(2009) 07 DEL CK 0354

In the Delhi High Court

Case No : Writ Petition (C) No. 3360 of 1999

Ravinder Kumar Agrawal APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Officers Service Regulations — Regulation 20(3), 24, 3

Citation : (2009) 07 DEL CK 0354

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Amiet Andley and Arun K. Sharma, for the Appellant; Jagat Arora and Rajat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—The petitioner herein being aggrieved by the disciplinary authority''s order dated 22.10.1998 and appellate authority''s order dated 14.05.1999 has filed the present writ petition.

2. The petitioner joined Hindustan Commercial Bank Limited (Private Bank) as a Probationary Officer on 25.06.1977 and was promoted as Manager on 01.05.1981. He was made branch Manager at Jammu on 25.08.1981. Between 1982 to 1985 some financial crunch was seen in the aforesaid bank and therefore on 24.09.1986 the aforesaid bank was put under moratorium. Ultimately, the aforesaid bank was took over by Punjab National Bank w.e.f. 19.12.1986.

3. Undisputedly, large number of Managers of Hindustan Commercial Bank Limited were terminated from service by the Punjab National Bank. Against the said drastic action, the petitioner and some of his associates challenged the aforesaid termination and the matter went up to the Supreme Court. The Supreme Court decided the matter in favour of the petitioner and all were reinstated vide judgment dated 09.11.1987 in the case titled K.I. Shephard and

Others Vs. Union of India (UOI) and Others,

4. Pursuant to the Supreme Court''s judgment, the petitioner and others reported for duty at Punjab National Bank. On the very same date, all of them were served with suspension orders which is reproduced as under:

Date: 9.11.87

Punjab National Bank

Personnel Division

7, Bhikaji Kama Place

New Delhi-110066

Shri R.K. Aggarwal,

34/8, Trikuta Nagar,

Jammu (J & K) Camp Personnel Divn. HO: New Delhi

Dear Sir,

This has reference to the judgment and order dated 18.09.87 of the Hon''ble Supreme Court of India in WP No. 177 of 1987 in accordance with which you have become the employee of the Punjab National Bank.

The amounts payable to you in terms of the judgment and order of the Hon''ble Supreme Court are being calculated and since it may take little more time to make payments finally, a sum of Rs. 19,396.87 only is being paid to you by cheque attached to this letter as an on-account payment to be adjusted in the final settlement.

Since allegations of misconduct against you while you were in service with the erstwhile Hindustan Commercial Bank Ltd., prior to your becoming the employee of the Punjab National Bank, the matter is being examined in the light of the observations made by the Hon''ble Supreme Court. In the meantime, it has been decided to place you under suspension. You will be paid all your dues up to the date, but with effect from the date of receipt of this letter, you will be under suspension pending disciplinary proceedings and you will be paid subsistence allowance during the period of your suspension accordingly.

Please note that all communications addressed to you will be sent to the address indicated above which was obtained on the basis of records available with us and you should communicate to the undersigned in the event of change in your address.

Yours faithfully,

Sd/-

(V.S. Vasan)

Asstt. General Manager (P)

5. Thereafter, on 17.12.1987 finally the charge sheet was issued along with Articles of Charges. The statement of imputation of charges were also served to the petitioner as under:

Charge-I

(i) Bharat Constructions

He unauthorisedly issued five guarantees against 50% margin aggregating Rs. 1.22 lacs as per details given below:

Date of Amount Remarks Issue 23.8.85 Rs.12,000/- 18.11.85 Rs.40,000/- 13.01.86 Rs.25,000/- Margin by way 11.03.86 Rs.30,000/- of FDRs for 14.03.86 Rs.15,000/- Rs. 3.40 lacs

He sanctioned overdraft limit of Rs. 2.65 lacs against the same FDRs of Rs. 3.40 lacs as against availability of Rs. 2.10 lacs after providing for 25% margin and cover against LGs.

