
(2010) 09 AHC CK 0466
In the Allahabad High Court
Case No : C.M.W.P. No. 30055 of 2005

M.S. Rana

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Bank of Baroda (Officers Service) Regulations, 1979 — Regulation 20(3)
Bank of Baroda Officers Employees (Discipline and Appeal) Regulations, 1976 —
Regulation 17, 4, 6, 6(10), 6(13)
Constitution of India, 1950 — Article 226

Citation : (2011) 1 AWC 1064 : (2011) 3 LLJ 60

Hon'ble Judges : Virender Singh, J;Ashok Bhushan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ashok Bhushan, J.—The Petitioner, M.S. Rana has appeared in person and made his submissions in support of the writ petition. Learned Counsel for the Bank, Respondents No. 2 and 3 has also been heard.

2. This writ petition has been filed by the Petitioner challenging the order dated 5.8.2004, passed by the Disciplinary Authority inflicting punishment of removal of the Petitioner, who was working as Officer M.M.G./Scale S-3 in the Bank of Baroda. The appellate order dated 15.2.2005 dismissing the appeal of the Petitioner has also been prayed to be quashed.

3. Brief facts of the case, which emerged from the pleadings of the parties are; the Petitioner from 27.11.2000 to 13.6.2002 was posted as Senior Branch Manager M.M.G.-3 at Rampur Branch of Bank of Baroda from where he was transferred to Agra. By order dated 19.6.2002, the Petitioner was placed under suspension in contemplation of disciplinary inquiry. A memorandum dated June 6, 2003 was issued containing articles of charges and statements of allegations. Articles of charges included charges in 5 heads in support of which allegations 1 (a) to 1 (i) and 2 were mentioned in the memorandum. The Disciplinary

Authority appointed Senior Manager, Zonal-6, Bareilly as Inquiring Authority. By order dated 2.7.2003, one Mr. Pradeep Kumar Goel was appointed as Presenting Officer on behalf of the Disciplinary Authority. The inquiry commenced on 21.7.2003. In the inquiry on behalf of the Management documents E-1 to M.E.-130/1 were submitted. A defence representative was also appointed to defend the Petitioner. The defence also listed large number of documents D.E.-1 to D.E.-62A. No oral evidence was led on behalf of either of the parties. A written brief was submitted by the Presenting Officer on 30.10.2003 before the Enquiry Officer in which all the allegations were claimed to be proved from the evidence on record except allegations 1(b), 1(d) and 1(e). A written brief on behalf of the Petitioner was also submitted on 3.12.2003. The Enquiry Officer after considering the materials on record and considering the written brief submitted by the Presenting Officer as well as by the Petitioner, submitted his enquiry report dated 30.12.2003. The Enquiry Officer held the allegations 1(a), 1(g), 1(h), 1(i) and 2 proved. The Enquiry Officer held that allegations 1(b), 1(c), 1(d) and 1(e) and 1(f) were not proved. The Disciplinary Authority issued an order on 31.3.2004 accepting the findings of the Enquiry Officer in respect of all the allegations and charges found proved except the allegations 1(d), 1(e) and 1(f) and charge (iv) and (v). The Disciplinary Authority stated that in view of the fact that sufficient evidence exists on record to prove the allegations 1(d), 1(e), 1(f) and charge No. (iv) and (v), a notice was issued proposing to reassess the aforesaid allegations which were not found to be proved in terms of the Regulations 7(2) of Bank of Baroda Officer Employees" (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as "Regulations"). 19.4.2004 was fixed by the aforesaid order dated 31.3.2004. The Petitioner could not appear on 19.4.2004 and prayed for adjournment on the ground of his illness. Again four further dates were fixed but the Petitioner could not appear before the Disciplinary Authority. By order dated 10.6.2004, the Disciplinary Authority informed the Petitioner to submit a written representation, if he so desired. The Petitioner submitted a detailed representation dated 16.6.2004 to the findings recorded by the Enquiry Officer holding the charges proved as well as to the findings which were proposed to be substituted by the Disciplinary Authority by his letter dated 31.3.2004. The Disciplinary Authority passed an order on 6.7.2004 substituting the findings of the Enquiry Officer with regard to allegations 1(d), 1(e), 1(f) and held the allegations 1(a), 1(d), 1(e) and 1(f) as well as charge No. (iv) proved. The aforesaid finding was recorded in the order dated 6.7.2004. The Disciplinary Authority thereafter passed an order dated 5.8.2004, holding the various allegations as contained in Memorandum dated 6.6.2003 and all the 5 charges proved. The order of punishment removing the Petitioner was passed by the Disciplinary Authority. Against the order passed by the Disciplinary Authority, the Petitioner filed an appeal dated 10.9.2004. The appeal filed by the Petitioner has been dismissed by order dated 15.2.2005. This writ petition has been filed challenging the aforesaid two orders dated 15.2.2005 and 5.8.2004.

