(2009) 06 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 1311 of 2001

P.A. Karkhanis APPELLANT

Vs

UCO Bank and Executive Director, Reviewing Authority RESPONDENT

Date of Decision : 22-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226

UCO Bank Officer Employees (Conduct) Regulations, 1976 — Rule 3

Citation : (2009) 111 BOMLR 2827 : (2010) 124 FLR 1107 : (2010) 1 LLJ 227

Hon'ble Judges : R.M. Savant, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : Neeta P. Karnik, for the Appellant; V.P. Vaidya, for the Respondent

Judgement

P.B. Majmudar, J.—By way of this petition, the petitioner has challenged the order of the dismissal dated 30th March, 1998 passed against him by the disciplinary authority second respondent which order has been confirmed by order dated 18th January, 1999, in appeal by the appellate authority respondent No. 3. The petitioner carried the matter before the reviewing authority, respondent No. 4. The reviewing authority respondent No. 4 rejected the review petition vide order dated 21st March, 2000, preferred by the petitioner. The petitioner has challenged the aforesaid orders in the instant petition by invoking Article 226 of the Constitution of India.

2. It is the case of the petitioner that he was initially appointed as a Clerk in the respondent Bank on 20th June, 1968. The petitioner subsequently applied for the Probationary Officer''s post and he was selected to the said post in the year 1974. The petitioner was subsequently promoted to the post of Scale II in 1983 and Scale III in 1988. The petitioner came to be transferred to the Hamam Street branch of the respondent Bank on 3rd September, 1990 as a Senior Manager. After joining at the said Branch, the petitioner noticed several irregularities in the matter of procedure adopted by the said branch in connection with maintaining of proper records of investment securities. The petitioner

noticed that Switch transactions worth crores of rupees were undertaken by certain brokers which were found to be risky. In this connection, petitioner wrote letters to the higher authorities from time to time but the petitioner was asked by the higher authorities to continue with the said practice which was followed by the said branch since last many years. The petitioner continued to serve as a Senior Manager of Hamam Street branch of the Bank between 3rd September, 1990 and 18th April, 1992. He was subsequently transferred as a Senior Manager of Andheri (East) branch of the Bank.

3. The petitioner was chargesheeted and was served with the article of charges on 14/17th June, 1994. The charges levelled against the petitioner were in connection with the alleged misconduct committed by him when he was working at the Hamam Street branch of the Bank between the period 3rd September, 1990 and 18th April, 1992. The petitioner was subjected to eight charges. So far as charge No. 1 is concerned, it is in connection with the unauthorized issuance of bank receipts worth several crores of rupees on behalf of various stock brokers. It was alleged that the same was in violation of the instructions of the Zonal Office and against the rules and procedures of the Bank. Charge No. 2 is that the petitioner in violation of rules and regulations of the Bank allowed the branch to issue bank receipts under the single signature of a Junior Officer posted at the said branch, exposing the Bank to risk even though such receipts were required to be issued under the joint signatures only. Charge No. 3 is in connection with no maintenance of proper books and records in respect of the bank receipts, involving huge sums issued by the Bank. As per charge No. 4, the petitioner did not ensure that the bank receipts issued or accepted by the Hamam Street were actually backed by relevant securities mentioned therein and such securities were delivered at the time of redemption of the bank receipts. It is alleged that the petitioner had concealed from the higher authorities the fact that in many cases bank receipts were redeemed only by payment and not by physical delivery of the securities mentioned therein. Charge No. 5 is in connection with wrongful diversion of huge sums of money to the stock brokers accounts continuously over a long period enabling them to use the same for speculative purpose. Charge No. 6 is in connection with wrong diversion of Rs. 40 crores in the account of share broker Harshad S. Mehta which is detrimental to the Banks interest and showed wrongful favour to a stock broker. Charge No. 7 is in connection with wrongfully crediting to the current account of share broker Harshad S. Mehta an amount of Rs. 26 crores which resulted into wrongful gain to the said broker exposing the Bank to substantial financial loss. Charge No. 8 is in connection with restarting security transaction on behalf of the brokers at the Bank''s Hamam Street Branch in violation of the instructions from the Zonal Office, Bombay and thereby failed to protect the interest of the Bank. The petitioner was accordingly subjected to the said charges.

