

CASE NO.:
Appeal (civil) 1766 of 2005

PETITIONER:
Syndicate Bank & Ors.

RESPONDENT:
Venkatesh Gururao Kurati

DATE OF JUDGMENT: 31/01/2006

BENCH:
H.K. SEMA & Dr.A.R. LAKSHMANAN

JUDGMENT:
J U D G M E N T

H.K.SEMA, J

This appeal, preferred by Syndicate Bank is directed against the Judgment and Order dated 16th April, 2004 passed by the Division Bench in Writ Appeal No.7997 of 1999 affirming the order dated 14th June, 1999 of the learned Single Judge passed in Writ Petition No. 12594 of 1991 allowing the Writ Petition filed by the respondent herein.

Briefly stated the facts are as follows:-

The respondent was working as Manager of the appellant's bank at Horti Branch (Karnataka) between 30.12.1976 and 22.7.1981. It is alleged that during the said period the respondent in collusion with certain staff members got necessary documents signed and arranged loans in the name of poor illiterate villagers under the Integrated Rural Development Program and misappropriated the proceeds of such loans. The allegations are:-

"a) On 20.06.1979 he obtained loan application and other documents from one Sri. S.M. Desai with Sr. N.C. Yelasangi as the proposed surety/co-obligant without informing them the purpose for which the same was obtained. A loan of Rs.6000/- for working capital needs of Sri. S.M. Desai's Boosari business was sanctioned and arranged by the respondent though the said Sri. S.M. Desai was not doing such business. Thereafter, the loan proceeds was withdrawn and received by the respondent by using a withdrawal slip issued in the name of the said Sri. S.M. Desai 15 days prior to the arranging the loan.

b) Between January 1981 and March 1981, the respondent in connivance with Sri. K.B.Bhaskaraiah, the then Farm Representative of bank's Horti branch, Sri. H.K. Hegdeyal, the Pigmy collection Agent Sri Mareppa P. Talakeri, the then Attender of the bank's Horti branch and Sri. Parasappa Siddappa Talakeri, father of the said Sri, Mareppa P. Talakeri sanctioned and arranged 12 Sheep Loans of Rs. 4000/- each aggregating to Rs. 48,000/- under the DRI Scheme and received the amount of the said loans either directly or through the accounts of

the said Sr. Parasappa Siddappa Talakeri.
This was done as detailed below:-

- i) Sri. Parasappa Siddappa Talakeri obtained loan application for sheep loans in the names of either his family members who were not eligible for such loans or other poor uneducated people of the village.
 - ii) Necessary Farm Representative's Reports were obtained from Sri. K.B. Bhaskaraiah, the Farm Representative.
 - iii) Though the amount of loans were to be released to the suppliers directly the same were credited to the Savings Bank Accounts of the borrowers. To show that the transactions were genuine, Stamped Receipts for purchase of sheep were obtained and put on record.
- c) Out of the 12 sheep loans arranged as aforesaid:
- i) Sri, Eswarappa Bhimappa Harijan who had received only Rs.300/- from the amount of loan of Rs.4000/- arranged in his name as above said, sought the intervention of Sri. S.S. Shivar, the village Panchayat President and thereupon, the respondent paid the said Sri. Eswarappa Bhimappa Harijan a sum of Rs.3,500/-.
 - ii) Sri. S.R.Harijan another such villager in whose name such loan was arranged who did not receive the loan proceeds, took up the matter directly with the respondent and thereupon the respondent paid him a sum of Rs.3000/-
 - iii) Smt. Girijava Omna Harijan, Smt. K.R.Harijan and Sri. S.D. Harijan denied having received the loan amount.
- d) On 22.07.1981, the date of relief of the respondent from the bank's Horti branch, he sanctioned a loan of Rs.10,000/- to Sri. Parasappa Siddappa Talakeri. On 24.07.1981 Sri. Mareppa P. Talakeri, credited a sum of Rs.120/- each to 72 loan accounts including the said 12 Sheep loan accounts from the proceeds of the loan of Rs.10,000/- sanctioned by the respondent to the said Sri. Parasappa Siddappa Talakeri."

On the basis of the aforesaid allegations, the following charges were framed against the respondent on 5th August, 1985 with the statement of imputations of misconduct:

CHARGE SHEET UNDER REGULATION NO.6 OF
SYNDICATE BANK OFFICER EMPLOYEES'
(DISCIPLINE & APPEAL) REGULATIONS 1976.