4. The Petitioner challenging the aforesaid orders, contends that no allegations

against the Petitioner of any financial irregularity or embezzlement was either made or proved. The Petitioner bona fide sanctioned the advances under the Scheme Rice Huller Modernisation Scheme after considering the pre-sanction report submitted by the Manager Credit Sri M.A. Khan and the allegations that assets were not found created on subsequent verification, cannot be a ground for awarding punishment of removal, whereas post sanction reports were submitted by Sri Khan and it was never pointed out to the Petitioner that assets were not found start and created. With regard to other allegations in charge-sheet that the Petitioner has financed the units outside the service area, it was contended that there was no restriction under the Reserve Bank of India Guidelines for sanctioning the loan outside the service area and this fact was not disputed in the inquiry. Mangalam brand of machinery through M/s. S.D. Engineering Works Panipat was taken from approved manufacturer of machinery under the scheme and the allegations that the amount of sanction advanced was given directly instead of giving delivery order, it was submitted that circular providing for the above changed procedure which was issued by Moradabad Region was received in the Bank only on 16.5.2002 and earlier the Rampur branch was not within the Moradabad Region. It is submitted that for the misdeeds and misconduct committed by Sri M.H. Khan, Manager Credit, who had given pre-sanction and post sanction reports, the Petitioner cannot be punished. It is submitted that certain charges which were not even proved by the Presenting Officer in the inquiry have been found proved by the Disciplinary Authority which was clearly illegal. It is submitted that Enquiry Officer was junior officer to the Petitioner and inquiry to a junior officer could not have been entrusted. It is submitted that no distinct charges were framed as required by Regulation 6(3) hence, there is violation of Regulation 6(3) of the Regulations. The Petitioner further submitted that no witnesses were examined on behalf of the management and on the allegations which were of omission and commission, examination of witnesses by the management was a must and without leading any oral evidence on behalf of the management, charges could not have been proved. The Disciplinary Authority has added two more charges in substituted findings dated 6.7.2004 which were not even in the charge-sheet. The Disciplinary Authority did not give proper opportunity to the Petitioner since the Petitioner was suffering from sciatic syndrome and he had submitted the medical certificate and adjournment applications. He submits that no reasonable opportunity was given by the Disciplinary Authority before passing the punishment order. He submits that Branch which was headed by the Petitioner was a big branch having turn over of 40 crores and all functions of branch could not have been personally looked into by the Branch Manager. He submits that Disciplinary Authority was biased. It is further contended that there was no sufficient material on the record to return the findings that allegations 1(a), 1(g), 1(d) as well as charges (iv) and (v) as proved by the Enquiry Officer and Disciplinary Authority also committed error in accepting the said charges proved. It is submitted that in any view of the matter, the charges proved were not of such nature, which would have resulted in removal of the Petitioner from service. He submits that had the Petitioner not

been transferred, he would have taken effective measures for ensuring more substantial recoveries. It is further submitted that in the advances given by the Petitioner there has been substantial recovery and bank cannot be said to have suffered any loss.

