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(2009) 09 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 57592 of 2005

Ramavtar	APPELLANT
Vs	
Chairman & Managing Director and Others	RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Citation : (2009) 09 AHC CK 0102

Hon'ble Judges : Sunil Ambwani, J and Virendra Singh, J

Final Decision : Dismissed

Judgement

1. Heard Shri Shashi Nandan, Senior Advocate assisted by Shri Amit Sthalekar and Shri S.K. Pandey for the petitioner. Shri Vipin Sinha appears for the respondentbank.

2. This writ petition is directed against the order dated 26.6.2004 passed by the Disciplinary Authority; and the order dated 18.2.2005 passed by the Appellate Authority of the Bank of Baroda, by which the petitioner was dismissed from service under the Bank of Baroda Officer Employees'' (Discipline and Appeal) Regulations, 1976 (Regulations of 1976), and his appeal was dismissed.

3. The petitioner was serving as an Officer MMG/SII, E.C.#55384 and was working as Branch Manager at Kemri Branch, District Rampur. A Memorandum dated 30.6.2003 enclosing "Articles of Charges" & "Statement of Allegations" alongwith ''List of Documents/Witnesses'' was served upon him for the acts of omission and commission in respect of reckless sanction and disbursement of loans under various schemes, without observing the Bank''s guidelines; flagrant violation of system and procedures; blatant misuse of his discretionary lending powers, for making wrongful gains to himself and demand/acceptance of bribe. The petitioner filed written statement on 6.8.2003. On 6.8.2003, Shri R.K. Thakkar, Senior Manager, Zonal Office, Bareilly was appointed as enquiry officer, under Regulation 6 (2) of the Regulations of 1976. The enquiry officer submitted his findings on 18.3.2004 to the disciplinary authority. The petitioner was required by an order dated 24.3.2004 for making his representation against the

findings. The disciplinary authority found that the enquiry was conducted fairly and adequate opportunity was given to the petitioner and accepted the findings of the enquiring authority. All the six charges contained in the Memorandum dated 30.6.2003 were found proved against the petitioner. The Deputy General Manager, Zonal Office, Bareilly as Disciplinary Authority punished the petitioner by his order dated 26.6.2004 with following observations:

"Dismissal from Bank''s service which shall ordinarily be a disqualification for future employment upon him.

Further the suspension period of Mr. Ram Avtar shall be treated as period not spent on duty and he shall not be entitled for increments due during the suspension period."

4. Briefly stated the allegations levelled against the petitioner, in the chargesheet were as follows:

"During the period from April 2001 to June 2002, while working as Branch Manager of Kemari Branch District Rampur Mr. Ram Avtar was alleged to have committed the following acts of omission/commissions:

? He sanctioned 450 loan accounts compromising therein qualify of loans, resorted to reckless financing, violating Bank''s systems and procedures.

? LABOD OF Rs. 20,000/ was sanctioned by him where in it was found that the FDR was not discharged, lien was not noted, stamped undertaking in respect of LABOD to minors was not obtained, LDOC1 was unsigned and documents were kept blank.

? He disbursed 105 dairy loans wherein no intermediary inspection was done between release of first and second instalments of loan, presanction inspection reports were prepared in casual manner without proper appraisal/assessment of the borrowers/facilities, disbursement was made in cash violating the bank''s established norms, repayment is not forthcoming in several accounts thus entailing financial loss to the Bank.

? He sanctioned and disbursed 44 loans under Rice Huller Scheme wherein following irregularities observed:

Presanction inspection reports were prepared casually without carrying out technical feasibility/economic viability of the unit.

Out of 44 cases 7 accounts amounting to Rs. 3.66 lacs turned as NPA within a short period of one year of disbursement and most of the other accounts were on the verge of becoming NPA.

No post sanction inspection was carried out in most of the accounts, resulting in noncreation of complete assets/total misutilisation of bank''s funds.

In some cases loan was disbursed to for brands of machinery which was not approved by CSIR, a Govt. Agency, who may refuse to grant subsidy in these

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cases.

Minimum margin of 5% as stipulated in the scheme was not obtained.

Not maintained, proper record of the loan application received.

Full loan including civil work component of Rs. 18,000/ was disbursed in one ago, in all cases to the supplier of machinery without ensuring endues of funds.

? He sanctioned and disbursed loan of Rs. 10,000/ under SIRS to staff relative without any authority from Regional Office.

? He accommodated few existing NPA or RC filed borrowers by sanctioning/ disbursing fresh credit facilities for liquidation of old outstanding loans.

? He accommodated and favoured some borrowers by sanctioning more one loan for different activities, which are proving difficult for recovery and are likely to become NPA.

? He did not obtain LADs in respect of 13 accounts aggregating Rs. 2.12 lacs which became time barred during the period April 2001 to June 2002 and thus exposing bank to loss to that extent.

? He charged Rs. 20/ per no dues certificate issued by him instead of Rs. 50/ per certificate, thereby causing revenue loss of Rs. 30/ per certificate to bank.

? People of the area complained against him for demanding and accepting illegal gratification/bribe for sanction of loans. The irregularities in granting loans as well as acceptance of bribe on his part have also been highlighted in the local newspaper in June 2002 which had severely damaged bank''s image."

5. In allegation No. 1 it was stated that during the short spell of his posting between April, 2001 to June, 2002 the petitioner resorted to reckless financing violating the laid down systems and procedures of the bank. He sanctioned 452 loan accounts during this period of 15 months compromising with the quota of loan appraisal sanction and disbursement inasmuch as 1.(a) out of 117 loans under BKCC/Crop loans, in 51 accounts the sanctioned limit were fixed separately in Rabi and Kharif crops. In most of the cases the limits were released within 1 to 3 months without observing the cropping pattern; (b) in all the 117 accounts, no presanction and post sanction inspection was done; (c) in number of accounts there was no recovery and that the accounts were proving difficult for recovery and resulted in financial loss to the bank.