4. The petitioner gave a detailed reply on 8th July, 1994, to the said charges pointing out that he had acted only on the basis of the instructions given by the higher authorities, particulars of which were given in his reply. The petitioner

pointed out in his reply that the said practice was followed in the Bank even before his joining and, therefore, it cannot be said that he has acted contrary to the instructions or acted against the interest of the Bank.

5. Subsequently an Enquiry Officer was appointed and a regular departmental enquiry commenced against the petitioner. The petitioner was given opportunity to defend his case in the enquiry proceedings. The enquiry officer subsequently submitted his report on 12th June, 1995, a copy of which is annexed at Exhibit V to the petition. As regards charge Nos. 1 to 4 and 8 are concerned, the enquiry officer found that the same are partly proved. So far as charge Nos. 5, 6 and 7 are concerned, it was found that the same are proved. The disciplinary authority vide its order dated 30th March, 1998 accepted the report of the enquiry officer. So far as charge Nos. 1 to 4 and 8 are concerned, the disciplinary authority inflicted the penalty of reduction of five increments in the time scale of pay. So far as charge Nos. 5, 6 and 7 are concerned, the disciplinary authority inflicted punishment of dismissal from service and ordered that the same shall not be considered as a disqualification for future employment.

6. The aforesaid order of the disciplinary authority was challenged by the petitioner by way of a departmental appeal. The said appeal of the petitioner was rejected by the appellate authority by its order dated January 18, 1999.

7. The petitioner thereafter preferred a review petition before the Executive Director of the Bank. The reviewing authority by its order dated 21st March, 2000 rejected the said review petition. The petitioner has approached this Court by way of this petition under Article 226 of the Constitution of India challenging the orders of the disciplinary authority, appellate authority and the reviewing authority, as stated above.

8. Mrs. Neeta P. Karnik, learned Counsel for the petitioner, has submitted that the relevant documents submitted by the petitioner before the enquiry officer were not taken into consideration by the enquiry officer and some of them, though very vital, were not even discussed or considered by the enquiry officer in his report. The learned Counsel further submitted that from day one, after resumption of his duties in the concerned Branch i.e. Hamam Street, the petitioner drew the attention of the higher authorities of the Bank pointing out that certain irregularities are going on in the Bank. It is submitted by the learned Counsel for the petitioner that the petitioner was advised by the higher authorities to continue with the said practice on the ground that the said practice which was going on was beneficial to the Bank and under the circumstances, the petitioner had no option but to continue with the past practice which was prevalent at the relevant time in the Bank before his joining the said branch. Learned Counsel for the petitioner submitted that even before petitioner''s joining the said branch, the irregularities in Switch transactions were going on in the Bank. In spite of the said fact, the earlier officers who were in charge were not subjected to any domestic enquiry. It is further submitted that the Bank had not suffered any financial loss at all nor there was any mens rea or bad intention

on the part of the petitioner in connection with brokers'' transactions undertaken by the said branch. Learned Counsel further submitted that the petitioner had from time to time invited the attention of the higher authorities of the Bank to stop such transactions by writing various letters. It is also submitted by the learned Counsel for the petitioner that considering the voluminous documentary evidence produced by the petitioner before the enquiry officer, it cannot be said that the petitioner had committed any misconduct worth the name as ultimately, as a subordinate officer, he was required to obey the instructions given by the higher authorities. Learned Counsel for the petitioner further submitted that considering the evidence produced before the enquiry officer, it cannot be said that any of the charges for which the petitioner was charged can be said to have been proved. It is further submitted that the enquiry officer has not considered the advice document at Exhibit ME28 produced by the Respondents. The petitioner has raised this point in ground (h) of the petition. There is no denial to this fact by the respondents by way of affidavit in reply. Learned Counsel further submitted that so far as allegations against the petitioner are concerned, they are absolutely vague and not substantiated by any evidence on record. The learned Counsel for the petitioner has also placed on record written submissions. In the written submissions, reference is made to various letters exchanged between the petitioner and the Bank. Learned Counsel for the petitioner submitted that the appellate authority has not even considered the submissions made by the petitioner about his innocence and the appellate authority without discussing the evidence on record has dismissed the appeal preferred by the petitioner. It is submitted that since the petitioner has already reached the age of superannuation, this Court by setting aside the dismissal order, may direct the Respondent Bank to give all retiral dues to the petitioner