5. Learned Counsel for the bank refuting the submissions of the Petitioner, contended that there was sufficient materials in the shape of documentary evidence on record, which clearly proved all the charges against the Petitioner and it was not necessary to lead any oral evidence. The Petitioner was given full opportunity by the Enquiry Officer as well as by Disciplinary Authority. In spite of being given five dates before the Disciplinary Authority after the notice dated 31.3.2004, the Petitioner did not choose to appear and had been sending adjournment applications on each occasion. It is submitted that bank has suffered loss due to reckless financing by the Petitioner and in any view of the matter, the fact whether the bank has actually suffered the loss, is not relevant rather the punishment can be awarded, even if the Bank was likely to suffer loss. It is contended that this Court in exercise of writ Jurisdiction cannot reappraise the evidence. The findings recorded by the Enquiry Officer and Disciplinary Authority are based on materials on record, which need no interference. learned Counsel for the Respondent bank has also placed reliance on several judgments of the Apex Court and this Court, which shall be referred to while considering the submissions in details.

6. Before we enter into respective submissions of the Petitioner and counsel for the Respondent bank, it is relevant to note the relevant statutory provisions governing the disciplinary inquiry and the scope of judicial review under Article 226 of the Constitution of India with regard to the disciplinary proceedings.

7. The Petitioner is governed by the Bank of Baroda Officer Employee's (Discipline and Appeal) Regulations, 1976. Regulation 4 provides for penalties Regulation 6 provides for procedure for imposing major penalty. Regulation 7 contains the provisions relating to action on the inquiry report and Regulation 17 provides for appeal. Relevant Regulations of 1976 shall be referred to while considering the submissions hereinafter.

8. The scope of judicial review of orders passed in disciplinary inquiry had been considered time and again by this Court and Apex Court. In Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, the Apex Court had occasion to consider the scope of interference under Article 226 with regard to disciplinary proceedings of a Bank Officer. Following was laid down in paragraphs 11 and 12.

11. 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.

12. 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.

9. The Apex Court in *Lalit Popli Vs. Canara Bank and Others*, was considering a case, where order of dismissal from service was passed against a Clerk employed in Canara Bank. Paragraphs 13, 14 and 15 which are relevant are quoted herein below:

13. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

14. In *B.C. Chaturvedi Vs. Union of India and others*, the scope of judicial review was indicated by stating that review by the Court is of decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding.

15. As observed in *R.S. Saini Vs. State of Punjab and Others*, , in paragraphs 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows:

16. Before advertng to the first contention of the Appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the Court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

10. The Division Bench of this Court in the case of *Sharad Chandra Shukla Vs. State of U.P. and Another*, *V.K. Bahadur Vs. State Bank of India and another*, and

Ram Pratap Sonkar Vs. Chairman and Managing Director, Allahabad and others, also laid down the same proposition.

11. The Apex Court in State Bank of India and others Vs. T.J. Paul, while considering the orders passed by the Disciplinary Authority against a bank officer held that in context of misconduct "doing any act prejudicial to the interests of the Bank, or gross negligence involving or likely to involve the Bank in serious loss" do not require proof of actual loss and likelihood of loss was enough to hold an employee guilty. Again in State Bank of India and Another Vs. Bela Bagchi and Others, the Apex Court laid down that absence of any loss to the Bank is no defence. Following was laid down in paragraph 15:

15. 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 defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.

12. From the proposition as laid down in the above cases, it is well-settled that this Court, while exercising the jurisdiction under Article 226 of the Constitution of India for reviewing a disciplinary action taken against a Bank Officer shall not act as a Court of appeal. this Court shall interfere in the orders passed in the disciplinary proceedings only when there is violation of any statutory provisions or there is violation of any procedural requirement causing substantial prejudice to the Petitioner or punishment imposed is shockingly disproportionate.

