

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
**WRIT PETITION NO.542/2009**

Kulwant Rai Goyal Petitioner  
C-1/30 Yamunavihar, Delhi-53  
Vs.

1] The Disciplinary Authority  
Punjab and Sind Bank,  
Zonal Office, Fitwell House,  
L.B.S.Marg, Vikhroli, Mumbai-83

2] The Appellate Authority,  
The General Manager, H.O. Personal Dept., Disciplinary  
Action Cell, Punjab and Sind Bank, 21, Rajendra Palace,  
New Delhi : 110008.

3] Punjab and Sind Bank,  
through the General Manager,  
Malabar Hills, Mumbai.

4] Gajinder Singh,  
(Former General Manager at  
Zonal Office, Mumbai),  
Punjab and Sind Bank, 21, Rajendra Palace, New Delhi  
110008

5] Reviewing Authority,  
Executive Director, Punjab and Sind Bank. H.O. Personal  
Dept.  
Disciplinary Action Cell,

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Bank House, 21, Rajendra Palace,  
New Delhi-110008

Respondents

Mr.Mihir Desai a/w Mr.Sagar Talekar for petitioner

Mr.S.C.Naidu, Mr.Y.C.Naidu a/w Mr.T.R.Yadav i/b Mr. C. R.  
Naidu & Co.for respondents

**CORAM : SMT. RANJANA DESAI &  
MRS. MRIDULA BHATKAR, JJ.**

**DATED : 25 TH NOVEMBER, 2009.**

**J U D G M E N T (SMT.RANJANA DESAI,J.)**

. Rule. Respondents waive service. By consent of  
the parties taken up for hearing forthwith.

2] In this petition filed under Article 226 of the  
Constitution of India the petitioner has prayed that the  
proceedings of the enquiry resulting in the order of  
dismissal dated 20/3/2007 followed by the order of  
Appellate Authority dated 28/7/2007 and Review Order  
dated 29/12/2008 be quashed and set aside.

3] It is necessary to give gist of the facts as stated by the petitioner (who is also referred to as C.S.O.). According to the petitioner he joined the Punjab and Sindh Bank (the Bank for convenience) as probationary officer in 1979 . He was promoted as Manager and posted at Surat as Branch Manager in 1996 and he worked as Branch Manager from 21/5/1996 to 3/8/2001. He was transferred to Malbar Hill branch and worked there as the Branch Manager from 11/9/2009 to 23/4/2002. The General Manager issued suspension letter to the petitioner stating interalia that certain irregularities have been committed by him. According to the petitioner he wrote a letter to the Deputy General Manager on 6/9/2003. On 10/6/2004 the petitioner received Show Cause Notice dated 14/1/2004 directing him to submit his reply within ten days. Vide his letter dated 3/8/3004 he submitted his reply to the show cause notice as regards the charges levelled against him. On 7/11/2005 chargesheet was served upon the petitioner .

On 13/12/2006 the enquiry officer was appointed. On 12/1/2007 the enquiry officer submitted his enquiry report. The petitioner submitted his comments on the enquiry report on 7/2/2007. The petitioner was dismissed from the service by order dated 28/3/2007. The petitioner filed an appeal against the said order which was dismissed by the Appellate Authority on 28/7/2007. Being aggrieved by the said order the petitioner filed writ petition in this Court. By order dated 7/2/2008 this Court directed the petitioner to avail the remedy of review. On 3/3/2008 the petitioner filed a review application. On 29/12/2008 the review application was rejected and hence this petition.

4] We have heard at considerable length Mr. Desai, learned counsel for the petitioner. Mr. Desai drew our attention to the findings of the enquiry authority. He submitted that the enquiry officer has observed that there have been acts of omission and

commission on the part of C.S.O.,but he needs to be given benefit of doubt in such cases where the accounts have been adjusted and the Bank has not suffered loss. Mr.Desai pointed out that the enquiry officer has further observed that in his zeal to improve the business of the Bank the petitioner showed scant regard for system and procedures of the Bank and invited risk to himself as well as to the Bank. The enquiry officer has further observed that the petitioner was at times negligent but more often he was an overconfident manager with either no understanding or little understanding of risk of banking. Mr.Desai submitted that from these observations of the enquiry officer it is clear that the petitioner was an overzealous and overconfident officer but he can certainly not be called a person who intentionally caused loss to the Bank. In fact during his tenure as observed by the enquiry officer deposits of the Bank had increased considerably.

5] Mr.Desai submitted that the enquiry officer has stated that as per the evidence the tenure of the petitioner at Malbar Hill Branch was from 11/9/2001 to 23/4/2002 and no loan was disbursed by him after 23/4/2002. In the chargesheet it is alleged that though his lending powers were withdrawn on 18/4/2002, the petitioner continued accommodating the parties unauthorisedly. However, in the entire inquiry proceedings, the bank management has failed to give any evidence to prove the allegation that the lending powers of the petitioner were withdrawn. In fact, the enquiry officer has clearly stated that powers of the petitioner were not withdrawn. Mr.Desai submitted that in the face of these observations of the enquiry officer the petitioner could not have been dismissed from service. It is wrong to come to the conclusion that the charges levelled against the petitioner have been proved. Mr.Desai further submitted that there is extraordinarily long time between the show cause notice and the chargesheet which has

caused prejudice to the petitioner. Mr.Desai further submitted that the conclusions drawn by the enquiry officer are not borne out by the evidence on record.Mr.Desai submitted that the Appellate Authority and Reviewing Authority have merely reproduced some portion of the findings of the enquiry officer. They have not given any reasoned order . For all these reasons Mr.Desai submitted that the impugned orders deserve to be set aside.