(ii) Balwant Singh & Sons

He unauthorisedly issued six letters of guarantee aggregating Rs. 7 lacs against HO sanction of 4 lacs with 50% margin as per details given below:

Date of Amount Remarks Issue 01.01.85 Rs.1.00 lacs 12.10.85 Rs.0.50 lacs 18.10.85 Rs.1.50 lacs Margin by way 10.01.86 Rs.1.00 lacs of FDRs for 10.01.86 Rs.1.50 lacs Rs. 4 lacs 18.10.86 Rs.1.50 lacs

Further, he unauthorisedly allowed overdraft facility of Rs. 3 lacs on 26.5.85 to the party against the same FDRs which were kept as security against the guarantees as against availability of Rs. 38,000/- only after providing for 25% margin and cover against the letters of guarantee.

(iii) Swastik Construction Co.

He unauthorisedly allowed over draft limit of Rs. 50,000/- on 19.02.86 against FDR of Rs. 75,000/- which was already kept as margin for the guarantee issued for Rs. 75,000/- on 19.08.85.

(iv) He had been unauthorisedly accommodating M/s Krishan Lal Kimti Lal over the period of more than 3 years on regular basis beyond Head Office sanction of Rs. 8 lacs in the CC(H) account and Rs. 2 lacs in CC(P) account. The outstanding balances as on 24.5.86 Rs. 10.40 lacs and Rs. 3.68 lacs respectively in the accounts are at stake.

(v) He unauthorisedly on regular basis, allowed M/s New Shoe Co., Sanjhi Ram & Sons and S.R. Footwear to avail their CC(P) limits upto Rs. 1.5 lacs each as against HO sanction of Rs. 1 lacs in each.

(vi) He recommended to Head Office a term loan of Rs. 82,500/- for purchase of mini bus in favour of Shri Naresh Bahasin which was declined by the Head Office, but he released the loan on 11.12.85.

(vii) He sanctioned term loan of Rs. 79,000/- on 28.1.85 to Shri Madan Lal and disbursed the same on 13.3.86 against the existing Matador Van, which the borrower had already purchased on 13.12.84.

Charge-II

He unduly accommodated by allowing demand loan to the following parties without taking any security, thereby jeopardising Bank''s interest:

Name Date of issue Limit Value of O/s balance security as on 24.5.86 Ashok Chemicals 13.06.85 Rs. 14,000/- NIL Rs. 15,400/- (with interest Accrued thereafter) Kashmir Hotels 13.06.85 Rs. 21,000/- NIL Rs. 23,100/- (with interest Accrued thereafter)

Charge-III

He did not check the securities in full or partial erosion thereof in following CC(H) accounts. As against aggregate bank dues of Rs. 1.75 lacs therein, securities of total value of Rs. 16,000/- only were available as on 24.5.86.

Name Limit Balance as on Value of 24.5.86 + interest security Adarsh Paper Bag Industries Rs. 35,000/- Rs. 36,000/- Rs. 6,000/- Rakesh Toys Co. Rs. 20,000/- Rs. 16,000/- NIL Prakash Chand & Co. Rs.1,00,000/- Rs. 84,000/- Rs. 10,000/- Medical Agencies Rs. 40,000/- Rs. 39,000/- ---------------- -------------- Rs. 1,75,000/- Rs. 16,000/- --------------------------------

Charge-IV

Smt. Sarno Devi was sanctioned Demand Loan of Rs. 6,000/- on 24.8.84 against Saving Fund deposit of Rs. 9,728/- in her account No. 148. The depositor withdrew the amount from her account leaving therein a balance of Rs. 3,863.34 only against the outstanding loan of Rs. 7,315.42 as on 24.5.86. He did not report the matter to the authorities.

Sd/-

Asstt. General Manager (P)

Disciplinary Authority.

6. The Inquiry Officer was appointed who conducted the inquiry and submitted the report. The summary of the findings charge-wise is as under:

The summary of the findings, charge-wise, in the case of Sh. R.K. Aggarwal, Officer (u/s) previously Manager, erstwhile HCB Ltd. at Jammu ? Charge sheet dated 17.12.1987 is as under:

Charge No. I(i) Proved Charge No. I(ii) Proved Charge No. I(ii) Proved Charge No. I(iv) Proved Charge No. I(v) Proved Charge No. I(vi) Proved Charge No. I(vii)

Not Proved Charge No. II Not Proved Charge No. III Partially Proved Charge No. IV Partially Proved.