6. The petitioner admitted that all.51 account limits were sanctioned in Kharif and Rabi seasons separately, however, he disbursed thesanctioned facilities to the borrowers in some cases on sugarcane pattern in one instalment at the request by the borrowers and advice from the higher officers so as to uplift the agriculture portfolio. The scale of financials was strictly complied with as given by Lead Bank/Regional Office. The interviewcumappraisal form of the bank was used, and are treated as presanction of the facilities and BKCC bills are accepted

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as a proof of postsanction survey as in the case of other branches. It was stated that the recovery is being made of these transactions and that in most of the cases outstanding were repaid and renewed. In few cases the accounts have not matured for recovery. The end use of crop loan was taken care of by receipts of fertilizer and collaterals such as mortgage of land and guarantee from third party in all the accounts to avoid the loans to the bank. The bank was miserably under staffed with two officers including the petitioner to run the branch. The services of second officer was utilized for stock inspections and renewals as and when he was free from routine work of branch operations.

7. The enquiry officer found that the disbursement was allowed in most of the cases in one shot. The contention, that interviewcumappraisal form was taken as presanction of credit facilities, was not tenable. The purpose of presanction is not restricted only to interview or appraisal of the credit facilities but also to include other vital information such as inspection of residence and character of the proposed borrower, physical verification of the proposed mortgage land etc. The enquiry officer found that it is off course difficult to verify the end use because fertilizer purchased from cash credit limit is utilised in the farms and looses its identity. He found from the perusal of various statement of accounts and evidence that these limits sanctioned on various dates from June, 2001 to February, 2002 were not liquidated even upto March, 2003 and inferred: thereby that all these accounts must have been degraded to NPA category.". The enquiry officer agreed that no doubt mortgage of land and/or third party guarantee is available, but banks are not so successful in executing the recovery through RC filed accounts and suit filed accounts and concluded: ''so ft can be concluded the Bank may suffer financial loss in all these accounts''.

8. The allegation No. 2 was with regard to LABOD loan accounts; the fixed deposit receipt of Rs. 20,000/ accepted for sanction of loan to Mr. Angan lal, Minor and Shri Puran lal on 27.5.2002 was irregular, inasmuch the FDR was not discharged by the depositor; the lien on FDR was not marked/noted; the letter of depositing FDR was neither filed nor signed by the borrower, LDOC1 is unsigned and stamped undertaking in case of LABOD to minors is not obtained. The petitioner admitted that these documents were blank and the requisite formalities were left to be complied with, but that there was nothing to suggest that the bank had incurred any loss. These irregularities may have occurred due to the reason of heavy rush of work on the day when the loan was given and the absence of second officer from the branch. It was stated that the bank was not likely to suffer any loss because of these irregularities. The enquiry officer found allegation No. 2 to be proved.

9. The allegation No. 3 was with regard to sanction and disbursement of 105 loans under the dairy loan scheme with the irregularities, (a) presanction inspection reports were prepared in casual and routine manner without proper appraisal/assessment of the borrowers/facilities; (b) disbursement in most of the cases was made in cash, either in one instalment or within the gap of 13 months,

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violating the established bank''s norms; (c) no intermediary inspection was made between release of 1st & 2nd instalments of loan amount; (d) the repayment was not forthcoming or not coming as per repayment schedule fixed in most of the dairy loans sanctioned and disbursed by him as per statement of accounts, and thus causing/likely to cause financial loss to the bank.

10. The petitioner stated that revised interviewcumappraisal form was used for financing dairy loans. As per NABARD guidelines, one pair of she buffalo costing Rs. 31,400/ against the security of equitable mortgage of 1 acre of land costing Rs. 2 lacs and other security like hypothecation of live stock, mortgage of land, 2 guarantors having agriculture land, was taken on all these accounts. The loan was disbursed to buy buffaloes from the market as there are no approved seller/ supplier by the Regional Office or Zonal office. The disbursement of the amount after three month''s gap as against previous manager disbursed within 1 to 2 months. The recovery was forthcoming except in those cases where the succeeding manager did not disburse the second instalments jeopardizing the recovery, and that the poor monsoon should also be considered as a factor, as animal husbandry loans or part of agricultural.

11. The enquiry officer found that there should be a gap of 68 months under the Agriculture Finance Scheme No. 10 in purchase of milch cattle which was not insured while financing 105 dairy loans. The loan is to be disbursed in two instalments. The presanction and postsanction inspections reports commended upon the casual working of the branch. The post sanction inspection format was discarded as it did not carry vital information about insurance, medical/health certificate etc. and date of commencement of the instalments. In all the 105 cases repayment was fixed quarterly/half yearly as against the monthly instalment without justification. Some of the loans aggregating to Rs. 6.20 lacs had already gone bad, and RCs were filed. Some accounts were already classified as NPA and that in respect of the remaining sporadic recovery was coming. The charge was thus proved.

12. The allegation No. 4 related to 44 loans under Rice Huller Scheme in which presanction inspection reports were found to be prepared casually without full details. The seven accounts amounting to Rs. 3.66 lacs had become NPA within one year of the disbursement of the loans. The post sanction inspections were not carried out and that Manglam Brand of Machinery was financed which was not approved by the CSIR. The minimum margin of 5% as borrower''s contribution was not obtained. The records of the applications were not kept in the prescribed Applications Received Register and that the loan component of civil constructions was released without ensuring that the civil work was completed.

13. The petitioner submitted that technical feasibility/economic viability, backward/forward linkage were to be taken care by the Zonal office. The petitioner had obtained tripartite agreement with solvent agency, borrower and implementing agency namely CSIR. Pre & post sanction norms were followed and

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the allegation of misutilisation of bank funds or nonused of assets was false. The Manglam branch of M/s S.D. Engineering works was approved by CSIR. No margin was stipulated for loans upto Rs. 50,000/ and that civil constructions work was undertaken by the suppliers of the machinery. Due to shortage of staff specially one clerk Mr. Luxmi Kant on temporary transfer to Narkulaganj, Bareilly, minor formality could not be completed. The payment was coming in seven alleged accounts and that the accounts became NPA because instalments were fixed on the total disbursement of Rs. 50,000/ as against Rs. 25,000/ payable by the loanee.