13. We now proceed to examine the facts of the present case. The allegations on which the articles of charges were based are contained in allegations 1(a) to 1(g) and allegation 2. It is useful to reproduce the allegations, omitting the details as given in tables in allegations (d) and (f)

1. He sanctioned and disbursed loans to -110-borrowers under Rice Huller Modernisation Scheme during the period Sept. 1 May, 02. During assets verification conducted by the Bank on 21.6.2002, 24.6.2002 and 25.6.2002 in respect of -96- cases under the scheme, the following irregularities were observed:

(a) In 54 cases, complete assets were not found installed/created. (Annexure-I).

(b) In following -3- cases, borrowers were not traceable--

(i) Abrar Ahmad s/o Kalia, r/o Village Gangapur Qadim - loan disbursed Rs. 50,000/- on 26.4.2002. (A/c # 3469)

(ii) Munney s/o Kalia, r/o Village Gangapur Qadim - loan disbursed Rs. 50,000/- on 26.4.2002. (A/c # 3476)

(iii) Nanhey Lal s/o Lal Singh, r/o Village Gangapur Qadim - loan disbursed Rs. 50,000/- on 29.4.2002. (A/c # 3480)

(c) In following cases, "Manglam" Brand of Machinery has been financed, which is not approved by C.S.I.R. As such C.S.I.R. may refuse to grant subsidy under the Scheme in these cases:

(i) Krishna Pal s/o Shiv Charan- Loan disbursed Rs. 50,000/- on 26.4.2002. (A/c # 3468) ;

(ii) Shiv Charan s/o Ram Charan-Loan disbursed Rs. 50,000/- on 6.5.2002. (A/c # 3510)

(iii) Bhan Pratap s/o Naubat Ram -Loan disbursed Rs. 50,000/- on 15.4.2002. (A/c # 3440) ; and

(iv) Suresh Chandra s/o Naubat Ram Loan disbursed Rs. 50,000/- on 15.4.2002. (A/c # 3441).

(d) Several units have been financed outside service area of the branch overlooking the vital aspect of supervision, monitoring and recovery of such loans e.g.

(e) In all of the cases, pre-sanction inspection reports have been prepared casually without

full details viz. without carrying out technical feasibility/economic viability of the unit for a particular area/village; without experience of applicant in the line of business, without ascertaining the requisite power connection/gen set with the borrower, without mentioning the period to which income/expenses/surplus income relate to and without taking into account the personal expenses of the borrower etc. A few random examples are loan accounts of Bhajan Lal, Chandra Bhan Singh, Mohd. Yamin, Dinkar and Daya Ram.

(f) In many accounts, back and subsidy has been credited even before repayment of the Bank loan which is against the provisions of the scheme. A few examples are as under:

(g) Bills/Receipts obtained for financed machinery in all the case are without following relevant details.

1. Make/Brand

2. Serial No. of Machine

3. Warranty Clause

4. Test Report of an authorised institute

For example:

Term loan a/c No. 3486 of Bhajan Lal.

Term loan a/c No. 3488 of Chandra Bhan Singh.

(h) Full disbursement has been made in various loan accounts (as per Annexure-I) without ensuring erection and commissioning of machinery in the premises of beneficiary and without ensuring end use of loan.

(i) Out of -110- cases disbursed under the Scheme,-24- a/cs amounting to Rs. 12.98 lacs have become N.P.A. within -1- year of disbursement (Annexure-II). Out of remaining accounts, most of the accounts are likely to become N.P.A. due to, large scale improper assessment of techno/economic viability of Project and reckless financing under the Scheme. (Annexure-III).

2. He sanctioned and disbursed various dairy loans without observing bank's laid down norms. Joint Assets Verification conducted by the branch on 24.6.2002 and 25.6.2002 in respect of -6- dairy loans revealed the irregularities as per Annexure-IV.

14. The Presenting Officer in his written brief, after the inquiry was concluded, submitted in writing that allegations 1(b), 1(d), 1(e) are not proved. The other allegations were found to be proved. Enquiry Officer agreeing with the Presenting Officer held allegations 1(b), 1(d), 1(e) not proved apart from allegation 1(c) and 1(f) which were also not found proved by the Enquiry Officer.