7. The summary of the findings shows that all charges were proved or partly proved. However, Charge No. 1 (vii) and Charge No. II not proved.

8. The findings of the inquiry officer charge-wise was as under:

Charge No. I : Bharat Constructions

Conclusion:

It has been clearly established that the LGs of 1.22 lacs were issued against the FDRs of Rs. 3.40 lacs and also overdraft allowed against the same FDRs when the statement of Presenting Officer, defence, relevant document produced and concerning paras of their briefs are looked into in their totality along with deposition of MW 1. As far as adding of interest accrued and then looking to the position is concerned, no cognizance can be given as how this amount of Rs. 4.10 lacs has been arrived at has not been mentioned and there is nothing to indicate that this aspect was kept in view while allowing the facilities. As regards allowing of these facilities by the charged officer being the unauthorized act, the Presenting Officer has placed reliance on document MD-17 only and no further documents or evidence has been produced. But this read with the Defence Assistant''s written brief wherein he has mentioned that margin of 50% was being maintained on issuance of guarantees at the instance of the then Asstt. General Manager and to prove his point, he has referred us to the deposition of the DW-5 which lend credence to the fact that the act of Sh. Aggarwal was unauthorized unless it was backed by the approval of the Assistant General Manager. Deposition of DW-5 for that matter cannot be considered to be an conclusive proof of AGM having consented the same as DW-5 in his deposition also remarked that no written confirmation to that effect was given and at the same time Defence has also not produced any documentary evidence in support of the fact that AGM consented issuance of guarantees at 50% margin. Defence has referred to DD 9 to 11 in support of their contention that business conducted was being reported to the controlling office. But the guarantees covered by these documents pertained to a different account i.e. Balwant Singh & Sons and not Bharat Const. Co. which is a subject matter of charge No. 1(1) and concealment is not the part of the charge and therefore, is irrelevant as far as charge 1(1) is concerned.

As such Charge No. 1 (i) is proved.

Charge I(ii) Balwant Singh & Sons

Conclusion:

Charge No. 1 (ii) simply says that charged officer unauthorizedly issued six letter of guarantees amounting to Rs. 7.00 lacs against the sanction of Rs. 4.00 lacs with 50% margin and also an OD facility of Rs. 3.00 lacs was allowed against the same FDR. The documents, depositions, statements, and briefs indicate that there was a sanction of Rs. 4.00 lacs only and guarantee for Rs. 7.00 lacs were issued as against this sanction which makes the act an unauthorised one and further allowing of OD against the same FDR was again unauthorised in view of the para(4) of MD 28/2. The contentions of the defence assistant that mortgage was created and the proposal was handed over etc. does not warrant any comment as it has nothing to do with the charge. As regards the defence contention that guarantees issued over and above the sanction carried telephonic verbal confirmation of the Asstt. General Manager and to prove it, has placed reliance on page 17(44), 18(45) of the proceedings and has not been produced any documentary evidence indicating the confirmation of such telephonic instructions and not even a letter from his side to the concerned officer referring to such permission. In the light of the foregoing, I have the reasons to conclude that charge is proved.

Charge-I(iii) Swastik Construction Co.

Conclusion:

Perusal of the relevant documents, brief, statement of Presenting Officer and Defence Asstt. Issuance of LG against the FDR of Rs. 75,000/- is established. But the charge says that on 19.2.86 the overdraft of Rs. 50,000/- was also sanctioned against the same FDR. Though Presenting Officer has not been able to establish the direct linkage as overdraft, but at the same time the contention of the defence that party had a total deposits of Rs. 2,27,500 also does not give any benefit to the defence because the FDRs are in the name of CDA, Northern Command, A/c Swastic Const. Co. which indicates that FDRs were not free to be considered for the purpose. And also FDR of Rs. 1.00 lacs was made in April, 86 after the relevant date i.e. 19.2.86 when the overdraft was allowed. This entire goes to prove that there was only one FDR of Rs. 75,000/- against which there was a guarantee of the like amount besides an overdraft on 19.2.86 and hence the charge is proved.