WHEREAS it is proposed to hold an enquiry against you in accordance with the procedure laid down in Regulation No.6 of Syndicate Bank Officer Employees' (Discipline & Appeal) Regulations, 1976.

AND

WHEREAS the Articles of Charges and Statement of Imputations of misconduct in respect of which the enquiry is proposed to be held are mentioned here below:

NOW THEREFORE, you are hereby directed to submit within 15 days from the date of receipt of this Charge Sheet, your written statement of defence, if any, showing cause as to why departmental proceedings should not be initiated against you and appropriate action should not be taken against you.

ARTICLES OF CHARGES

ARTICLE No.1:

That during the period between 30.12.1976 and 22.7.1981, you were functioning as manager of our Horti Branch and that while functioning in your position as such, on 20.6.1979, you obtained loan applications and other documents in the name of Shri Shankarappa Malakappa Desai with Sri N.C. Yelasangi as the proposed co-obligant / surety without informing them the purpose for which, they were obtained:

AND

Then sanctioned and arranged in their names, a secured Loan of Rs.6,000/- for the ostensible purpose of working capital requirements of Boosari business, knowingly or having reasons to believe that the said Sri Shankarappa Malakappa Desai was not doing such business;

AND

Got the loan proceeds withdrawn and received the same through a withdrawal slip issued in the name of the said Sri Desai, 15 days prior to the arranging of the loan.

By your above acts, you failed to discharge your duties with utmost integrity, honesty, devotion and diligence and exhibited conduct unbecoming of a Bank Officer and thereby violated Regulation No.3(1) of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976.

ARTICLE No.II

That during the period between January 1981 and March 1981, you, in connivance with Sri K.B.Bhaskaraiah, the then Farm representative of our Horti Branch, Sri H.K. Hegdeyal, the pigmy collection Agent of the branch, Sri Mareppa P.Talakeri, the then Attendar of the Branch and Sri Parasappa Siddappa Talakeri, father of the said Sri Mareppa P.Talakeri, obtained application forms for sheep loans through the said Sri Mareppa P. Talakeri, in the names of either his family members or other poor uneducated people of the village;

AND

Secured Farm Representative Reports from Sri.
K.B.Bhaskaraiah, the Farm representative;

AND

Sanctioned 12 loans for a total sum of Rs.48,000/-
under the IRDP Scheme;

AND

Got the loan proceeds withdrawn from the accounts
of the borrowers concerned and received the
amount either directly or through the accounts of
the said Sri Parasappa Siddappa Talakeri, Sri H.K.
Hegdeyal and others known to you;

AND

In the process, committed various irregularities as
more fully described in the statement of
imputations of misconduct mentioned herein below:

By your above acts, you failed to discharge your
duties with utmost integrity, honesty, devotion and
diligence and exhibited conduct unbecoming of a
Bank Officer and thereby violated Regulation
No.3(1) of the Syndicate Bank Officer Employees'
(Conduct) Regulations, 1976.

The Enquiry Officer was appointed. He conducted
the enquiry after giving an opportunity to the respondent,
submitted its report on 3.7.1989 finding the respondent guilty
of the charges proved. The Disciplinary Authority accepted the
report of the Enquiry Officer and by the impugned order dated
29.7.1989 removed the respondent from the service of the
bank with immediate effect. However, the same shall not be
the disqualification for future employment. Thereafter, the
respondent filed an appeal before the Appellate Authority. The
Appellate Authority gave the respondent personal hearing on
25.04.1991. In the appeal, the respondent submitted that he
did not want to make any oral submission but submitted a
written representation dated 25.4.1991 along with additional
appeal filed on 2.9.1989. After considering the appeal filed by
the respondent, the Appellate Authority dismissed the appeal
by an order dated 29.4.1991 confirming the punishment of
removal imposed by the Disciplinary Authority. Aggrieved
thereby, the respondent filed a Writ Petition No. 12594 of 1991
challenging the removal of the respondent from the bank
service. The learned Single Judge amongst others held that it
is not a fit case for interference in so far as the finding on the
charges framed against the petitioner (respondent herein).
However, the learned single Judge was of the opinion that
punishment imposed on the respondent was disproportionate
to the gravity of the charge proved. The learned single Judge
was also of the opinion that the respondent was placed under
suspension from 19.7.1989 and he was removed from service
on 29.7.1989 i.e. two days before the date on which the
petitioner (respondent herein) would have attained the
superannuation age in the normal course. The petitioner
(respondent herein) served the appellant's bank for more than

33 years and except this disciplinary proceeding there was no other allegation of misconduct against the petitioner (respondent herein) while working in the bank. The petitioner (respondent herein) was removed from the bank service just two days before he completed the age of 58 years and during his old age, he must necessarily have something to maintain himself and his family members. On these compassionate grounds, the learned single Judge converted the order of removal from service into compulsorily retirement.