14. The enquiry officer found that the presanction inspection was made casually. The prescribed forms/economic viability was not taken care of and that inspections were not made at different stages of completion of civil constructions, erection and commissioning; margins were not ensured and that civil constructions were not verified. The entire loan was disbursed in one shot and that post sanction inspections were not carried out. He found the allegations to be proved.

15. The allegation No. 5 related to disbursement of a loan of Rs. 10,000/under the SLRs Scheme to Smt. Sumatra w/o Shakru, mother of staff member Mr. Shekhar posted at Kemri Branch, without obtaining prior sanction from appropriate authority. There was no repayment in the account at all and that the account had become NPA. The petitioner pleaded ignorance about the relation between the employee, who was a part time sweeper, and the borrower and stated that the account was since closed. The enquiry officer found that the petitioner had carried out presanction appraisal and sanctioned Rs. 10,000/for purchase of buffalo to Smt. Sumatra. Mr. Shekhar was appointed in the bank vide appointment letter dated 4.11.1991 and that the account was degraded to NPA category as on 31.12.2003. There was no recovery upto March, 2003.

16. The allegation No. 6 related to violation of bank''s guidelines, existing NPA or RC filed in accommodating borrowers for sanctioning/disbursing fresh credit facilities to liquidate old outstanding with reference to fresh loan of Rs. 28,000/ to Shri R.M. Johri against whom bank dues of Rs. 24,956/were outstanding. The account was liquidated by disbursement of fresh loan in the same account. In both the accounts there was no recovery. The second instance was of Shri Ram Sumer for fresh loan under Huller Scheme. He was defaulter in the loan account. A loan limit of Rs. 50,000/was disbursed, whereas Shri Ram Sumer was disbursed Rs. 60,000/ on 12.10.1995 and his loan account was classified as NPA on 31.8.1998 and RC was filed on 6.5.1999. On 31.3.2003 Rs. 41.438/ was outstanding in the account. The third loan was given to Shri Chotey Haji against whom recoveries for Rs. 36.020/was issued. The loans were disbursed inspite of the fact that there were already three RC filed/NPA irregular accounts.

17. The petitioner stated that he was not aware that earlier any loan was granted to Shri Chotey Haji, which had become NPA when he had given sanction of crop loan of Rs. 1 lacs on 3.8.2001. There was no cross reference return on previous

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RC filed account. The earlier two accounts were however slightly over due and were rephased on the request of Smt. Seema Devi; Arvind Kumar; and Indrajeet. There was handsome recovery in these accounts.

18. The enquiry officer found that the charged officer was in the habit of accommodating defaulter borrowers and did not take care to ensure that fresh loans could not be granted to the defaulters.

19. The allegation No. 7 related to accommodating favoured borrowers by sanctioning for different activities which proved difficulty in recovery and the accounts were likely to become NPA. The reference was given to the accounts of Shri Raj Kumar, who was financed for Rs. 50,000/ on 15.1.1998 for retail sale of Bartan and Rs. 19,000/ on 1.5.2002 for Rs. 18,273/ for restaurant. The second instance was of Shri Ali Ahmad; Gohar Ali; Nabi Ahmad; and Shafiq Ahmad, who were given crop loans, whereas there was already a tractor loan in the name of Nabi Ahmad and Gohar Ali and they were all related to one family. The aggregated amount sanctioned was Rs. 4.85 lacs as against the land holding of 4.91 acres only. There was no repayment in any crop loan account since September, 2001 and Rs. 65,000/ in the tractor loan account. The total outstanding as on 31.3.2003 was Rs. 5,03,437/.

20. The petitioner submitted that Shri Raj Kumar was instrumental in deposit mobilization. There was substantial recovery in his account and that security of 4.91 acres land was available by way of equitable mortgage. The loan was renewed and Rs. 95,000/ was recovered in the tractor loan account.

21. The enquiry officer found that account of Shri Raj Kumar was irregular on the date of sanctioning fresh loan of Rs. 10,000/ on 1.5.2002. Both the accounts since have become NPA and in the matter of All Ahmad and others, the crop loans were irregular. The tractor loan was given against the same security and that there was no collaboration with agricultural land measuring 19.64 acres which was mortgaged.

22. The allegation No. 8 was with regard to negligence in not taking LADs in 13 accounts aggregating Rs. 2.12 lacs, which became time barred during the period of April, 2001 to June, 2002 and was in loss to the bank. The petitioner submitted that out of these 13 time barred documents, RC was filed in seven accounts and thus only six accounts were allowed to become time barred. The enquiry officer found that even if the contention of the charged officer is accepted, six accounts have become time barred amounting to Rs. 0.85 lacs and thus the allegation was proved.

23. The allegation No. 9 related to charge of Rs. 20/ per no dues certificate, instead of Rs. 50/ per certificate causing loss to the bank. The petitioner took a defence that his predecessor had charged and that the other branches were still charging Rs. 20/ for issuing no dues certificate and that in the inspections the short charges were not pointed out. The enquiry officer found that the officer appears to be ignorant about the application of incidental charges, which had

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different than the issuing no dues certificate. The no dues certificate is issued to the proposed credit card beneficiaries after charging Rs. 50/ as incidental charges.