9. Mr. V.P. Vaidya, learned Counsel appearing for the Bank, on the other hand, submitted that considering the totality of the facts and circumstances of the case, the enquiry officer found that the charges against the petitioner are proved. He has relied upon the report of the enquiry officer as well as the order of the disciplinary authority. The respondent Bank has not filed any affidavit in reply to the petition.

10. We have heard the learned Counsel for the parties at length. We have gone through the voluminous documentary evidence forming part of this petition. We have also gone through the order of the disciplinary authority as well as the order of the appellate authority and the order passed by the reviewing authority. We have also considered the written submissions submitted on behalf of the petitioner.

11. In order to find out as to whether from the evidence on record, misconduct alleged against the petitioner can be said to have been proved and whether the petitioner has acted in a manner detrimental to the Bank''s interest, it is necessary to consider the factual background in connection with the transactions in question as well as the role played by the petitioner in this regard. It is

required to be noted that the petitioner was transferred to the Hamam Street Branch of the Bank on 3rd September, 1990. Within few days after joining the duty, the petitioner wrote a letter to the Divisional Manager of the Bank on 18th September, 1990 pointing out certain irregularities. In the said letter, the petitioner pointed out that there was no proper record of H.O. Investment securities and that the securities worth crores of rupees were not traceable. The petitioner pointed out in the said letter that the branch was having Switch transactions on behalf of several brokers. The amounts are in crores. The relevant part of the said letter of the petitioner reads as under:

On behalf of several brokers, the amounts are in crores. The formal sanction is only for one broker i.e. M/s. P.R. Subramaniam. Similarly there are instructions to undertake such transactions only against SGL or actual securities, whereas the branch is undertaking switch transactions on account of several brokers. Bank Receipts. It is on branch record that no other nationalised bank except Bank of India and Andhra Bank is undertaking such transactions for customers.

This matter was brought to the notice of Mr. Ramanathan, Divisional Manager during his visit on 12.9.90. He advised us to send the detail proposals for all brokers. However, when I asked a to whether we should conti8nue to undertake the switch transactions till such proposals are sent and decision taken or stop these transactions, he advised to continue undertaking such transactions since they were undertaken up to now, which please confirm.

The securities in the account of KCNM Trust & Mr. Kundnani are reported to be not traceable.

The balancing of books is not up to date. Since there is no proper record of allotment of this work it is difficult to ascertain the correct position.

12. It is required to be noted that after resumption of his duties at Hamam Street Branch, within a short period, the petitioner informed the Divisional Manager of the Bank about the aforesaid irregularities prevailing in the said Branch. Even the Divisional Manager of the Bank, one Mr. S.V. Ramanathan, informed the General Manager, Head Office at Calcutta on December 18, 1990 pointing out that he along with DGM had discussed the matter with petitioner on 17th December, 1990 and that he (petitioner) was also of the opinion that the Bank should not continue the Switch transactions on behalf of brokers though this alone is the main source of profit for the branch. The aforesaid letter is at ExhibitB to the petition. There are various other letters in connection with the objection taken by the petitioner regarding Switch transactions carried out by the Branch.

13. It is not in dispute that the said transactions on behalf of brokers routed through the said branch were stopped in May, 1991. However, as per the letter of the Divisional Manager of the Bank dated March 17, 1992, the Zonal Manager of the Bank was informed to restart the said transactions by taking certain measures. The said letter is at Exhibit M to the petition. The branch was

accordingly asked to start the transaction with immediate effect. Accordingly, at the instance of the higher authorities, even though initially for some time the said transactions were stopped, it was directed to restart the said transaction.