Charge I(iv)

Conclusion:

The documents referred to by Presenting Officer establishes that there was a sanctioned limit of Rs. 8 lacs and Rs. 2 lacs in respect of CC(H) and CC(P) respectively and further establishes that party was accommodated over and above this limit as alleged in the charge sheet. Arguments advanced by the defence and documents referred by the defence do not in any manner negatives the charge. But to some extent establishes that over accommodation was in the knowledge of superior authorities meaning thereby that there was no concealment of facts. But the same is not the charge against the charged officer. The documents so referred and arguments advanced do not indicate that there was confirmation of the action of the charged officer in allowing the over accommodation. The charged officer has also not disputed allowing of over accommodation and it has also been confirmed by Sh. Krishan Lal, the defence witness during the cross examination at page 13(40) of the proceedings. As regards contention of Defence that the charge of accommodating on regular basis, I have to say that "the regular basis" is a relative term and does not make much difference when viewed in the light of nature of charge made and its counter given by the defence. In view of the foregoing, I conclude that the charge is proved.

Charge No. I(v)

Conclusion:

The documents namely MD 54, MD 57, MD 50, MD 51, MD 55, MD 58/2, MD 53 clearly indicate that the limits sanctioned in favour of these parties in respect of CC(P) was Rs. 1 each and the parties had been accommodated over and above the sanctioned limits and act was unauthorized. This has not been disputed by the Defence. The contention of the defence that there used to be a verbal instructions to them from the Regional Manager does not change the situation as the same has not been established either by way of documentary or oral evidence.

Defence contention that the accommodation was not on regular basis is tenable not because of the documents DD 62, DD 64 statements of account covering only a month but because Presenting Officer has also not been able to establish either through the documentary or oral evidence. Further DD 60, DD 61, DD 62 referred to by the defence indicates only reporting of the unauthorised business and by mere reporting an unauthorised act does not become authorised by itself unless reporting is responded by confirmation of the action, as is also requested in these documents by the charged officer, by the superior competent officer which has not been mentioned and brought in record. Similarly MD-60 as referred to by the defence does not alter the situation. Therefore, the charge is proved save that parties were accommodated on regular basis.

Charge No. I(vi)

Conclusion:

The charge in this case covers only two aspects i.e. 1. Charged Officer recommended a loan of Rs. 82,500/- for purchase of mini-bus and the same was declined by the Head Office.

He released loan on 11.12.85. The documents produced by Presenting Officer establish these two acts and has not been disputed by the defence either. Though through DD-68 defence has tried to establish that release of loan was with the consent of Regional Manager but it is the Regional Manager again vide MD-63 conveys that action in having released the loan cannot be confirmed and gives reasons thereof. So MD-63 overrules DD-68. As such, charge is proved.

Charge I(vii)

Conclusion:

Presenting Officer has not produced any oral/documentary evidence to establish sanction of term loan of Rs. 79,000/- to Sh. Madan Lal on 28.1.85 and also its dispursement on 13.3.86 as alleged in the charge sheet. Invoice produced as management documents vide MD 86/2 does not in any manner establishes the above two facts and also that a matador stood in the name of the borrower. Though insurance cover note MD-87 indicates insurance of a matador owned by Sh. Madan Lal which by itself is not sufficient to substantiate the charge. Further Presenting Officer has not brought oral/documentary evidence to establish that the amount released on 29.1.85 was utilized to purchase the same matador as covered by MD 87. Further no attempt has been made to establish linkage between amount of Rs. 79,000/- released o 29.1.85 to that of material contained in document MD-87. As such, charge is not proved.

Charge ?II

Conclusion:

Only documents produced by the Presenting Officer are statements of accounts which make no mention of security, margin etc. The Presenting Officer has not been able to prove the charge and at the same time defence has produced the documents to counter the charge of having accommodated the parties by allowing demand loan without having any security by referring me to documents DD-77, 78. The charge is, therefore, not proved.

Charge ? III

Conclusion:

The documents viz. MD 72, 73, 79, 80 brought on record by the Presenting Officer to establish charge 3 in respect of Adarsh Paper Bag Industries, Prakash Chand & Co. & Medical Agencies, as the relevant pages of the stock register was being maintained. But the manner in which same is maintained indicates a casual approach on the part of the charged officer. The entries are not initialled save in the case of MD-79, MD-89, the figures mentioned there do not speak that to what head/item these pertain. It does not indicate the year. These statements indicate that the securities were not being checked.