24. The last allegation namely allegation No. 10 was with regard to visit of Mr. A.K. Shah, Chief Manager, Zonal Office, Bareilly and Shri S.K. Gupta, Senior Manager, Regional Office, Bareilly on 18.6.2002 to Kemri Branch. A large number of customers/local people gheraoed the branch and complained against him for demanding and accepting illegal gratification/bribe for sanction of loan. The bank had received serious complaints against him alleging acceptance of bribe while considering loan applications/granting loans. These irregularities were highlighted in local newspapers severely damaging bank''s image. Shri S.K. Gupta, Senior Manager, Regional Office, Bareilly (MW2) deposed to prove, the charge. He stated that when he reached the branch, many complainants and other people gathered there in huge crowd in and outside the branch complaining against the Branch Manager for taking and demanding bribe for sanction of loans. He also deposed that they were shouting that their money should be returned, otherwise they will not allow the branch to open on the next day. Many complainants complained verbally and many in writing handed over to Chief Manager, Coordination. MW3, Naeem Ahmadthe complainant, and management witness deposed in the enquiry and confirmed that he had complained against Shri Ram Avtar for demanding bribe for sanctioning loan. He stated in his examination and the crossexamination by the petitioner that he had applied for loan for Mini Rice plant. The Manager demanded 10% as bribe and had kept many middlemen through which he was operating. He repeatedly approached the bank and was turned away. His application was pending for about one year. The branch manager assured that he will sanction the loan after April, 2002 but did not sanction the loan and had also asked him through various intermediaries not to appear in the enquiry.

25. The petitioner submitted that deposition of Shri S.K. Gupta, MW2 was not collaborated. The deposition of Shri Naeem AhmadMW3 was false as his application of loan was rejected, because it was unviable and his market reputation was not good. He was a habitual complainant and had also made complaints against previous branch manager. Whenever an application for credit is turned down or rejected, such type of complaints are made. The enquiry officer found that most of the borrowers had lodged their complaints against the petitioner, either verbally or in writing to Shri A.K. Shah, Chief Manager (Coordination) Zonal Office with whom MW2 had gone to the branch. Although such type of complaints against the sanctioning authority are made by the persons whose applications of credit are turned down, Shri Naeem Ahmad MW3 had stated that he was warned not to depose against the officer by his muscle man. He also relied upon the deposition of Shri Avadh Agrawal MW4, the inspecting officer, who carried out joint asset verification alongwith Shri Ram Ghai MW1 who had collaborated that the assets in most of the cases were not created or found at the site of the borrower and thus charge No. 10 was also

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found established.

26. The petitioner was supplied a copy of the enquiry report and that his explanation was considered by the disciplinary authority. The appellate authority also considered the grounds and after observing that the enquiry was conducted fairly giving reasonable opportunity to the petitioner, the charges were held to be proved. The appellate authority found that neither the enquiry officer nor the disciplinary authority made any observations without analysing the evidence properly. The documents were taken on record in the enquiry and opportunity was given to the appellant to verify them. The complaint of Shri Naeem Ahmad to management witness was not the actual basis for drawing conclusions and imposing penalty.

27. The petitioner was found guilty of charges of failing to make assessment before financing the projects; he overlooked the presanction activities while financing loans under the Rice Huller Modernisation Scheme and financed recklessly. He was casual in his approach without using the prescribed formality and went on disbursing the loans without carrying out postsanction inspections. The appellate authority considered the sanction of loans to the mother of the employee Shri Shekhar and considered the depositions of MW2, MW3 & MW4 regarding the complaints by people at the branch on 18.6.2002 and the complaints against the petitioner. He found that the charges were established and that he was satisfied that the punishment imposed was based on proved allegations and charges were commensurate with the misconduct.

28. Shri Shashi Nandan appearing for the petitioner submits that 714 documents were listed in the chargesheet. The enquiry officer fixed only six dates in conducting the enquiry. On the first day i.e. 6.9.2003 only the documents were numbered and taken on record. No discussion nor any crossexamination was made. On the second day on 22.9.2003 the enquiry was adjourned with a direction to the petitioner to nominate his defence officer fixing 20.10.2003. On the third day on 20.10.2003 the petitioner demanded some documents. On the fourth day on 24.11.2003 only the documents were numbered, taken on record, and the copies were provided. The petitioner requested for time to study the documents, on which the enquiry was adjourned for 19.12.2003. On the fifth sitting, three witnesses were produced including the complainant. Two bank officers were crossexamined and the matter was fixed for 19.12.2003. On the last and final date on 29.12.2003 only one witness Awadh Agrawal was produced and the enquiry was concluded. He submits that from the dates fixed and time spent in the enquiry proceedings it cannot be said that 714 documents and 4 witnesses out of 10 listed were examined properly. The enquiry was nothing but an eyewash. All the documents were taken on record without any discussion, or crossexamination. The petitioner''s defence was rejected illegally without recording any reason.

29. In respect of first allegation, it is stated that the target limit for sanctioning the loan in a year was fixed on 700 accounts, and thus sanction of 452 accounts

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cannot be said to be reckless financing. The application forms, interviewcumappraisal/assessment forms, documentation including hypothecation and agreements were all taken as per guideline dated 23.3.1999, and that the manager''s discretionary proforma was duly sent to Regional office for approval. No objection was raised by the regional office. There was no violation of the Rules. No cropping pattern was produced in the enquiry and thus the finding on the charge is erroneous. On postsanction inspection it is stated that such inspections were made to confirm the end use of loans, the bills/receipt duly acknowledged by the borrowers. The enquiry officer accepted that the fertilizer looses its identity and thus post sanction inspection has to be carried out only with the help of the receipt. The Baroda Kisan Credit Card (BKCC) cannot be termed as NPA before expiry of 24 months vide circulars of NPA annexed to the writ petition and that 80% of the BKCC accounts were fully recovered.

30. On allegation No. 2, it is submitted that the sanction of Rs. 20,000/ to one Shri Angan lal has not caused any loss to the bank as the entire amount has been recovered vide certificate issued by the bank at page 215 of the writ petition. These documents were placed before the respondents but they have failed to discuss it. A FDR of Rs. 20,000/ was obtained from the borrower and as such the bank''s interest were fully secured.