14. A letter was addressed by the Head Office to the Divisional Manager, Divisional Office, Bombay, seeking advice as to whether it is necessary to obtain any permission from the Reserve Bank of India or any other authority in this respect so that the concerned branch will be in a position to proceed further in the matter. The petitioner has also pointed out in the said letter that the Chairman and Managing Director had suggested to start the transaction at the earliest during the discussions with the Manager of the Branch. The petitioner also wrote another letter on 6th April, 1992, at Exhibit O to the petition. The said letter was in connection with the Switch transactions. The contents of the said letter are as under:

Kindly refer to the correspondence resting with our letter dated 30.3.92.

As you are aware Mr. Ramnathan, Divisional Manager has visited our branch today and instructed to start the above transaction. He told us that this is as per instructions from Chairman and Managing Director. He assured us that he will reply to our above referred letter shortly.

He advised us that certain formalities like undertaking and copies of contract will be completed by M/s. H.S. Mehta subsequently and personally supervised the transactions which were undertaken at his insistence.

Kindly confirm

15. The Divisional Manager, thereafter wrote a letter to the petitioner on April 27, 1992 informing the petitioner that the letter of the Bank dated 17th March, 1992 itself is indicative how the Bank would like to go with the transactions in question. The petitioner was also informed by the said letter that he has been provided with number of officers, some of whom are familiar with the transactions. In paragraph 8 of the reply, the Divisional Manager wrote thus:

You have asked in your letter to advise you whether Zonal Manager has since confirmed the arrangement. You need not worry about this as this is an internal matter between the Divisional Office and Zonal Office and as far as you are concerned, our instructions are sufficient.

For the time being this rerouting transactions may be stopped pending further instructions from Head Office.

16. The petitioner by his letter dated 8th March, 1993 had informed the Zonal Manager that he had always protested against these transactions and alerted the higher authorities on almost all points covered in their letter dated 19th January, 1993 but his efforts were not given due consideration. The said letter is at Exhibit Q to the petition.

17. The learned Counsel for the petitioner strongly relied upon the said

correspondence and submitted that as a subordinate officer the petitioner had no option but to carry out the instructions given by the higher authorities. The petitioner had served as Senior Manager of Hamam Street Branch between 3rd September, 1990 and 18th April, 1992. While the petitioner was at the Hamam Street Branch, he drew attention of the higher authorities about such irregularities in connection with the Switch transactions. It is not in dispute that the said procedure and transaction was carried out much prior to the petitioner joining at the said branch. It is the petitioner who for the first time drew the attention of the authorities the apprehended danger to the Bank if the Bank proceeds with the transactions in question. It is required to be noted that while the petitioner was working at the said Branch, he was not subjected to any memo or show cause notice of any nature and in fact during his tenure as a Branch Manager in the said Branch he was asked by the higher authorities to continue with the said transaction. It seems that for the time being the transactions were stopped but again at the instance of higher authorities, same were restarted. It is unfortunate that the enquiry officer has not referred to the said voluminous documents which were produced before him by the petitioner. As pointed out earlier, the petitioner was in charge of the Bank as Senior Manager of the Hamam Street during the period 3rd September, 1990 and 18th April, 1992 and during major part of his tenure he went on corresponding in respect of the transactions in question with the higher authorities. If the act of the petitioner was of such a grave nature, it is surprising as to how the disciplinary authority failed to take into account the said aspect during the period when the petitioner was in the said branch of the Bank. In fact, after his transfer from the said branch to the Andheri Branch, after considerable time, he was subjected to chargesheet on 14th/17th June, 1994. It seems that the disciplinary authority with a view to cover up the decision of the higher authorities of the Bank ultimately decided to hold an enquiry against the petitioner after a considerable time after his transfer from the Hamam Street branch of the Bank. Neither the Enquiry Officer nor the disciplinary authority has considered the fact that the petitioner had already drawn the attention of the authority the moment he joined at the said branch. It is true, as argued by the learned Counsel for the petitioner, that even if the higher authority of the Bank had asked the petitioner to continue with the same practice, the petitioner was still not obliged to follow such instructions. However, as a subordinate officer of the Bank and especially when in view of the letter of the Zonal Office by which the petitioner was asked to obey the instructions of the Bank, no fault can be found with the petitioner in this behalf. It is required to be noted that even before considerable time till the petitioner joined the said branch, the said practice was followed by the Bank. The authorities had not chosen to take disciplinary action against the earlier officers who were in charge of the Bank and who were following the said practice without murmuring in any manner. It is to be noted that within a short period after the petitioner joined the said branch, he drew the attention of the Zonal Manager and other higher authorities of the Bank regarding the switch transactions. From the record it is clear that the Chairman and other higher officers of the Bank were interested in carrying out the said transactions with a view to help certain brokers.