In our view, this is no ground for converting the order of removal from service into compulsorily retirement. On the question of punishment being disproportionate to the charges framed and proved, we are of the view that the charges framed and proved are grievous in nature, which would normally attract removal from service, if such charges were proved. We are also of the view that sentiments and compassion have no role to play in such a situation when the gravity of misconduct such as this has been found well proved against the respondent.

Against the order of the learned Single Judge, curiously enough, the respondent preferred Writ Appeal No. 7997 of 1999 and the appellants herein filed cross objections. Both the appeal and the cross-objections were disposed by a common order by the Division Bench after re-appreciating the evidence allowing the writ appeal by setting aside the order dated 14.6.1999 passed by the learned Single Judge in Writ Petition No. 12594 of 1991 and quashed the order of dismissal dated 29.7.1989. Hence the present appeal by special leave.

In the writ appeal, the learned Division bench framed the following issues:-

(i) Whether charges framed against the appellant-delinquent officer are vague?

(ii) Whether non-supply of the documents sought by the appellant vitiated the enquiry and the action of the management of the respondent Bank in removing the appellant from service as a disciplinary measure?

(iii) Whether placing reliance on statements previously recorded by CBI by the Enquiry Officer has vitiated the enquiry?

(iv) Whether the findings of fact recorded by the Enquiry Officer are perverse for want of legal evidence?

The Division Bench decided issue Nos. 1, 3 and 4 against the respondent herein. The Division Bench, however, decided issue No.2 against the appellant herein, that non-supply of documents sought by the appellant vitiated the inquiry resulting the removal of the respondent from the bank service.

The sole question, therefore, to be determined is, whether non-supply of documents, which did not form part of chargesheet and were not relied upon by the prosecution prejudice the delinquent officer resulting in vitiating the enquiry proceedings.

During the proceeding the management has produced oral evidence of 24 witnesses and documentary evidence by producing 218 documents, the fact which is not denied by the delinquent officer.

It was the specific case of the appellants that the documents sought by the delinquent officer which were

relevant for the purpose of enquiry and which were part of the charges were supplied to the delinquent officer, but the documents which were not supplied to the delinquent officer were those on which the prosecution either did not rely or which did not form part of the charges.

Before we examine the issue No.2 we may at this stage quote the finding of the learned Division Bench in paragraph 16 of the judgment:

"The reasons stated by the management of the Bank not to supply copies of certain documents sought by the appellant, in our considered opinion, are totally irrational and untenable. The documents in respect of which privilege of confidentiality was claimed by the Bank's Management, by no stretch of imagination, could be regarded as privileged documents or confidential in nature. Therefore, we do not think that the Bank's Management was justified and acted legally in refusing to furnish the copies of the documents sought by the appellant. It is our considered opinion that all the documents sought by the appellant-delinquent are either those documents on the basis of which the disciplinary authority has framed the charges and the documents on which the disciplinary authority has placed reliance to prove those charges or the documents though, they are not the basis for framing the charges nor those of which the disciplinary authority places reliance to prove the charges against the appellant delinquent, but, they would have aided the appellant-delinquent, to effectively cross-examine the witnesses of the disciplinary authority."

(emphasis supplied)

The High Court's finding, in our view, is perverse. The High Court having come to the conclusion that the documents sought by the respondent are not the basis for framing the charges nor those on which the Disciplinary Authority placed any reliance to prove the charges against the delinquent officer held that non-supply of those documents sought by the delinquent officer prejudiced his case and resulted in vitiating the proceedings.

From the record, it appears that the delinquent officer sought for supply of certain documents. The twelve documents, which formed part of the charges and were relied upon by the Inquiry Officer, were supplied to him by a letter dated 11th August, 1987. Two documents were produced during the enquiry for cross-examination of the witnesses. This fact was admitted by the counsel for the respondent at the time of hearing. Rest of the documents were not supplied to the delinquent officer stating that they had no relevancy to the enquiry, meaning thereby that neither they form part of the charges nor were relied upon by the prosecution during the course of enquiry.