31. On allegation No. 3 regarding preparation of sanction reports on dairy loans and disbursement in one instalment or with a gap of 1 3 months and further no inspection caused, it is submitted that in all the cases interviewcumappraisal proposals were duly made and that enquiry officer had himself taken on record these forms. The circular for dairy loan annexed with the rejoinder affidavit at page 82, did not stipulate any gap for payment. There was no requirement under the Rules to maintain gap or restrictions. The medical certificates were issued by the veterinary doctor and that nakhasha report for purchase and insurance was available on the record. The post sanction inspection format was discarded by the bank long ago. The recovery was forthcoming and that the finding in this regard was contrary to the record. In only 32 cases out of 103 repayment schedule has commenced during the tenure of the petitioner and that the recovery had become due after the suspension of the petitioner on 18.6.2002. The petitioner, therefore, could not be held responsible. He had obtained mortgages of one acre of land worth Rs. 2 lacs against the loan sanctioned for one pair of buffaloes for Rs. 31,000/.

32. On allegation No. 4, in respect of 44 loans under the Rice Huller Scheme, it is submitted that technical feasibility and economic viability was assessed by CSIR and was admitted. The enquiry officer did not produce any other prescribed pre sanction forms. The tripartite agreement was well documented and that the branch had carried out pre sanction inspection as per guidelines. The recovery was due only after October, 2002 when rice hulling starts, whereas the petitioner was suspended on 8.6.2002 and that some of the accounts became NPA only in

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March 2003 after nine months of petitioner''s suspension. Out of these accounts the petitioner had made payments by cheques only in 26 cases, 12 accounts were cancelled and remaining six were paid by the other Branch Manager. There were no specific details of charge No. 4F and 4G, given in the enquiry report.

33. Shri Shashi Nandan submits that in the allegation No. 5 with regard to the loan of Rs. 10,000/ to the mother of staff member Shri Shekhar, there was no specific rule or regulation that any norm was violated by the petitioner. The account had turned performing and that by certificate dated 13.3.2004 of the bank the money was recovered leaving a balance of Rs. 1,270/ only. The account was a standard account. No material was placed to establish the relationship between the staff and the borrower.

34. On charge No. 6 it is submitted that the finding of the enquiry officer that the crop loan disbursed on 26.12.2000 was degraded to NPA category in December, 2001 is misconceived inasmuch as crop loan could not become NPA before 26.12.2002. There was no irregularity of procedure or misconduct. In respect of Bank of Baroda Kisan Credit Card the loans are taken on revolving pattern. The amount can be realised and deposited again by the borrower and that the NPA dates fell in March, 2003, much after petitioner''s suspension. The asset verification of Ram Sumer was done by Shri Awadh Agrawal on 13.3.2002 and that no rule was violated. With regard to recovery of loans to Smt. Seema Devi; Shri Arvind and Inder Jit it is submitted relying upon the details of recovery at page 225 and 264 of the writ petition that BKCC loan was fully recovered and that dairy loan was forthcoming.

35. On charge No. 7 he submits that the sanctioning of loan did not constitute any misconduct as the petitioner was fully empowered to grant the loan. Both the account had turned NPA on 2.10.2002 and 31.3.2003 four months after petitioner''s suspension. The recovery position was also shown to the enquiry officer but he has failed to discuss the same. The mortgaging of land of 19.64 acres was placed before the enquiry officer but he failed to discuss the same and that all the four crop loans were fully recovered and due recovery was also coming in tractor loan.

36. On allegation No. 8 Shri Shashi Nandan submits that there was no documentary evidence to prove the charge. Out of 13 accounts, in seven cases letter of acknowledgment of debt was taken from the borrowers and in six accounts permission for issuing recovery certificate was sought from the Regional Manager, and letter of recovery certificate was filed in these accounts. None of these loans had become barred by time and thus loans could be recovered as per Section 19 of the Limitation Act, 1963.

37. On allegation No. 9 Shri Shashi Nandan submits that prior to the posting of petitioner the prevailing practice at the branch was to charge Rs. 20/ against the no dues certificate. No new circular was received in the branch to charge Rs. 50/. The bank was repeatedly inspected and that no objection was raised in charging

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Rs. 20/ as incidental charges and that there was no dishonesty or embezzlement in charging lesser amount.

38. With regard to allegation No. 10 it is stated that all the complaints were written on the letter pad of the Krishna General Co. Most of the complainants had given affidavits namely affidavit of Shabbir Ahmad at page 239; Ali Ahmad at page 241; Shakeel Ahmad at page 243 and Shafeeq Ahmad at page 244 that they did not make any complaints. Mohd. Ahmad was defaulter and on this ground his loan application was rejected. The complainant namely Naeem Ahmad was produced before the enquiry officer. He was a person of unsound mind and a habitual complainer to every successive manager. His loan application was rejected as his reputation was not good and his project was unviable. He had lodged a frivolous complaint. A person of unbalanced mind could not have deposed against the petitioner. He had stated and threatened the petitioner that if he does not give loan to him, his position will be like the previous Manager. Shri Naeem Ahmad had himself admitted that he is not mentally fit in presence of Shri Manoj Rastogi and the Branch Manager of the branch office Kemri.

39. With regard to the alleged agitation before the inspecting officer Shri Shashi Nandan submits that the dealership of M/s Krishna Generator Co. for Huller had expired on 31.3.2002. He had instigated the complaints in forged names. Shri Kamal Bansal was also of criminal background. Shri S.K. Gupta MW2 admitted that he had visited the branch to investigate about the complaint of Hamdard Rice Industries at Kemri. Shri S.K. Gupta had gone to assist Mr. A.K. Shah. One of the guarantor of Hamdard Rice Industries was in jail under Sections 302, 394, 411, IPC from May 1999 to 13.12.2002 and that the alleged demonstration was the handiwork of these persons. Shri Shashi Nandan submits that the entire enquiry was vitiated by firstly denying a reasonable opportunity to the petitioner to defend the case. He submits that the enquiry in respect of charges which require perusal of 714 documents and four witnesses could not have been concluded in six sittings in which effective proceedings took place only on two dates namely on 24.11.2003 and 29.12.2003. The relevant rules in violating the norms have not been mentioned. He submits that the petitioner was authorised to sanction all the loans and was given target to be fulfilled. The branch was heavily understaffed and that most of the borrowers have become regular in payment. The defaults committed after the petitioner was suspended could not be directly attributable to him. There is not a single case in which the requisite securities, bank guarantees and mortgage was not taken. The petitioner was not to be blamed for any violations of rules at all. He functioned as efficient manager and worked hard to comply with the directions of the regional office and for disbursement of the loan for the benefit of poor people. Not a single loan had become barred by limitation.