As regards erosion of securities to the level indicated in the charge, the Presenting Officer has neither produced any documentary nor oral evidence to prove the erosion of securities. While presenting the Management''s case, page 4(19) of the proceedings, he argues that "there is apprehension that securities under charge III were missing" and referred me to the Audit stamp placed on relevant pages of stock register pertaining to the account of M/s Adarsh Paper Bag Industries and Prakash Chand & Co. and has argued that due weightage needs to be given to the fact that sufficient stocks were available in March, 1986. MW-3 also confirms in cross-examination that account of M/s Adarsh Paper Bag Industries is running with D.P. The Fixed Deposits of the parties ad collateral security obtained to which repeated reliances have been made by the charged officer in his brief and deposition of Defence witnesses are of no consequence as the charge relates to the primary security only.

In view of the foregoing, I have reasons to conclude that charge III to the extent that charged officer did not check the securities is proved but the other part of the charge that non-checking of securities resulted in erosion of securities to the level indicated in the charge sheet is not proved.

The documents MD-75 relied upon by the management (para-2) and documents DD-79 (para-2) sufficiently bears out the fact of non-checking of securities resulting in erosion thereof. The securities available with the concern after the change of line as contended by the Defence are of no consequence as the same are not charged to the Bank as change of line has been done without the notice of the Bank as indicated by the above documents. Therefore, the charge No. III in respect of M/s Rakesh Toys Co. is proved.

Charge IV

Conclusion:

Mere reference to the documents cited by the Presenting Officer i.e. MD-83, MD-84 do not establish by itself a linkage between the SF account of Smt. Sarno Devi and demand loan sanctioned. But when considered with document DD-81 and statement of defence covering charge (iv) at page 10 of the proceedings, it is established that a demand loan of Rs. 6,000/- was sanctioned in favour of Smt. Sarno Devi against SF deposit of Rs. 9,728.58 and also the fact that the depositor withdrew the amount from her account leaving therein a balance of Rs. 3,863.34 only. Presenting Officer has not furnished any documentary/oral evidence and therefore, has not been able to establish that charged officer did not report the matter to the authorities rather says in his brief that there could be no protection to the charged officer that he reported the fact to the higher authorities.

In view of the foregoing the charge No. IV to the extent that Smt.Sarno Devi was sanctioned a Demand Loan of Rs. 6,000/- against SF deposit of Rs. 9,728.58 in her A/c No. 148 and that the depositor withdrew the amount from her account leaving behind a balance of Rs. 3,863.34 only is proved but the second part of the charge i.e. "he did not report the matter to authorities" is not proved and as such, the charge No. IV is partially proved.

Sd/-

(V.K. Gupta)

(Enquiry Officer)

Distt. Co-Ordinator.

9. After going through the findings of the inquiry officer, the Disciplinary

Authority finally imposed penalty of removal from service with immediate effect vide order dated 22.10.1988. The Disciplinary Authority further mentioned in the said order that the aforesaid order shall not be the disqualification for future employment and no wages will be paid to Mr. R.K. Aggarwal (petitioner herein) for the suspension period excepting the subsistence allowance already paid/ payable to him. Against the Disciplinary Authority order dated 22.10.1988, the petitioner filed an appeal on the ground that the petitioner while serving with the Hindustan Commercial Bank Limited has not committed any ?Misconduct'' within the definition of misconduct set out in the enclosed list as under:

a. "Absence without leave or overstaying sanctioned leave without sufficient grounds;

b. Unpunctual or irregular attendance;

c. Neglect of work, negligence in performing duties;

d. Breach of any rule of business of the Bank or instruction for the running of any department;

e. Committing nuisance on the premises of the bank;

f. Entering or leaving the premises of the bank except by an entrance provided for the purpose;

g. Attempt to collect or collecting monies within the premises of the Bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

h. Holding or attempting to hold or attending any meeting on the premises of the Bank without the prior permission of the management or except in accordance with the provision of any rule or law for the time being in force;

i. Canvassing for union membership or collection of union dues or subscriptions within the premises of the Bank without the prior permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

j. Failing to show proper consideration courtesy or attention towards officers, customers or other employees of the Bank; unseemly or unsatisfactory behaviour while on duty;

k. Marked disregard of ordinary requirements of decency & cleanliness in person or dress;

l. Incurring debts to an extent considered by the management as excessive.