18. In the petition, the petitioner has made a reference to the letter written by the disciplinary authority in October, 2006 to the Head Office Vigilance Department stating that the petitioner had acted under instructions of higher authorities, did not have mala fide intentions and hence dismissal will be unjustified. During the course of hearing, the learned Counsel appearing for the respondents fairly submitted that he is not aware of the aforesaid aspect as to whether the disciplinary authority had written any such letter in October, 1996 to the Vigilance Department. In this behalf, there is no denial to the averment made in the petition. In view of this, it is presumed that the disciplinary authority must have written such letter to the vigilance department and the respondent is not in a position to deny the said aspect.

19. Before proceeding further, it may be necessary to deal with the report of the enquiry officer in connection with the enquiry conducted against the petitioner. So far as charge at article No. 1 which is in connection with indiscriminate issuance of numerous bank receipts is concerned, the enquiry officer after analysing the evidence found as under in paragraphs 6 and 8. The same read thus:

6. In his letter dated 18.9.90 addressed to DM (Exh. D1), the CO has sought permission from higher authorities to stop such unauthorised transactions. In fact, the CO should have himself stopped the transactions as he knew that these were unauthorised.

8. The CO has taken the plea that he was consistently against undertaking of such transactions and had taken up the matter again and again with the higher authorities, but they asked him to continue these transactions with other brokers also. Nevertheless the CO should have insisted upon the written approval of DO/ZO and in case the same was not forthcoming he should have stopped these transactions. The CO has also stated that he was prevailed upon to continue these transactions whenever he insisted for stoppage of these transactions, on the assurance that detailed guidelines will be provided in due course.

The enquiry officer has found that the defence plea has some weight and, therefore, the charge was held as only partly proved to the extent that the petitioner did not stop the transactions in respect of brokers other than M/s. P.R. Subramanian and Sons. As discussed earlier, when the petitioner was asked to perform the duties by the higher authorities, no blame can be foisted upon the petitioner in this behalf, yet charge No. 1 has been held to have been partly proved by the enquiry officer.

20. So far as charge at Article No. 2 is concerned, it is in connection with issuance of bank receipts under the single signature of a junior officer. In this connection, it is the specific case of the petitioner that there were no written instructions issued in this behalf for issuing bank receipts under the joint

signatures. Even the enquiry officer has found that the primary responsibility lies with the officer issuing the bank receipts but it was found that the petitioner was also to be blamed for not having insisted upon joint signatures on the bank receipts. The enquiry officer has found that the petitioner cannot be blamed regarding the bank receipts which were issued prior to his tenure. The the enquiry officer has found that the charge has been partly proved.

21. Charge No. 3 is in connection with maintenance of proper books and records in respect of bank receipts. In this connection, the enquiry officer in his report at para 19 has observed as under:

The defence plea that the counterfoils of BRs served as a record and that further improvements were made difficult because absence of manual of instructions/ guidelines cannot be accepted. Even for any small transaction in the bank, proper records are maintained and detailed entries/particulars are noted. In respect of BR transactions, the amount involved were running into several crores of rupees and thus it cannot be said that the counterfoils of the B Rs were sufficient and proper record.

The enquiry officer found that it goes to the credit of the petitioner that he started one BR Register from the next accounting year. In this connection, it is required to be noted that the said irregularities were going on even before the petitioner took over the charge. The charge has been partly proved.