40. Shri Shashi Nandan has relied upon the judgments in Rajinder Kumar Kindra v. Delhi Administration, (1984) 4 SCC 635, in which it was held that negligently keeping personal bank chequebook in such a manner to enable another

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employee to misuse a cheque is not a misconduct; Dilip Singh Rana v. State of U.P., 1994 All LJ 580(DB), in support of the submission that when serious charges of dereliction of duty, misappropriation of funds and embezzlement are under enquiry, the charges must be supported by evidence namely assessment of evidence by the enquiry officer. A reasonable opportunity must be given to the delinquent officer to defend himself in respect of all the charges; Kuldeep Singh v. Commissioner of Police and others, (1999) 2 SCC 10, in support of the submission that the reasonable opportunity in departmental enquiry includes the production of those witnesses whose statements are being relied upon; the documents which are not mentioned in the chargesheet and are not proved cannot be relied upon by the disciplinary authority.

41. Shri Shashi Nandan has also relied upon Narinder Mohan Arya v. United India Insurance Co. Ltd. and others, (2006) 4 SCC 713, to submit that the High Court, while exercising writ jurisdiction should examine as to whether the evidence adduced before the enquiry officer had nexus with the charge, and could lead to the guilt of the employee. The punishment order must contain reasons so as to enable the writ Court to ascertain whether there was application of mind to the points required by the relevant rules; and P.K. Kalia v. Canara Bank Ltd. and another, 2007 (7) ADJ 114 (DB), in submitting that the copies of the documents, which have been relied upon by the disciplinary authority must be given to the petitioner. The chargesheet should be specific and the authority must mention the rules, which are sought to be violated and supply copies of the Government orders on which the reliance is placed. In Union of India and others v. Central Administrative Tribunal and others, 2008 (7) ADJ 134 (DB), the Court held that the proof of complicity and not the circumstantial evidence is needed in a departmental enquiry to prove the charges. There has to be legal and admissible evidence to record findings against the employees.

42. Shri Vipin Sinha appearing for the bank would submit that all the charges were proved. The petitioner was reckless in granting loans. Preappraisal reports were not filled up properly. The loans were granted without verifying the creditworthiness of the borrowers and that the amounts were disbursed in one shot. He submits that the enquiry officer allowed full and adequate opportunity to the petitioner. All the documents were supplied and that the witnesses proved them. The petitioner was given full opportunity to crossexamine the witnesses and to lead his own evidence. He has relied upon the findings of the disciplinary authority and the appellate authority on each of the charges. He would submit that most of the loan accounts have become nonperforming assets causing loss to the bank. There could be no better evidence than the complaint of the demand of bribe in disbursing the loan amount made to the inspecting party. Shri S.K. Gupta, Senior Manager, Regional Office, Bareilly MW2 had fully collaborated the facts; the demonstration made by the people on the branch and the complaints made by the persons including Mr. Naeem Ahmad, who was examined as MW3.

43. Shri Vipin Sinha has relied upon judgments in Deoki Nandan Sharma v. Union

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of India, 2001 (5) SCC 340; UCO Bank v. Rajendra lal Capoor, 2007 AIR SCW 3656; D.S. Bisnoi v. State Bank of India, 2004 (1) AWC 640; Ganesh Santa Ram v. State Bank of India, 2005(1) SCC 13; Suresh Pathrella v. Oriental Bank of Commerce, AIR 2007 SC 199 and State Bank of India v. Ramesh Dinker Kunde, 2006 (3) UPLBEC 2472 (SC), in support of his submission that the scope of judicial review on the findings recorded by the disciplinary authority is limited. The Court would concern itself with the procedure, and evidence on the charges, and not the correctness of the conclusion drawn by the departmental authorities. The subsequent events such as recovery of loans would not be a ground to review the findings that the recovery had become doubtful, and that the accounts had turned nonperforming assets. He submits that the Court, in view of UCO Bank''s case (supra) in the matters of embezzlement or exceeding limits in sanctioning loan, should take stricter view. If the charges proved are serious in nature and indicate blatant irregularities, the findings of fact are not to be interfered with any writ jurisdiction. He relied upon Ganesh Santa Ram''s case (supra) to submit that the principles of natural justice cannot be put in a straight jacket. Their applicability depends upon the context and the facts and circumstances of each case. He submits that in this case the petitioner never objected to the sufficiency of the opportunity to peruse the documents or to crossexamine the witnesses. The petitioner did not lead any oral evidence to disprove the allegations against him. He further relies upon Suresh Pathrella''s case (supra) in submitting that the fact, that the amount was lost to the bank, is no ground to take a lenient view for the proved misconduct of the bank officers. If there are no malafides or violations of principles of natural justice, the Court should not interfere. There was sufficient evidence found by the enquiry officer against the charged officer for recklessly awarding loans without due and proper verification. The loans were awarded to the persons who were already defaulters and that senior officers of the bank received complaints and were satisfied that the petitioner demanded money in granting loans. The Court, therefore, should be very slow to interfere with the findings and that the punishment, is commensurate with the seriousness of the allegations proved on record.