10. Thereafter, the petitioner challenged the aforesaid Disciplinary Authority''s order dated 22.10.1988 by filing SWP No. 484/1989. The High Court of Jammu & Kashmir observed that the appeal preferred by the petitioner was not decided by that time. The J & K High Court disposed of the said petition as under:

Appellate authority would of course be guided by what was said by the Supreme Court of India. In case reported as Ram Chander Vs. Union of India (UOI) and Others, It was observed that the appellate authority should associate the delinquent with appeal proceedings and speaking order should be passed by affording opportunity of hearing to the petitioner. Let this be done within four months. The period of four months would begin from the date a copy of order passed by this Court is made available to the respondent-bank by the petitioner. If for any practical reasons it is not possible to take a decision respondent-bank would be at liberty to seek extension of time. But in that eventuality they would have to explain each and every days'' delay. Disposed of accordingly.

11. Pursuant to the directions dated 31.01.1999 of the High Court of Jammu & Kashmir, the Appellate Authority after affording an opportunity to the petitioner passed a detailed order, the relevant portion of which is extracted as under:

7.1 Regarding A/c M/s Bharat Construction Co., it is apparent from the Management Exhibit MD-17 that allowing of the facilities by the appellant was unauthorized. He stated in his defence that margin was maintained at 50% in the guarantees at the instance of AGM, but nothing was brought on record by him to substantiate his submission.

7.2 M/s Balwant Singh & Sons

The records reveal that guarantees for Rs. 7 lacs were issued against sanction for Rs. 4 lac. His contention that the LGs of Rs. 7 lac were issued before receipt of sanction, does not confirm his authorized action of issuing LGs beyond the sanctioned limit. He allowed overdraft limit of Rs. 3 lac against the FDR kept as security in LGs and his submission that the overdraft was not sanctioned after receipt of letter dated 10.2.86, does not mitigate his lapses committed before receipt of the said letter dated 10.2.86.

7.3 M/s Swastic Construction Co.

It is apparent from the FDR (MD-37), Letter of Guarantee (MD/3) and Statement of Accounts (MD-34 & 35) that overdraft for Rs. 50,000/- was allowed by the appellant against FDR of Rs. 75,000/- which was in the name of CDA, Northern Command A/c Swastik Construction Co. to cover the letter of guarantee (LG).

7.4 M/s Krishan Lal Kimti Lal

The appellant has admitted in his appeal that the party was being allowed CC(H) and CC(P) limits upto Rs. 10 lac and Rs. 4 lac respectively against sanctioned limit of Rs. 8 lac and Rs. 2 lac respectively even before submission of regular proposal. Since the facilities were being allowed beyond sanctioned limits, the same were authorised.

7.5 M/s New Shoe Co. M/s Sanjhi Ram & Sons and M/s SR Footwears

The charge that the parties were unauthorisedly allowed to avail CC(P) limit upto Rs. 1.50 lac against HO sanction of Rs. 1 lac in each account, has been held as proved by the Enquiry Officer on the basis of evidences adduced in the inquiry.

7.6 A/c Naresh Bhasin

The contention of the appellant that the loan was disbursed with the consent of Regional Office, is not tenable in view of management exhibit (MD-63) wherein the Regional Office conveyed that his action in having released the loan could not be confirmed.

7.7 In respect of the Charge number 3, it is apparent from the management exhibits (MD-72, 73, 79 & 80) that securities were not being checked.

7.8 Charge number 4 has been held as proved on the basis of evidences on record. His submission that the returns were submitted and the authorities had not taken any action against him, is not acceptable.

7.9 In respect of the points raised by Shri Agarwal about conduct of enquiry, the records reveal that after completion of deposition of defence witnesses, the Enquiry Officer specifically asked the appellant whether he had any other witness to produce or he wanted to examine himself. Shri Agarwal replied that he had no other witness to produce and that he did not want to examine himself and that his evidence was closed.