Apart, from this the delinquent officer did not deny that the prosecution relied upon 218 documents and also 24 witnesses and the delinquent officer had an opportunity to cross examine them and also examine the documents on basis of which the witnesses were cross-examined in the course of enquiry. The Enquiry Officer as stated earlier submitted a detailed report in which the delinquent officer did not deny at all, either by oral or written arguments, that he did not receive the cash from the cashier which was meant for the loanee. Learned counsel for the respondent vehemently urged that

although the documents may not form part of the charges or be relied upon by the prosecution in the course of enquiry, denial of the same would prejudice the delinquent's case because denial of contemporary documents deprive the right of the delinquent to set up an effective defence. We are unable to countenance such submissions at all, that the documents which do not form part of the charges or are relied upon by the prosecution during the course of enquiry, non-supply of which would cause any prejudice to the delinquent officer.

In the case of Krishna Chandra Tandon Vs. The Union of India, (1974) 4 SCC 374, it is held in paragraph 16 as under:-

"Mr. Hardy next contended that the appellant had really no reasonable opportunity to defend himself and in this connection he invited our attention to some of the points connected with the enquiry with which we have now to deal. It was first contended that inspection of relevant records and copies of documents were not granted to him. The High Court has dealt with the matter and found that there was no substance in the complaint. All that Mr. Hardy was able to point out to us was that the reports received by the Commission of Income-tax from his departmental subordinates before the charge-sheet was served on the appellant had not been made available to the appellant. It appears that on complaints being received about his work the Commission of Income-tax had asked the Inspecting Assistant Commissioner Shri R.N. Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the report made by Mr. Srivastava or any other officer unless the enquiry officer relied on these reports. It is very necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent. It is not the case here that either the Enquiry Officer or the Commissioner of Income-tax relied on the report of Shri R.N. Srivastava or any other officer for his finding against the appellant. Therefore, there is no substance in this submission."

In the case of Chandrama Tewari vs. Union of India, 1987 (Supp.) SCC 518 at scc p.521 it was held by this Court:

"However, it is not necessary that each and every document must be supplied to the

delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied up by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recoding finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer."

In our view, non-supply of documents on which the Enquiry Officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the Enquiry Officer to arrive at his conclusion, the non-supply of which would cause prejudice being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of delinquent officer must be established by the delinquent officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.

Learned counsel for the respondent has cited the following rulings of this Court:

Committee of Management, Kisan Degree College vs. Shambhu Saran Pandey, (1995) 1 SCC 404, wherein it has been held by this Court that denial of an opportunity to inspect documents at the time of final hearing is erroneous procedure and in violation of principles of natural justice. This is not the fact of the case at hand.

State of U.P. vs. Shatrughan Lal, (1998) 6 SCC 651 wherein this Court held that where the charge-sheet is issued and the documents which are proposed to be utilized against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request and at the same time he is called upon to submit his reply cannot constitute an effective opportunity to defend. The aforesaid decision is of no help to the facts of the respondent's case.

Lastly, it is contended by the counsel for the respondent, that the respondent has put in 33 years of service and he was dismissed from service just two days prior to the age of superannuation, therefore, this Court may consider the

entitlement of pension and gratuity in spite of removal from service. In this connection, learned counsel has cited the decision of this Court in Ganesh Santa Ram Sirur vs. State Bank of India (2005) 1 SCC 13 where Dr. Justice A.R. Lakshmanan speaking for the Bench although upholding the dismissal of the appeal held that in the peculiar facts and circumstances the appellant will be entitled to full pension and gratuity irrespective of his total period of service. In that case the officer had sanctioned loan to his wife. However, having realised the mistake later he tried to salvage the same by not encashing the draft issued in the name of his wife and the draft was not encashed. In those peculiar facts and circumstances since no loss was caused to the bank this Court took that view. The decision in Ganesh Santa Ram Sirur (supra) is distinguishable from the facts of this case.

In the view we have taken the order dated 14.6.1999 passed by the learned Single Judge and the order dated 16.4.2004 passed by the Division Bench are hereby quashed and set aside. The order of the Disciplinary Authority dated 29.7.1989 removing the respondent from service is restored. The appeal is allowed with no order as to costs.