44. The petitioner was suspended on 19.6.2002 and a chargesheet was served upon him on 6.8.2003, in terms of Regulation 5 (2) read with Regulation 6 of the Regulation of 1976 on 30.6.2003. Shri R.K.Thakker, Senior Manager, Zonal Office, Bareilly was appointed as Inquiring Authority and that after his appointment Shri Thakker fixed the first date of enquiry on 6.9.2003. The petitioner submitted nomination of one Shri Arun Kumar Sharma as defence representative. It is alleged that the enquiring officer refused the defence representative and fixed the next date on 22.9.2003. The proceedings of 6.9.2003, annexed as Annexure9 (page 138), would, however, show that after formal introduction the charged officer was asked certain questions. He was enquired whether he had received the chargesheet and whether he accepts the allegations/charges levelled against him. He was also asked whether he would like to plead his own case, and that details of the documents taken on record

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were mentioned in the proceedings. The petitioner accepted that he has received the chargesheet order dated 30.6.2003; he denies all the charges/allegations whatsoever levelled against him and requested that he shall be taking/availing defence assistance but could not finalise the name as the Zonal Secretary of the Association Mr. N.C. Sharma was not available in the city. He was asked to notify the name of the defence officer. The petitioner expressed that he should be given further chance to introduce defence assistant in the next hearing. The presiding officer''s request for permission to submit the documents, if any desired, in view of the demanded documents to the charged officer at a latter stage, was accepted. The presiding officer also accepted the request on the same day to examine Mr. Awadh Agrawal, Senior Manager (Inspection); Mr. Ram Ghai, Officer; Mr. S.K. Gupta, Senior Manager of Regional Office, Bareilly and the complainant as per point No. 10 of the statement of allegations and thereafter the hearing was adjourned for 22.9.2003.

45. On 22.9.2003 the petitioner himself requested for adjournment. The enquiring officer reminded him that the petitioner was required to introduce the defence or to plead his own case. The enquiry proceedings dated 22.9.2003 annexed as Annexure 10 to the writ petition would show that the inquiring officer granted adjournment keeping in view of the principles of natural justice and gave him a last chance to plead failing which the enquiry will be concluded exparte on 20.10.2003.

46. On the next date on 20.10.2003, after adjourning the enquiry from 10 AM to 3 PM on the request of the petitioner, he was allowed to be represented by Shri Rakesh Sharma, Senior Branch Manager, Branch Office Rejendra Nagar, Bareilly. The petitioner''s request to produce the documents detailed in the proceedings dated 20.10.2003 (Annexure11 page 146) was accepted.

47. On 24.11.2003 the next date fixed in the enquiry the documents demanded by the petitioner were given to the petitioner and were taken on the record of the enquiry as defence exhibit and the hearing was adjourned to 19.12.2003 at LBO Rampur/Kemri Branch at 10 a.m. Shri Rakesh Sharma, the defence officer was present alongwith the petitioner.

48. The evidence sheet annexed as Annexure13 page 152 of the writ petition records the statement of Shri Ram Ghai, Officer MMGII and Shri S.K. Gupta,. Senior Manager, Regional Office, Bareilly. The crossexamination of Shri S.K. Gupta, Sr. Manager MW2 by defence officer was recorded on the same day. On 29.12.2003 Shri Awadh AgrawalMW4 was examined. The petitioner requested the presiding officer to adjourn the hearing upto 4.30 PM so that he could arrange for witnesses for their deposition. The enquiry officer waited upto 4.30 PM and thereafter recorded: "Since no further witness could attend the proceeding upto stipulated time, it was decided mutually amongst all the participants to conclude the inquiry. According PO was directed to submit his written brief of arguments upto 15.1.2004 under advice to CSO/Defence who shall provide his written brief of defence within 15 days of receipt of PO''s

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brief." (Annexure15 page 169).

49. On the same day the petitioner gave in writing to Shri R.K. Thakker, enquiring officer that Kemri is a very sensitive place and has always been a complaint prone branch. The local influential persons exert pressure on branch to disburse the loan to their party person or to their relatives. They were making false complaints in the period of previous manager also. Mr. C.D. Gupta and Mr. Anil Girdhar (previous officer of Branch) were beaten by the political persons in past, only because they did not work as per choice of political group/pressure group. The function of political group/pressure group is still going on in the same style. Hamdard Rice Industries wanted to release of limit without completing the documents because release of Rs. 20 lacs on incomplete loans is quite risky. The matter was brought to the notice of Regional Manager, Bareilly. The loan of Hamdard Rice Industries was not disbursed and that the party was unduly pressurizing him despite the fact that they were unable to comply the terms and conditions of sanction. The party had managed to facilitate during 20002001 without informing the bank about the death of one partner. On learning from the financial papers 20002001, the petitioner came to know about the reconstitution of the firm, and asked for fresh review/documents to which they were unable to complete. Due to this, the complaint has emerged and one of the partner Mohd. Saghir made due and cry and managed to tarnish my image and that of bank.

50. Shri R.M. Jauhari, the presenting officer submitted his written brief dated 31.1.2004 with copy to the petitioner giving his submission on each charge. The petitioner submitted his own written brief with a covering letter dated 13.3.2004, annexed Annexure18 page 185 to the writ petition, on which the enquiry was closed. The enquiry officer submitted his report alongwith his findings detailed as above. The report and the findings were communicated to the petitioner by Shri B.S. Hegde, the Disciplinary Authority and Deputy General Manager on 24.3.2004.

51. The submissions of Shri Shashi Nandan, that 714 documents were listed in the chargesheet and that the enquiry officer fixed only six dates in concluding the enquiry hardly giving any opportunity to the petitioner to defend himself, are not supported by the proceedings of the departmental enquiry. The petitioner did not ask for further opportunity to give his reply, nor produced evidence in his defence. The petitioner neither requested for any more documents nor filed his own documents, and inspite of opportunity, failed to produce his witnesses. The petitioner and the defending officer agreed to conclude the enquiry on 29.12.2003, with liberty to file written brief of defence after he receives the written brief of arguments by the P.O. dated 15.1.2004. The petitioner did not make any protest in the enquiry proceedings that he was not given sufficient and adequate opportunity to defend himself. In the written brief of the petitioner dated 13.3.2004, annexed as Annexure 18 to the writ petition, there is no complaint made by him that he was not provided the evidence relied upon by the presenting officer, and that opportunity of crossexamination of the prosecution

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witnesses was not given to him. The petitioner did not request for leading any further evidence or to produce any defence documents or to produce any defence witness in support of his defence. We, therefore, do not find any substance in the submission that the petitioner was not given adequate opportunity to defend himself. The argument does not find support from the proceedings of the departmental enquiry.