7.10 All the documents demanded by the defence which were relevant were provided and as such his contention in this regard is not acceptable.

7.11 The enquiry has been conducted in accordance with the provisions contained in Discipline & Appeal Regulations and there is nothing on record to indicate the basis for prejudice or bias of the Enquiry Officer.

7.12 During the personal hearing, the appellant was asked the reasons for alleged biased attitude of the Enquiry Officer, but he did not mention any reason therefor.

7.13 The charges have been proved against Shri Agarwal on the basis of the assessment of evidences adduced in the departmental enquiry and the findings of the Enquiry Officer have been accepted by the Disciplinary Authority. I am satisfied that the appellant was provided with the adequate opportunity of defence at each stage of the proceedings.

7.14 His contention that the order passed by the DGM(P) as Disciplinary Authority is contrary to the provisions of law because the charge sheet was served by the AGM(P) as Disciplinary Authority, is not tenable because AGM(P) and DGM(P) are the designated Disciplinary Authorities in terms of schedule annexed to the Discipline & Appeal Regulations, 1977.

8. In view of the foregoing, I do not find any merit in the points raised by Shri Agrawal in his appeal and in the personal hearing warranting interference with the decision of the Disciplinary Authority. I, therefore, reject his appeal and confirm major penalty of ?Removal from Service with immediate effect which

shall not be a disqualification for future employment'' imposed upon him by the Disciplinary Authority.

I order accordingly and Shri Agarwal be informed.

12. The petitioner has challenged the aforesaid Disciplinary Authority''s and Appellate Authority''s orders dated 22.10.1988 and 14.05.1999 respectively, in the present writ petition. Learned Counsel for the petitioner submits that the respondent issued orders of suspension enmasse in November, 1987 on all those employees of erstwhile HCB who were reinstated pursuant to Supreme Court decision dated 18.09.1987 and, thereafter, terminated them immediately. Thus, the respondent acted malafidly with pre-set determination to terminate. He further states that the petitioner had duly reported all his actions to higher authorities, while in HCB. However, the HCB authorities never took an exception to petitioner''s actions and, indeed, issued commendation letters to him.

13. He further submitted that neither there was any finding on integrity against the petitioner nor his action resulted in any loss to the institution. The HCB and its authorities never initiated any disciplinary action against the petitioner for the transactions under reference. Moreover, the ?action confirmation file'', wherein HCB authorities confirmed petitioner''s actions was requisitioned by the petitioner through the Appellate Authority, but was not produced by respondent. The petitioner, while in HCB, acted as per the mindset of the HCB management. After coming under PNB, he was bound to act as per mindset of the PNB management. The petitioner was never given the opportunity to work in PNB after HCB was taken over by PNB.

14. Further, learned Counsel for the petitioner has relied upon the judgment dated 28.11.2008 passed by the Division Bench of this Court in LPA No. 493/2004 titled M.L. Kalra v. UOI and Anr. On the perusal of the aforesaid judgment it is found that in the said case the punishment was imposed after one year of his superannuation on the basis of the charge-sheet issued to him on 19.08.1993 i.e. after a period of 6 years alleging lapses. Secondly, in the said case the PNB continued the enquiry proceedings initiated against the appellant even after his retirement by invoking Regulation 20(3)(iii) of the Officers'' Service Regulations. In the said case, the loan in question was sanctioned by the Head Office and Board of Directors in hurry. The appellant in the said case was only a junior officer and was not competent to overrule the Board. But the case before this Court is different on the facts and legal pleas. Therefore, the said judgment in Kalra''s (supra) case is not applicable to the facts and circumstances of the present case.

15. On the other hand learned Counsel for the respondent refuted the submissions made by the petitioner that the petitioner never requisitioned the file of the Hindustan Commercial Bank relating to confirmation of action from erstwhile bank. The request was never made by the petitioner either during the course of the departmental enquiry or an appeal preferred by him before the

Appellate Authority. Therefore, the petitioner cannot raise this plea at this stage. He further submitted that the petitioner was given due opportunity to defend himself in the departmental enquiry and at the stage of the appeal. Even otherwise, the petitioner did not produce any witness proving that there was a prior permission from the Asstt. General Manager (AGM) of the erstwhile bank. If there is no procedural lapse in the departmental enquiry, then no relief could be given in the writ petition, he submitted.