15. The submission of the Petitioner that no witness was examined in support of the allegations hence, none of the charges can be proved, need to be considered first. The Petitioner referred to Regulation 6(5)(iii) of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976 which provides that a list of documents by which and list of witness by whom the articles of charge are proposed to be substantiated be forwarded by the Disciplinary Authority to the inquiring authority. Reliance has also been placed on Regulations 6(10)(a), 6(13), 6(5)(iii). Regulations 6(10)(a) and 6(13) are quoted herein below:

6(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 charges are proposed to be proved.

6(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 other employees. 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.

16. The aforesaid regulations only provide that list of witness by whom the articles of charges are proposed to be substantiated be sent by the Disciplinary Authority to the Inquiring Authority and Inquiry Authority shall also furnish the list of documents and list of witnesses to the charged officer and the documents and witnesses shall be produced on the date of inquiry. The question as to whether when no witness is listed in the list or produced before the Enquiry Officer the inquiry is vitiated? The answer to the question as to whether in a particular case, a charge can be proved by documentary evidence or oral evidence, depends on facts of each case. No such proposition can be read from the aforesaid regulations that unless witnesses are examined to prove the charges, the charges cannot be proved. In the present case, large number of documentary evidence which relate to advances and sanction by the Petitioner including the pre-sanction and post-sanction reports, details of the accounts and other materials were produced. It was for the management to decide that they shall prove charges on the basis of documents or orally and they having not produced any witness, it cannot be said that there is error in the proceedings or producing witnesses was mandatory. Thus, the submission of the Petitioner that there being no oral evidence, charges cannot be proved, cannot be accepted.

17. There being documentary evidence on record and after considering the documentary evidence filed by the Petitioner as well as Management, the Enquiry Officer recorded findings that charges 1(a), 1(g), 1(h), 1(d) and 2 are proved to which findings the Disciplinary Authority having concurred, it cannot be said that the said findings of proved charges are based on no materials or can be termed as perverse. As noticed above, this Court in exercise of writ jurisdiction shall not interfere with the findings which are based on evidence on record.

18. The Petitioner had also made submission that he was not given ample opportunity by the Disciplinary Authority to appear before him in reply to the notice dated 31.3.2004. By notice dated 31.3.2004, the Disciplinary Authority had fixed 19.4.2004 as the date for appearance of the Petitioner at zonal office. The Petitioner could not appear on 19.4.2004 and requested for adjournment. Subsequently 21.4.2004, 27.4.2004, 25.5.2004 and 8.6.2004 were fixed at Zonal office on which dates, the Petitioner did not appear. In the supplementary-affidavit, the Petitioner has referred to his letters requesting adjournments of dates fixed. When the Petitioner could not appear even after the adjournments granted for more than three dates, the Disciplinary Authority wrote a letter dated 10.6.2004 to the Petitioner that Petitioner having not attended the dates fixed before the Disciplinary Authority, if he so desires he may submit a representation within ten days. In compliance of the letters dated 10.6.2004, the Petitioner submitted his representation on 16.6.2004 which were considered by the

Disciplinary Authority. Thus, the submission of the Petitioner that ample opportunity was not given by the Disciplinary Authority, cannot be accepted. The Petitioner has also submitted that the Disciplinary Authority was biased which was apparent due to issue of notice dated 31.3.2004 for substituting findings with regard to the charges which were not found proved by the Enquiry Officer. The mere fact that notice was issued by the Disciplinary Authority for substituting the findings cannot prove that the Disciplinary Authority was biased. The allegation of bias has to be proved on sufficient materials. In the writ petition, the Petitioner has not impleaded the officer of the Bank against whom the allegation of bias is made. No officer of the Bank having been personally impleaded in the writ petition, the allegations of bias raised by the Petitioner cannot be accepted.

