

CASE NO.:
Appeal (civil) 2055 of 2003

PETITIONER:
State Bank of India & Ors.

RESPONDENT:
Ramesh Dinkar Punde

DATE OF JUDGMENT: 11/08/2006

BENCH:
H.K. SEMA & A.K. MATHUR

JUDGMENT:
J U D G M E N T

H.K. SEMA, J

The challenge in this appeal is to the order dated 2nd August, 2002 of the High Court of Judicature at Bombay whereby the imposition of penalty of removal inflicted upon the respondent, who is a bank officer, preceded by an inquiry, is set aside with a direction to the appellant to reinstate the respondent with all consequential benefits including that of back wages, to be paid within a period of three months.

Briefly stated, the facts are as follows:

The respondent was working as an officer under the appellant bank and at the relevant time he was posted as Manager, Personnel Banking Division, Palghar Branch. Sometime in June, 1986 the respondent introduced one Shri Kishor Bidaye and Shri D.B. Angane to the Branch Manager Jogeshwari (W) Branch. The respondent brought said Shri Bidaye to the Branch Manager and got a current account opened in the name of Shri Bidaye. He had also introduced the said current account by giving his old Andheri address at Bombay as the address of Bidaye. A cheque was issued in favour of the State Bank of India, which was to be invested in the name of the Trust/Board. However, the respondent insisted that the funds were meant for Bidaye and Angane and thereby, induced the Branch Manager to accept the Trust funds as Term Deposits and issue TDRs in the names of Bidaye and Angane. The respondent also ensured sanctioning of overdraft facility against the STDRs. so issued. It is also alleged that the respondent exerted pressure to grant overdraft on the same day of remittance of funds and emphatically stated that it would be his responsibility if anything went wrong. A complaint was made by a Trust regarding Term Deposit Receipts being issued in the name of Bidaye and granting overdraft facilities to him on the basis of such TDR.

The appellant's bank, thereafter, initiated a Departmental Inquiry. The following charges were framed against the respondent:

"ARTICLE OF CHARGE TOGETHER WITH THE
GROUNDS ON WHICH IT IS BASED \026 SHRI R.D.
PUNDE (UNDER SUSPENSION) FRAUD AT
JOGESHWARI (W) BR.
CHARGE

CHARGE-1

You, when posted at Palghar Branch as Manager P.B.D. negotiated with a fraudulent intention to extend credit facilities against deposits to be received from Trusts to Sarvashri Kishore Bidaye and D.B. Angane at Jogeshwari (W) Branch and

induced the Branch Manager, Jogeshwari (W) branch to accept Trust Funds in Terms Deposits and also caused issue of TDRs in the individual names with the funds received for investment in their own names (Trusts). You ensured that STDR were issued in individual names and that overdrafts were sanctioned there against although you were well aware that it was in violation of Bank's prescribed norms, procedures, instructions on the subject. You assisted the said persons despite knowing their fraudulent motives. You thus acted dishonestly and in a manner unbecoming of a Bank Official violating Rule No. 32(4) of the State Bank of India (Supervising Staff) Service Rules.

GROUND ON WHICH BASED

(i) You negotiated with the Branch Manager, Jogeshwari (w) Branch on behalf of Sarvashri Kishor Bidaye and D.B. Angane about the credit facilities to be extended to them against deposits to be received and vouched for bonafides and creditworthiness of the said individuals and assured to recover at short notice loans granted there against. Accordingly you introduced Shri Kishor Bidaye and caused his current Account to be opened in the books of Jogeshwari (w) Branch knowing fully well that Shri Bidaye is a defaulter borrower of our Pimpri Branch. You also gave your residential address as the legal address of Shri Bidaye.

