proved would reveal that the allegations could be put into distant compartments. Though, they pertained to the same set of transaction, two elements of misconduct were emerging from the allegations, if established. If, an allegation, distinct by itself and if proved, shows misconduct being established and the other allegation is not established, it cannot be said that the enquiry report is vitiated, merely because part of the allegation is proved.

49. Petitioner contended (9th submission) that four documents listed in the letter dated 12.4.1997 were not given inspection of, and Therefore, enquiry is vitiated. The issue is no longer rest integra. Merely because, some document was not produced is not enough. In the decisions reported as Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , State of U.P. Vs. Harendra Arora and Another, and the decision reported as State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik, , charged officer has to show prejudice caused to him by non-production of relevant document.

50. Written submissions filed by the charged officer in response to the report of the enquiry officer before the Disciplinary Authority makes no grievance on this count. In appeal, except for stating that these four documents were not produced, nothing has been shown as to how prejudice was caused. Even in the writ petition, except for stating that these documents were not produced, it has not been pleaded as to how prejudice was caused. During arguments, counsel for the petitioner contended that if the file containing the office orders issued from January,1991 to August,1994, were produced, petitioner could have established his discretionary powers pertaining to the allegation pertaining to charge No. II sub-allegation (iv).

51. As noted above, petitioner had raised a grievance pertaining to the finding of the enquiry officer recorded in para 4.40 of the enquiry report in the context of a wrong onus being placed upon him. Petitioner may have some point to urge on this issue, but it would hardly make any difference to the finding in general against the petitioner because of his indictment qua other allegations. As noted above, in the decision in Krishna Chandra Tandon's case (supra), Supreme Court had observed that if an allegation or two fell, it hardly mattered if the order could be supported on other counts. Further, as held by the Supreme Court in the decision reported as Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , single acts are not the focus of attention in an enquiry. If it is a course of action spreading over a sufficiently long period and involving a large number of transactions. The very act of acting beyond authority and that too a course of conduct spread over a sufficiently long period and involving enumerable instances, is by itself a misconduct.

52. It was urged vide contentions No. 10 and 11 noted in para 25 above, that the order of the Disciplinary Authority suffers from non-application of mind. The two orders have been noted in para 23 and 24 above. They deal with the issue raised. Law does not require the Disciplinary Authority to write elaborate

judgments where they agree with the findings of the enquiry officer. Findings of the enquiry officer are elaborate. As noted above, only three were challenged before me. The Disciplinary Authority has taken note of the contention urged and has dealt with the same. Merely because the reasoning is brief would not render the order as a non-speaking order. Similarly, the Appellate Authority has dealt with the issues raised. Brevity cannot be equated with a non-speaking order.

53. Much issues were raised on the observation of the Appellate Authority that there is an apprehended loss of Rs.334.69 lakhs. Counsel for the petitioner urged that the Appellate Authority has introduced an unproved concept of loss being occasioned. I am afraid, petitioner has ignored the specific quantification of the amounts where the recoveries had become sticky. The Appellate Authority has referred to the said sums and has made an observation that there is an apprehended loss. It cannot, Therefore be stated that the Appellate Authority has introduced an unproved fact. I reiterate that the Appellate Authority has not held that the acts of the petitioner have caused a loss. The Appellate Authority has merely recorded that there is an apprehended loss.

54. The 12th submission raised by the counsel for the petitioner needs to be noted and rejected. Petitioner had relied upon a certificate issued to the branch where the petitioner was working, as the best branch. In response to the said claim of the petitioner, in the counter affidavit, respondent had pleaded: "it is submitted that the certificate for the best branch is a contribution of all the staff members working in the concerned branch and not of the petitioner alone. The working of the branch depends upon the cooperation and hard work of all the staff members of a particular branch and an individual cannot take the entire credit for the same."

55. Petitioner extends the pleading of the respondent to urge that if best work of the branch goes to the credit of all the staff members, defaults should be debited to their account.

56. Syllogism i.e. a form of reasoning in which a reasoning is drawn from two given or assumed propositions is hardly attracted. No individual officer against whom a charge is established can plead that since the office as a whole was functioning effectively, he cannot be charge-sheeted or disciplinary action cannot be taken against. If the branch as a whole is functioning effectively and efficiently does not lead to the conclusion that each and every member of the branch, acting individually, is functioning satisfactorily.

57. That takes me to contentions No. 2, 3 and 4, which as noted above, were deferred, to be decided in the last part of my judgment.