22. Charge at Article No. 4 is regarding petitioner not bringing to the notice of the higher authorities the fact that in many cases bank receipts were redeemed only by payment and not by physical delivery of the securities. In this connection, it is not in dispute that there were no guidelines/instructions for extinguishment of the bank receipts. It is the specific case of the petitioner that the higher authorities were well aware of the procedure adopted in the Branch and the officers deputed by the Zonal Manager, when the petitioner was on leave, had followed the same procedure while redeeming the remaining bank receipts before stoppage of these transactions. It may be mentioned here that the petitioner had time and again written various letters pointing out the irregularities prevailing in the Bank to the higher authorities. According to the petitioner, the bank was only interested in redeeming the bank receipts and the higher authorities were aware of the procedure followed in the Branch and had in fact themselves followed the same practice for redeeming the bank receipts in the branch when the petitioner was on leave in May, 1991. It is true that so far as this aspect is concerned, the petitioner should have been more vigilant. In our view, so far as this charge is concerned, the finding of the enquiry officer is not satisfactory in this behalf. It cannot be said that the petitioner was negligent so far as this aspect is concerned. In our view, none of the aforesaid charges for which penalty of reduction of increment as awarded is based on evidence on record.

23. So far as charge at Article No. 5 is concerned, it is in connection with

diversion of huge sums of money to the stock brokers account enabling them to use the same for speculative purposes. The enquiry officer has found that the branch on numerous occasions credited the proceeds of cheques/pay orders issued in favour of UCO Bank by other banks/institutions in the brokers account even though there was no authorisation from such banks/institutions who had issued such cheques/pay orders. In this connection the enquiry officer found in paragraph 32 of his report that as regards the risk involved and the speculative nature of the transaction, the petitioner had himself brought these facts to the notice of the higher authorities and the DM had accordingly taken up the matter with the GM in his letter dated 18th December, 1990. The petitioner in fact was asked to follow the said practice and it is not disputed by the learned Counsel appearing for the Bank that no such instructions were given by the authorities to the petitioner in this behalf. The learned Counsel appearing for the petitioner has drawn our attention to Rule 3 of the UCO Bank Officer Employees (Conduct) Regulation, 1976, which reads thus:

3. No officer employee shall in the performance of his official duties or in the exercise of powers conferred in him act otherwise than in his best judgment except when he is acting under the direction of his official superiors.

It is required to be noted that when at the higher level insistence is made to follow the practice, it is too much to expect from the petitioner that he should ignore the say of the higher officers.

24. So far as charge at Article No. 6 is concerned, it is in connection with the cheque of Rs. 40 crores issued by a Nationalised Bank in favour of UCO Bank. The said cheque was received by the D.N. Road branch of the Bank and proceeds of the same were sent to the Hamam Street Branch. The petitioner allowed credit of the same amount in the account of Harshad S. Mehta by debiting D.N. Road Branch, though there was no such authorisation/instruction from the D.N. Road Branch to Hamam Street Branch. It is the case of the petitioner that the amount was credited to the account of Mr. Harshad S. Mehta only on receiving specific telephonic instructions from one Vijayan of D.N. Road branch which fact was also mentioned in the advice sent to the D. N. Road branch. The enquiry officer has recorded that an advice to this effect was also sent to the main office on the same day. However, the enquiry officer has found that the advices sent to D.N. Road branch /main office had not been produced by the petitioner during the inquiry to support his contention. However, the factum regarding sending of such advice has not been denied even in the reply. The enquiry officer should have tried to ascertain as to whether any such advice was sent.

25. As regards charge at Article No. 7 is concerned, it is in connection with crediting the current account of Harshad S. Mehta w8ith an amount of Rs. 26 crores being the proceeds of a pay order issued in favour of UCO Bank by the State Bank of Saurashtra. In this connection, the case of the petitioner is that the said practice of collecting the cheques in favour of UCO Bank and crediting the same to the concerned brokers account was continuing in the branch from

earlier years and it was within the knowledge of the higher authorities and no objection was raised at any point of time in connection with the said procedure. Considering the fact that the petitioner has already made grievance from day one in this behalf and considering the voluminous documentary evidence produced by the petitioner, the findings given in connection with the aforesaid charge Nos. 5 to 7 can also be said to have been vitiated.