You visited Jogeshwari (w) Branch on various dates accompanied by others including the said persons and caused issue of STDRs in the name of Shri Bidaye/Shri Angane against clearing cheques received from the under noted Boards. You also prevailed upon the Branch Manager/Manager P.B.D. to sanction overdraft limit thereagainst to the said persons.

t t d	Cheque Amt. Recd.	Of Cheq.	Date pf STDR TDR	Amt. Of OD No.	TDR	Limi
	From				Favouring	Sanc Ione
	The Railway Goods Clearing and Forwarding Establishment	Rs.2 lacs	26.06.86	236386 Shri. Bidaye	Rs. 2 lacs Lacs	Rs.1.50 Lacs
	Nathdwere Temple Board	Rs.2 lacs	8.07.86	236199 Shri Bidaye	Rs.2 lacs Lacs	Rs. 1.50 Lacs
	Security Guards Board For Greater Bombay and Thane Distt.	Rs.5 lacs	12.07.86	586504 Shri Angane	Rs.5 lacs Lacs	Rs. 3.75 Lacs

Hyderabad
(Sind)
National
Collegiate
Board.

Rs.5 lacs

21.07.86

586542

Rs. 5 lacs
Shri
Bidaye

Rs. 3.75
Lacs

(ii) You were well aware of the intentions and motives of Shri Bidaye and Shri Angane to defraud the Bank. You failed to use the material information to protect the Bank's interest."

On the basis of the aforesaid charges, the Commissioner for Departmental Inquiries in the Central Vigilance Commission, Govt. of India was appointed as the Inquiry Officer. The Inquiry Officer, after making a detailed inquiry, submitted its report dated 31.1.90 holding that the charges against the respondent stand proved. Thereafter, by an order dated 8.12.90 the Disciplinary Authority dismissed the respondent from the services of the Bank. Aggrieved thereby, the respondent filed an appeal before the Appellate Authority, which was rejected by the order dated 29.10.91. Aggrieved thereby, the respondent preferred Writ Petition No. 2105/92 before the High Court of Judicature at Bombay praying inter-alia to quash and set aside the order of dismissal dated 8.12.90 passed by the Disciplinary Authority and also the order dated 29.10.91 passed by the Appellate Authority rejecting his appeal and to reinstate the respondent with full back wages, continuity of service and all the consequential benefits. During the pendency of the Writ Petition before the High Court, it appears that pursuant to the observations made by the High Court, the petitioner bank reduced the punishment of dismissal to removal. The High Court, on re-appreciation of evidence, reversed the finding of the Inquiry Officer and set aside the orders of the Disciplinary Authority and Appellate Authority. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an appellate authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. (See Govt. of A.P. and Ors. (appellant) v. Mohd. Nasrullah Khan (respondent) (2006) 2 SCC 373 at page SCC 379). Reverting to the facts of the case, it appears that the respondent was charged with misconduct of having conducted himself in violation of the Rule 32(4) of the Service Rules. Rule 32(4) reads:
"32(4) Every employee shall, at all times, take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank official."

After noticing the said provision and re-appreciating the evidence, the High Court was of the opinion that unless there is evidence to show that the petitioner had knowledge of the intention on the part of the persons introduced in the Bank, the petitioner cannot be said to have committed any

misconduct as alleged by the Bank. The High Court has also considered the official evidence recorded by the Inquiry Officer in course of the inquiry and observed that the statements recorded by the Inquiry Officer had nowhere stated that the petitioner had knowledge of the intention of Bidaye and Angane to enjoy the overdraft facility by misusing TDRs belonging to someone else. The High Court also observed that there is no evidence to show that on all the occasions when the TDRs were issued the petitioner was present in the Jogeshwari Branch. Ultimately, the High Court has concluded its finding in paragraph 9 of the impugned Judgment as under:

"9. Ample evidence could have been led to prove the complicity of the petitioner with Bidaye and Angane. Even in the FIR lodged with the police, there is not even a suggestion that the petitioner was in anyway involved in the commission of fraud by Bidaye and Angane. In these circumstances, we are firmly of the opinion that this is a case of no evidence of misconduct as alleged by the bank, which is not proved at all and therefore order of punishment is unsustainable. In the result the petition succeeds and it is allowed."

It is impermissible for the High Court to re-appreciate the evidence which had been considered by the Inquiry Officer \026 a Disciplinary Authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.