52. The petitioner sanctioned a large number of loans within his short period of posting without completing the records. The defence, that he was fulfilling the target limit, was not accepted as he had advanced loans without following norms, on which large number of accounts became nonperforming assets. The finding recorded by the enquiry officer regarding reckless financing without making presanction inspection, the failure to make post sanction inspection and the verification of the end use, is based on the materials available on record. On charge No. 2, the petitioner admitted that the FDR taken as security for the loan was not discharged by the depositor nor the lien was noted on the document. The defence, that the documents were not filled up due to oversight was not believed and the charge was found proved.

53. The sanction of 105 dairy loans in allegation No. 3 were mostly found to be irregular. In all the 105 cases repayment schedule was fixed quarterly/half yearly as against monthly payments. A large number of these loans as detailed in the enquiry report had gone bad, and RCs were issued and that many accounts were classified as nonperforming assets. The recovery was sporadic in only some of the loans. The allegation No. 4, with regard to disbursement of 44 loans under the Huller Scheme, was also found to be sanctioned carelessly without preparing presanction reports. Seven accounts had become nonperforming asset due to nonpayment within one year of the sanction. The petitioner did not carry out post sanction inspections to verify the end use of the funds violating bank''s guidelines. The joint verification report dated 28.6.2002 indicated that the assets financed in most of the cases (Me 4c 1 & 2) were not found, and that in some of the cases the machines were not approved. The machinery supplied by the Mangalam brand was not in the approved list.

54. The allegation No. 5 of sanction of a loan to a relative of the employee of the bank was also proved and has not been denied by the officer. His defence, that he had no knowledge of the relationship of the borrower with the bank employee, was not accepted.

55. In respect of allegation No. 6, the enquiring officer considered the documents on record and the bank accounts of the borrower. The petitioner himself admitted that he had accommodated the borrower''s accounts by sanctioning/disbursing fresh facilities despite the fact, that the earlier facilities were over due, and concluded that the officer was in habit of accommodating defaulting borrowers. The allegation No. 7 of accommodating group loans in the name of persons, who had already taken a loan and had not cleared them was also found to be against the banking norms. The officer had accommodated them for excessive financing.

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The defence of the officer, that the total agricultural land of the borrower was mortgaged, was not found proved from the records. In the same manner the allegation No. 8 for not taking LAD''s in 13 accounts aggregating to Rs. 2.12 lacs which became time barred during April, 2001 to June, 2002 was also found proved and the defence of the officer that RCs had been filed in seven accounts was accepted but no defence was forthcoming for the remaining six accounts. The allegation No. 9 with regard to giving no dues certificate on charging Rs. 20/ instead of Rs. 50/ was also found proved. This allegation, however, can have no bearing on the misconduct as the defence of the officer that he had not received instructions and that many other branches were also charging Rs. 20/, was not considered by the enquiry officer.

56. The last charge about the gherao of the inspecting party complaining against the behaviour of the petitioner on 18.6.2002 was established by the earlier depositions of Mr. Ram Ghai and Mr. S.K. Gupta. The petitioner could not satisfactorily explain the complaint of Mr. Naeem Ahmad MW3 about false assurance given to him for grant of loan. The management witnesses were believed by the enquiry officer.

57. In Deoki Nandan Sharma (supra) the Supreme Court held that where the bank officer was given reasonable opportunity to adduce evidence and that the appellate authority, while deciding the statutory appeal, has taken into consideration all the points raised therein and dismissed the appeal, there could be no reason to interfere with the punishment order. In UCO Bank (supra) the Supreme Court held in para 16 that the officers of the bank enjoy a part of confidence in them. When a Manager of the bank is found to have embezzled or misappropriated any amount or exceeded the jurisdiction in the matter of grant of sanction of loans, the Court takes a strict view of the matter.

58. This Court has held in D.S. Bisnoi (supra), relying upon Sudhir Singh v. District Cooperative Bank, 2003 ALJ 1213; Ram Pratap Sonkar v. Allahabad Bank, 2000 ALJ 2510; K.K. Singh v. Gomti Gramin Bank, 2002 ALJ 480; and Union of India v. Vishwa Mohan, (1998) 4 SCC 310, that even if no loss was caused to the bank, the employee can be punished and that the Court would not sit in appeal against the findings.

59. In Ganesi Santa Ram Sirur (supra) it was held in a matter of enquiry against the bank manager sanctioning loan to his own spouse that the principles of natural justice cannot be put in a straitjacket. Their applicability depends upon the context, facts and circumstances of each case. The bank manager/officer and employee of the bank is expected to act and discharge his functions in accordance with the rules and regulations of the bank. Acting beyond the authority is by itself a breach of discipline and trust and amounts misconduct. In Suresh Pathrella (supra) the Supreme Court held that even if no amount was lost to the bank, is not aground to take a lenient view for proved and misconduct of bank officer.

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60. In this case both the disciplinary authority and the appellate authority have taken into consideration each charge into account. After discussion on relevant issues, the contentions raised were not found to have any merit.

61. In the judicial review of the orders of the disciplinary authority, and the appellate authority, the Court does not sit in appeal over the findings and record a different opinion on the same evidence. The petitioner was given sufficient opportunity to defend himself and that the enquiry officer, the disciplinary authority and appellate authority have considered each and every ground of defence taken by the petitioner. The petitioner did not choose to lead evidence and was satisfied with his written submission, which was also taken into consideration by the authorities.

62. The writ petition is dismissed.

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