58. Relying upon Regulation 45, 46 and 47 of the PNB Employees (Pension) Regulations,1995, counsel for the petitioner urged that since the petitioner had superannuated from service, penalty of removal from service could not be inflicted upon the petitioner. Counsel for the respondent relied upon Regulation 20(3)(iii) of PNB Officers (Service) Regulations,1979.

59. Regulation 20(3)(iii) of the P.N.B Officers (Service) Regulations 1979 inter alia, reads as under:-

"3(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF."

60. P.N.B (Employees") Pension Regulations 1995 also deal with the issue of penalties. Regulation 45 of the Pension Regulations reads as under:-

"In a case not falling under regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in Punjab National Bank Officer Employees" (Discipline and Appeal) Regulations, 1977 or in Settlement as the case may be."

61. Regulation 48 of the Pension Regulations reads as under:-

"1. The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service;

Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service;

Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

2. Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee;

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations."

62. Regulation 46 (1) and (2) read as under:-

Provisional Pension:

1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld etc either permanently or for a specified period.

2. In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.

63. Said issue was the subject matter of adjudication in WP(C) 4417/99, decision whereof has been delivered today, along with the decision in the present writ petition. In view of my reasoning in WP(C) No. 4417/99, wherein I have held that statutory provisions or the provisions having power of law as contained in Service Regulations have to be read harmoniously and as far as possible effect given to all provisions. I have held that simultaneously giving effect to the pension and service regulations in the instant case would be that the departmental proceedings would be deemed to be proceedings under the Pension Regulations. This would require the same to be concluded under the pension regulations i.e. the penalty has to be under the Pension Regulations.

64. Petitioner contended that under the Pension Regulations, penalty could be imposed only in respect of grave misconduct. Counsel contended that grave misconduct could be dismissal and none else. He, Therefore, contended that for the purpose of Pension Regulations, there was no grave misconduct and, Therefore, no penalty therein could be imposed upon the petitioner and in that view of the matter, counsel contended that if this Court agrees with the petitioner qua the contentions 2, 3 and 4, that should be the end of the matter.

65. In the decision reported as Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , it was held that acting beyond one's authority is misconduct and proof of loss is not necessary. It was observed:

"The findings of the inquiry officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a 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 chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favors 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 deal with public funds. If what we hear about the reasons for the collapse of Baring 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."

66. In the decision referred as State Bank of India and others Vs. T.J. Paul, , an order of removal from service was passed against the employee. Writ petition filed had succeeded on the ground that no financial loss was proved and not taking adequate security from the loaners was at best a minor infraction which could not attract major penalty. Reversing the decision of the High Court, the Supreme Court held, negligence, gross or otherwise, involving or likely to involve the banks in serious loss is gross misconduct. It was observed:

"15.. . . . In other words likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct. The Inquiry Officer's findings of gross misconduct on the ground of not attaining adequate security is, Therefore, correct."

67. In Union Bank of India Vs. Vishwa Mohan, in the context of banking business it was observed:-

"12. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and non-est needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired."

68. It is not a case where petitioner has been found to be merely not prudent or being inefficient or his decisions suffering from taint of error of judgment. The finding do bring out the charge of misconduct. In the decision of the Supreme Court reported as 1979 SCC 197, UOI Vs. J.Ahmad, it was held that failure to maintain devotion to duty i.e. conducting self in a way inconsistent with duty and faithful discharge of duty in service was a misconduct. It was held that an act or omission which runs counter to the accepted code of conduct or contrary to the written norms and guidelines was misconduct. Gross negligence and carelessness where the degree of culpability is high was misconduct. It was held that sometimes carelessness can often productive of more harm than deliberate wickedness or malevolence.

69. The writ petition is accordingly disposed of as under:

i) Order dated 24.4.1999 passed by the Disciplinary Authority imposing the penalty of removal from service and the order dated 12.1.1999 passed by the Appellate Authority rejecting the appeal are set aside.

ii) It shall be open to the respondent to proceed under the PNB Employees (Pension) Regulation,1995 against the petitioner in respect of charge-sheet served under cover of memo dated 25.3.1996.

iii) If the respondent initiates further action in terms of the PNB Employees (Pension) Regulation,1995, proceedings would be completed as expeditiously as possible by the Disciplinary Authority and in any case not later than six months from the date of the present judgment.

iv) Since the issue of Regulation 20(3)(iii) of PNB Employees (Pension) Regulation,1995, and PNB Officer Employees (Service) Regulations, 1979 came up for judicial interpretation in a court of law for the first time in the present case and connected case decided today, there shall be no order as to costs.