19. As noticed above, the Disciplinary Authority after receiving the report of the Enquiry Officer has issued a notice expressing its disagreement with the findings recorded by the Enquiry Officer with regard to the charges, which were not found proved, i.e., allegations 1(d), 1(e), 1(J) and charges IV and V. After giving notice to the Petitioner when Disciplinary Authority proceeded to substitute the findings on the basis of the evidence on record, the Disciplinary Authority found the aforesaid charges proved by its findings dated 6.7.2004. The power of Disciplinary Authority to record his own findings when it disagree with the findings of the Enquiry Officer, is specifically provided for in Regulation 7(2). Regulation 7 is quoted below:

7. Action on the inquiry report. - (1) The Disciplinary Authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 6 as far as may be.

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

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.

20. In the present case as noticed above, the Presenting Officer himself in his written brief, which was submitted after the close of the enquiry has not proved the charges 1(b), 1(d), 1(e) with which the Enquiry Officer agreed. The Disciplinary Authority while reversing the findings of the Enquiry Officer on the

aforesaid charges had not even adverted to the written brief of the Presenting Officer in which the above charges were not proved.

21. Bank of Baroda Officer Employees" (Discipline and Appeal) Regulations, 1976 provides that Presenting Officer is appointed by the Disciplinary Authority to present on Us behalf the case in support of the articles of charge. Regulation 6(13) provides that in 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. Regulation 6(18) contemplates filing of written Brief by the Presenting Officer and the Employee within 15 days of the date of completion of the production of evidence. Regulation 6(13) and Regulation 6(18) are quoted as below:

6(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 witness 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 reexamine his witness 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.

6(18) After the completion of the production of the evidence, the officer employee and the Presenting Officer may file written brief of their respective cases within 15 days of the date of completion of the production of evidence.

22. The aforesaid provisions of Regulations, 1976 clearly indicate that Presenting Officer has been given role to prove the charges on behalf of the Disciplinary Authority. The Presenting Officer in his written brief held allegations 1(d) and 1(e) as not proved. Following has been stated in the written brief with regard to charges 1(d) and 1(e):

(d) Several Units Rampura 27, 28

Please refer M.E.-120/1 Point No. 4 : As per the guideline of Regional Office, Bareilly branches were authorised to dispose off the applications under the scheme as per the service area contempt, till the clarification on the matter of service area relaxation is received.

Please refer D.E.-61/5 Point No. 11(1): Bank's Branch can finance out of his service area by getting "No dues Certificate/" from concerned service area branch as per direction of Reserve Bank of India. D.E.-61/8 Point No. 12, Hindi Version of D.E.-61 also depicts that branches may consider sanction of loan under the scheme outside service area after obtainment of No Dues Certificate, as per Reserve Bank of India Directives. D.E.-61/11 again is the repetition of similar guidelines. D.E.-61/4, copy of r/o Bareilly Circular No. R.O.B. : 26 : A.G.R. : 702 dated 1.11.2000 duly signed by Senior Manager (Credit) has instructed the branches to consider sanction of loans under the scheme after

obtaining No Dues Certificate from the borrowers D.E.-61/22 and 23 para also confirms similar guidelines.

However, the sanction of loans to Daya Ram s/o Teeka Ram, Omkar s/o Chet Ram r/o Atai Nagar, Shahid Ali s/o Budhan, Ismail Shah s/o Machhan Shah and Bhan Pratap s/o Naubat Ram r/o Kamora, could have been considered by our Dhamora Branch as the village viz. Atai Nagar and Kamora fall within the service area of Bank of Baroda Bhamora branch.

I am of the opinion that allegation does not hold good.