26. Charge at Article No. 8 is in connection with the security transactions on behalf of the brokers at Hamam Street Branch which were stopped by Zonal Office with effect from 7.5. 1991. However, the petitioner unauthorisedly allowed 3 SGL transactions on 171991 and one SGL transaction on 271991 as per the details given in the imputation. It is the defence of the petitioner that SGLs were issued by the operational level staff without his knowledge on 1791 and 2791 Further, the enquiry officer has found that though it is possible that the SGL was issued on 2791 without his knowledge but on 1791 the petitioner was very much in the office and thus it was not possible to believe that the transactions in the SGL account were done on that day without his knowledge. This charge is held to be partly proved. So far as this charge is concerned, since appropriate reasons have been given by the enquiry officer in this behalf, it has no bearing regarding voluminous correspondence exchanged by the Bank as this charge is independent of the aforesaid aspect. We cannot reappreciate the evidence so far as this charge is concerned and the finding given by the enquiry officer which is accepted by the disciplinary authority cannot be disturbed by us in this petition under Article 226 of the Constitution of India.

27. It is required to be noted that the following factual aspects are as such not in dispute.

(i) That after joining the duty at Hamam Street branch of the Bank, immediately the petitioner started making correspondence with the higher authorities pointing out the irregularities going on in the said branch;

(ii) That as per the documents on record, it is clear that the petitioner was advised to continue with the same practice;

(iii) Before joining at the said Branch since long the switch transactions and other irregularities were going on in the branch;

(iv) During the petitioner''s tenure at the said branch, he was never informed to discontinue with the switch transactions;

(v) After petitioner''s transfer from the said branch to Andheri Branch at subsequent stage, the respondent Bank became serious in connection with the transactions in question;

(vi) As per the say of the petitioner, the guidelines issued by the Reserve Bank of India came after the petitioner''s transfer from Hamam Street Branch;

(vii) The averment in the petition that the disciplinary authority recommended to the Vigilance Department that the petitioner cannot be blamed as he acted as per the instructions of the higher authorities is not replied by way of affidavit in reply nor the said fact has been disputed during the course of hearing by the learned Counsel appearing for the Bank;

(viii) For considerable time even after the chargesheet was served to the petitioner, the petitioner continued to be in active service and no attempt was even made to place him under suspension, though the charges levelled against the petitioner were of serious nature.

28. It is not in dispute that the Bank has not suffered any financial loss at all. The learned Counsel for the respondent has also fairly pointed out that it is not the allegation against the petitioner that by way of taking any illegal gratification or by way of other monetary consideration, the petitioner had continued with the transactions in question. The allegation against the petitioner is in connection with the negligence in performance of his duty. In our view, since the petitioner from time to time continuously, while he was in office at the said Branch, had drawn the attention of the Bank, it cannot be said that the petitioner had wilfully allowed the said transaction to go on in the said Bank. Even after the said transaction was reintroduced by the Bank at the instance of Chairman and higher authorities, the petitioner again wrote a letter seeking specific directions and guidelines in this behalf. In our view, the petitioner has been made a scapegoat with a view to save other higher officers of the Bank. In our view, the disciplinary authority has not taken into account the important documents produced by the petitioner on record. Under the circumstances, the finding given by the enquiry officer can be said to have been vitiated as the defence of the petitioner has not been taken into account. As discussed earlier, regarding charge Nos. 1 to 7, the findings are absolutely halfhearted and relevant and material aspects have not been taken into account. Since the petitioner has already retired from the services of the Bank since long, it would not be proper to send the matter back to the enquiry officer to consider the evidence.

29. Under the circumstances, the order of dismissal passed against the petitioner in connection with charge Nos. 5 to 7 are concerned, the same is not sustainable. As pointed out earlier, the petitioner was subjected to chargesheet after a considerable time. As pointed out earlier, in fact the petitioner has tried to save the interest of the Bank as far as possible but ultimately decisions were taken at the Head Office level by the Chairman and other officers. Considering the said fact, in our view, the petitioner has been made a scapegoat regarding the transaction which was carried out by the Bank at the relevant time.