The clinching evidence found by the Inquiry Officer against the charged officer is in the form of Hand Writing Expert, marked as Ex. S-54 (2), which proved that the hand writing is that of the charged officer. It is also proved that the charged officer had filled in the account opening form of Sh. Bidaye, which has not been denied by the charged officer. The charged officer, in his examination-in-chief has admitted that he introduced Sh. Bidaye. The charged officer also admitted that Sh. Nazar requested him to fill in the application form and pay-in-slip which he did as a part of customer service. The charged officer was the Manager of the Bank. There was no occasion for him to fill in the application form or the pay-in-slip on behalf of Bidaye as a customer service unless he has personal interest in it. The respondent admitted that the distance between Palghar Branch (where he was posted) and the Jogeshwari Branch (where the account was opened) is about 60 Kms. and Palghar Branch is not connected by local train as it usually takes about 2 = hours from Andheri Station to Palghar Branch. It is common knowledge that unless he had personal interest, he would not have covered such a distance to favour his so called friend Bidaye. The charged officer also admitted his presence on 12.6.86 and 26.6.86.

The account opening form of Sh. Bidaye is in the handwriting of the charged officer. The address of Sh. Bidaye is shown as c/o the respondent. The account has been introduced by the respondent. In the Inquiry Report it is established that the charged officer did exert pressure on the Branch officials for issuance of TDRs against the funds received from the trusts and granting overdrafts against TDRs.

From the facts collected and the report submitted by the Inquiry Officer, which has been accepted by the Disciplinary Authority and the Appellate Authority, active connivance of the respondent is eloquent enough to connect the respondent with the issue of TDRs and overdrafts in favour of Bidaye.

We are, therefore, clearly of the view that the High Court was erred both in law and on facts in interfering with the

findings of the Inquiry Officer, the Disciplinary Authority and the Appellate Authority by acting as a court of appeal and re-appreciating the evidence.

We may now notice a few decisions of this Court in similar circumstances.

In the case of Union of India (appellant) v. Sardar Bahadur (respondent) (1972) 2 SCR 218 it is held as under:

A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts."

In Union of India (appellant) v. Parma Nanda (respondent) (1989) 2 SCC 177 it is held at page SCC 189 as under:

"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In Union Bank of India (Appellant) v. Vishwa Mohan (respondent) (1998) 4 SCC 310, this Court held at page SCC 315 Para 12 as under:

"12. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence,

integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the inquiry report/findings to him."

In Chairman and Managing Director, United Commercial Bank and Ors. (Appellant) v. P.C. Kakkar \026 (respondent) (2003) 4 SCC 364, this Court held at page SCC 376 para 14 as under:

"14. 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 v. Nikunja Bihari Patnaik (1996) 9 SCC 69, 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."

In Regional Manager, U.P. SRTC, Etawah & Ors. (appellants) v. Hoti Lal and Anr. (respondents) (2003) 3 SCC 605, it was pointed out as under:

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is a must and unexceptionable."

In Cholan Roadways Ltd. (appellant) v. G. Thirugnanasambandam (respondent) (2005) 3 SCC 241 this Court at page SCC 247 held:

"It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic inquiry."

Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance with such submission. As already said, the respondent being a bank officer holds a position of trust where

honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.

In the case of T.N.C.S. Corpn. Ltd. and Ors. (appellants) v. K. Meerabai (respondent) (2006) 2 SCC 255 such plea had been rejected by this Court. It was pointed out at page SCC 267 para 29 as under:

"29. Mr. Francis also submitted that a sum of Rs. 34,436.85 being 5% of the total loss of Rs. 6,88,735/- is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money mis-appropriated. In the instant case, respondent employee is found guilty of mis-appropriating the Corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or mis-placed sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by the disciplinary and Appellate Authority."

In the view that we have taken, this appeal deserves to be allowed. The impugned judgment and order of the High Court dated 2.8.2002 is, hereby, set aside. The orders of the Disciplinary Authority and that of the Appellate Authority are restored. The Writ Petition filed by the respondent stands dismissed.

The appeal is allowed. In the facts and circumstances of this case, the parties are asked to bear their own costs.