(e) In all the cases, pre-sanction inspection Dinkar and Daya Ram ; please refer D.E.-61/15 : Mr. Suresh Chand Sharma, Scientific Officer, Regional Science and Technology Centre, Moradabad vide their letter No. 256 : R.S.T. : D.A. 2001 dated 1.2.2001 sent a letter to the Chief Development Officer of Distt. Rampur (quoting Notification No. 818/75) signed by Mr. B.K.S. Yadav, Secretary Banking Department, dated 11.8.2000. Through this letter he informed about the scheme to the District authority and further advised that C.S.I.R., New Delhi and C.S.T., Lucknow are the coordinating agencies of the scheme viz. Modernisation of Rice Huller Mill keeping in view that Rampur is paddy growing district, in order to provide high quality rice bran and polish for the solvent extraction units operating in the nearby areas, the modernization of existing Rice Huller units was proposed. The ultimate objective of the scheme was to save the precious Foreign Exchange by reducing imports of edible oils. Hence, a grant in aid/subsidy of Rs. 25,000/- was proposed to attract the existing Huller Units to go for modernization. For implementation of the scheme in the district, Mr. Sharma requested the Chief Development Officer to arrange a meeting of Lead District Manager, District Coordinator of other Banks, Manufacturers of Machineries, Owners of Solvent Extraction Units and Non-Government Organizations. With this initiatives high level meeting were held and a decision to this effect was taken that the scheme be implemented in the district. This decision was based on the discussion held in a series of meetings held between C.S.I.R., C.S.T., District Officials, Bank Officials and other related people.

Please refer De-61/29, 30 and 31: The vital aspects of Technical Feasibility and Economic Viability was studied by C.S.I.R. and C.S.T., the co-ordinating agencies and thereafter the scheme was implemented. Rampur being a paddy growing area the availability of raw material for such units was in abundance and the finished goods viz. Rice Bran and Polish was to be marketed directly to the solvent extraction Units. A tripartite agreement was envisaged in the scheme.

Sir, in such type of village and cottage industry the entrepreneurs are of low means, who are not adequately qualified for preparing and submitting the detailed project reports containing cost of project, sources of funds profitability analysis and balance sheet analysis etc. to Bank Officials for considering their applications for sanction of loans. To overcome this situation the C.S.I.R. and C.S.T. had worked out the technical feasibility for modernizing the existing units,

C.S.I.R. and C.S.T. have again worked out the economic viability after modernization incorporating therein the per ton profit of Rs. 166, Break even analysis at 147 tons per annum and 300 tons per annum capacity, assuming that the units will work 150 days in a year. All this analysis in individual cases that too in mass at Branch Level was not practicable. However, the C.S.O. could have directed this Manager Credit that at the relevant column a Xerox copy of the Technical Feasibility and Economic Viability Report of C.S.I.R./C.S.T. be annexed with each pre-sanction inspection report.

Keeping in view the foregoing I am of the opinion that the allegation in does not hold good.

23. The Enquiry Officer has in its inquiry report, while recording findings with regard to allegations 1(d) and 1(e) stated following:

(d) Several units.... recovery of such loans.

Since Presiding Officer is convinced on the basis of M.E.-120/1 and D.E.-61.5 and has disapproved the allegation. Therefore, I have no comments to offer and presume that allegation No. I (d) stands not proved.

(e) In all cases, pre-sanction--....Dinkar and Diyaram.

Since Presiding Officer is convinced on the basis of D.E.-61/15 and D.E.-61/29, 30 and 31 and has disapproved the allegation. Therefore, I have no comments to offer and presume that allegation No. 1(e) stands not proved.

24. The Enquiry Officer held the allegations 1(d) and 1(e) not proved on the ground that Presenting Officer himself was convinced that these charges cannot prove the allegations. In the order dated 6.7.2004 in which the Disciplinary Authority has held charges 1(d) and 1(e) proved, he has not even adverted to the written brief submitted by the Presenting Officer, which was the basis for finding of Enquiry Officer as charges not proved. It is true that Disciplinary Authority can disagree with the findings of Enquiry Officer on any charge but when no finding was given by the Enquiry Officer on the aforesaid charges referring to the written brief of the Presenting Officer, who himself did not prove the charges, whether it was open for the Disciplinary Authority to hold the charges proved on whose behalf in the enquiry the said charges were not proved, is the question to be answered. As noticed above, the Presenting Officer was appointed to prove the charges on behalf of the Disciplinary Authority and when the Presenting Officer himself has not proved the aforesaid charges. Disciplinary Authority could not have come to the findings that charges are proved specifically when it does not even advert to the findings of the Presenting Officer. The question may be asked as to whether in a case where Presenting Officer in spite of there being materials comes to a wrong conclusion that particular charges are not proved, whether the Disciplinary Authority is remedyless? The answer to the said question can be found in Regulation 7(1), which provides that the Disciplinary Authority for the reasons to be recorded remit the case to the