16. He has relied upon the judgment titled Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, the relevant paras of which are as under:

13. In Union of India and another Vs. G. Ganayutham (Dead) by LRs., this Court summed up the position relating to proportionality in paragraphs 31 and 32, which read as follows:

The current position of proportionality in administrative law in England and India can be summarized as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury (1948 1 KB 223) test.

(2) The court would not interfere with the administrator''s decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (1985 AC 374) principles.

17. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/ employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/ employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit resulted in case, when the officer/ employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one''s authority is by itself a

breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

17. Learned Counsel for the respondent has further relied upon the judgment titled Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, and stated that causing loss to the bank is immaterial and otherwise also he could not have committed irregularity. The relevant portion of the said judgment is as under:

7. It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the Bank to take all possible steps to protect the interests of (he Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is "misconduct" within the meaning of Regulation 24. The findings of the Enquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a Bank - for that matter, in the case of any other organisation - every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority the discipline of the organisation/bank will disappear; the functioning of the Bank would become chaotic and unmanageable. Each officer of the Bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks which deals with public funds. If what we hear about the reasons for the collapse of Brings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore the very discipline of an

organisation and more particularly, a Bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one''s authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and over-drawls allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit - huge profit, as the High Court characterises it - they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class-I officer was not aware of the limits of his authority or of his powers. Indeed, Charge No. 9, which has been held established in full is to the effect that inspite of instructions by the Regional Office to stop such practice, the respondent continue to indulge in such acts. The Enquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge No. 8, which has also been established in full is to the effect that inspite of reminders, the respondent did not submit "Control returns" to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24.

18. Learned Counsel for the respondent further refuted the contention of the petitioner that no action was taken against the petitioner for his alleged misconduct by the erstwhile HCB Limited and the respondent bank was not competent to initiate disciplinary action with regard to the misconduct and amalgamation committed by the petitioner. He clarified that the charges primarily relates to the year 1985-86. It was due to the bad financial condition of the erstwhile HCB Limited, the Reserve Bank of India, in exercise of the statutory powers, had imposed moratorium at HCB Limited from 24.05.1986 and ultimately, the bank was merged with effect from 19.12.1986 with Punjab National Bank by Notification issued by the Central Govt. in consultation with RBI. Thus, there was hardly any time available with the HCB to take action for the misconduct on the part of the petitioner. Since the petitioner become the part of the respondent Bank, therefore the respondent bank is competent to take action against his employees. He further stated that such a liberty had been granted to the respondent bank by the Hon''ble Supreme Court of India in the matter of K.I. Shephard and Others Vs. Union of India (UOI) and Others, . The counsel for the respondent has pointed out that the present writ petition is barred on the well settled principles of res judicata, constructive res judicata. Though the petitioner has stated in the present writ petition that he had filed the writ petition before J & K High Court. However, the petitioner has deliberately and with mala fide intention, has not enclosed a copy of the said petition because

if the said petition had been annexed, it would have been more than apparent that the contention sought to be raised in the present petition, amongst others, was raised by him before J & K High Court while challenging his dismissal order from the service and the petitioner having raised those contentions before the High Court, the same would, according to the established law, are barred on a well settled Principle of res judicata and is not entitled to raise the same/similar contentions now before this Court.

19. The view of this Court is, the aforesaid petition was not disposed of on merit, the respondents were directed to dispose of the appeal pending. Therefore, the principles of res judicata do not apply.

20. This Court is of the view that multiple lapses were committed by the petitioner without bothering the norms, rules & regulations and conduct (rule) of the institution. Disciplinary Authority and the Appellate Authority has considered each and every aspect and the plea raised by the petitioner in its order. The petitioner was given proper opportunity during the departmental proceedings to defend his case. This Court find no lapses in the said orders and, therefore, does not warrant any interference in order passed.

21. Therefore, keeping the aforesaid discussion into consideration and the facts and circumstances of the case, this Court dismiss the present writ petition accordingly.