30. At this stage it may be noted that the appellate authority has not even discussed the evidence forming part of the record. The appellate authority is required to consider the evidence on record and to find out the guilt. Neither the enquiry officer nor the disciplinary authority or the appellate authority has considered all these important documents on which the petitioner has relied upon. In our view, the appellate authority is duty bound to assess the evidence

for coming to the conclusion as to whether the guilt is established against the delinquent or not. Upon perusal of the order of the appellate authority, an impression is created as if the appellate authority''s jurisdiction is restricted only to see whether the enquiry is conducted in accordance with the principles of natural justice. The appellate authority can certainly reappreciate the evidence and reach its own conclusions which has not been done. The appellate authority has not appreciated the evidence on record in its proper perspective so as to find out the alleged misconduct on the part of the petitioner. If it is found that the material facts produced by the delinquent have not been taken into account at all, this Court can certainly interfere with the findings which are arrived absolutely on the basis of surmises or conjectures.

31. The enquiry officer as well as the disciplinary authority at the time of taking decision is required to take into account the version of the delinquent as also the various documents produced by the delinquent. The documents produced by the petitioner have not been taken into account and, therefore, principles of natural justice can be said to have been violated. It is not the law that the evidence produced by the delinquent in the form of documentary evidence is not even required to be considered by the enquiry officer. The fate of the delinquent depends upon the report of the enquiry officer. The enquiry officer, in a departmental enquiry, is having a pious role as ultimately he is required to find out the truth and while doing so, the evidence produced by the delinquent during the enquiry is required to be considered and gone into. The enquiry officer has to objectively record the evidence, analyse the evidence and submit the report to the disciplinary authority giving his findings as to whether the charges against the delinquent are proved or not. Therefore, the enquiry officer owes an important duty though his finding can be based even on circumstances or preponderance of probabilities but at least relevant part of the evidence is required to be discussed by him in his report. The findings should be arrived at on the basis of some evidence or even on the basis of preponderance of probabilities. In the case on hand, from the circumstances narrated hereinabove, we are satisfied that the enquiry officer has not considered the relevant aspects while submitting his report to the disciplinary authority. The disciplinary authority, in our opinion, has not considered the relevant facts and circumstances of the case. It is also required to be noted that the appellate authority while deciding the appeal is required to consider the evidence produced on record by the delinquent and its judgment should have been based on the basis of material on record.

32. In view of what is stated above, we set aside the impugned orders of the disciplinary authority, appellate authority and the reviewing authority in so far as it relates to charge at Article Nos. 1 to 7 are concerned. Since the petitioner has already retired by way of superannuation, it would not be proper to send the matter back to the disciplinary authority to consider the evidence on record. We accordingly confirm the order of the disciplinary authority reducing five increments in the time scale of pay in connection with charge at Article No. 8.

The penalty imposed by the disciplinary authority reducing five increments in the time scale of pay shall stand as regards charge No. 8. Since the petitioner has already retired by way of superannuation, there is no question of passing the order of reinstatement. However, the respondents are directed to pay all necessary retiral dues to the petitioner as if he was continued in service till the date of superannuation within a period of three months from today. However, at the time of making such payment, the penalty regarding withholding of five increments in connection with charge No. 8 is to be taken into account and after considering the said penalty, whatever amount due and payable is required to be paid to the petitioner. For the intervening period i.e. from the date of dismissal till the petitioner reached superannuation, he shall be entitled to back wages to the extent of 30 per cent. Since there is nothing on record as to whether the petitioner was gainfully employed after his removal from services, in our view, considering the facts and circumstances of the case it would be just and proper to award 30 per cent of back wages during the intervening period i.e. from the date of dismissal order till the petitioner reached the age of superannuation.

33. Rule is made absolute to the aforesaid terms with no order as to costs. It is clarified that this order is to be construed only in connection with the departmental proceedings initiated against the petitioner. If any other proceedings in any other for a are pending against the petitioner, this order will have no bearing on the same.