Enquiry authority for fresh or further inquiry. Thus, the findings of the Disciplinary Authority that allegations 1(d) and 1(e) were proved, cannot be sustained. It is relevant to note that the Petitioner has taken the aforesaid ground both in the appeal as well as in the writ petition. Thus, we are of the view that findings by the Disciplinary Authority on the aforesaid allegations 1(d) and 1(e) that they are proved, cannot be sustained.

25. One more glaring error has been committed by the Disciplinary Authority. In its findings the Disciplinary Authority has recorded findings on a charge which was not included in the charge memo. Last two paragraphs of the findings of the Disciplinary Authority are to the following effect:

It has also now been observed that important data as period of repayment of loans sanctioned by C.S.O. have been deliberately manipulated in the computer in such a way that these advance accounts will slip into N.P.A. only after 2 years so that a situation of quick mortality case will not arise.

However, the fact remains that Mr. Rana has through his deliberate attempts to manipulate the data on abdicating his responsibility to effectively supervise and control the operations and by his direct involvement in financing the ineligible and unworthy borrowers thereby creating N.P.As. for an aggregate amount of Rs. 66.84 lacs in -143- accounts as in many borrowal accounts not a single rupee of repayments have been received, with ulterior motive of personal gain for himself thereby knowingly placing our Bank in an unforgettable and unforgivable position of likely loss to the extent of Rs. 77.45 which includes -33-accounts amounting to Rs. 10.61 lacs likely to become N.P.A. in coming quarters.

26. In the aforesaid findings, the Disciplinary Authority has held that charged officer has deliberately manipulated the data in computer which was not a charge included in the charge memo. Again it was held that charged officer has made deliberate attempt to manipulate the data on abdicating his responsibility to effectively supervise and control the operations, which was not even alleged. The aforesaid findings of the Disciplinary Authority being beyond the charges cannot be sustained.

27. The order of removal dated 5.8.2004 being based on substituted findings as noticed above, which, findings with regard to allegations 1(d) and 1(e) having been held as above to be unsustainable, the order of punishment cannot be sustained. However, apart from allegations 1(d) and 1(e), there were other allegations, which have been found proved by the Enquiry Officer and Disciplinary Authority. On above proved charges, the Disciplinary Authority could have very well awarded punishment to the Petitioner. As to what punishment is to be awarded to the Petitioner on remaining proved charges, is a matter which has to be left to the Disciplinary Authority, which require the matter to be remitted to the Disciplinary Authority to pass a fresh punishment order. However, looking to the nature of the charges which have been found proved, we are of the view that the Petitioner deserves lesser punishment other than the

punishment which has been awarded by order dated 5.8.2004.

28. The Petitioner as well as learned Counsel for the Respondent bank have submitted before us that during the pendency of the writ petition, the Petitioner has attained the age of superannuation. learned Counsel for the Bank referring to Regulation 20(3)(iii) of Bank of Baroda (Officers' Service) Regulations, 1979 submits that even if a Bank Officer attains the age of superannuation during the disciplinary proceedings, the proceedings shall be continued as if he was in service until they are concluded and final orders are passed. It is useful to quote the Regulation 20 (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 C.P.F.

29. The aforesaid regulations fully empowers the Bank to pass an order of punishment, even if the Petitioner has attained the age of superannuation during the pendency of the writ petition.

30. In the result, the order dated 5.8.2004 as well as the appellate order dated 15.2.2005 are set aside. The matter is remitted to the Disciplinary Authority to pass fresh punishment order in accordance with the observations as made above. The writ petition is allowed to the extent indicated above.

31. Parties shall bear their own costs.