6] Learned counsel for the respondents on the other hand submitted that no interference is necessary with the impugned orders. He submitted that the entire evidence has been considered by the enquiry officer in its proper perspective .The enquiry officer has been very fair. He has absolved the petitioner of the charge which is not proved against him. Learned counsel submitted that it cannot be said that either the Appellate Authority or the Reviewing Authority has not applied its mind.He

submitted that it is not necessary for both the authorities to go on repeating what the enquiry officer has said. In this connection he relied on judgment of this Court in **Dainik Deshdoot & Ors.Vs.The Employes State Insurance Corporation & Ors.,1951** ICLR 446 . Relying on the judgments of the Supreme Court in **Damoh Panna Sagar Rural Regional Bank and Others And Munna Lal Jain, 2005(I) L.L.J. 730 (SC)**, and in **The Disciplinary Authority-cum-Regional Manager Central Bank of India & Ors.And Nikunja Bihari Patnaik , 1996(II) L.L.J.379** learned counsel submitted that the petition deserves to be dismissed.

7] The charges levelled against the petitioner can be summarized as follows.

- a] The petitioner had opened Current Account without introduction.
- b] The petitioner sanctioned limits unauthorisedly.
- c] The petitioner accommodated various parties in



their current account beyond powers vested in him.

d] The petitioner accommodated parties by purchasing of local and outstation cheques contrary to norms and guidelines of the bank.

e] The petitioner sanctioned limits /loans or overdrafts without following the prescribed procedure and appraisal and on many a occasions without going through the financial papers such as Balance Sheet, Guarantee, Verification, etc..

f] In many a cases it was observed that limits were sanctioned and disbursed without observing the financial transactions in the account.

8] There is no dispute about the fact that the petitioner participated in the enquiry and was given opportunity to defend. We find that the enquiry officer has been very fair and has absolved the petitioner of the charge which was not proved. Certain charges are held to be partly proved and certain charges have been held to

be proved. Summary of the same as handed over by learned counsel for the respondents is as under.

PG No.	STATEMENT OF ALLEGATIONS	PG. NO.	FINDING OF I.A.	REMARKS
88	CSO disbursed advanced beyond his delegated powers and committed various omissions and commissions. CSO continued accommodating parties even after 18/4/2002 when his lending powers kept in abeyance.	89	Not proved	
89	Cash paid limits- six hypothecation limits which were sanctioned on 08/04/02 were disbursed on 24/4/02 unauthorizedly .	95	Proved	
95	Jiten Traders -Account open without introduction/ unauthorized accommodation limit sanctions without proper appraisal.	96	Partly proved	Account Adjusted
96	Amiigo alkli- account open without introductions/Limit sanctions without proper appraisal.	99	Proved	Suit filed
99	Marathon Chemicals- account open without introductions/ Limit sanctions without proper appraisal.	101	Proved	Suit filed
101	Concord Chemicals – account open without introductions/Limit sanctions without proper appraisal.	103	Proved	Suit filed

103	Wellwing Trading Co.Pvt.Ltd.- Limit sanctions without proper appraisal/ No proper appraisal/ No personnel guarantee of Director/No Insurance/Stock statement undated/Charged not created/No seal of company documents/ party unauthorisedly accommodated.	105	Proved	Account adjusted
105	Aminex Holding & Investment- Unauthorised O.D./No proper appraisal/No guarantor/No additional security/Improper pronote/documents executed by one Partner only/No Insurance/No stock verification/undated stock statement/No business activities had given address	107	Proved	Suit filed
107	Abhilasha Trading- Unauthorised O.D./Limit sanctioned without proper appraisal/No Guarantee/No additional security/Documents under stamped /pledged goods highly over invoice/Previous Bankers NOC not taken/No proper appraisal done/ Undue benefits given to Borrower.	109	Partly proved	Accounts stand adjusted
109	Chandan Metals-Improper pledging/No proper appraisal/documents under stamped/No transaction in the account/pledged goods seem non/sellable/No additional security/ No Insurance/No Guarantor	111	Partly proved	Suit filed

112	Chetana Enterprises- Improper pleading /no proper appraisal/documents under stamped/No transaction in the account/pledged goods seem non-sellable/No additional security/No Insurance/No Guarantor	114	Partly proved	Suit filed
114	Secrid Pharma-unauthorisedly accommodated (Rs. 32,75,403.95) against sanctioned limit of Rs. 25,00,000/-by ZO./No Insurance Policy/Bank lain not mark/Unauthorisedly sanctioned C.C. Limit to son of Proprietor and disbursed Rs. 10,58,459/-.	117	Proved	Account Adjusted
117	Surendras Brothers-No transaction/Chemical pledged had already expired/ Further Chemical pledged without releasing earlier pledged chemicals/Proprietor's son permitted to open account and C.C.limit of Rs.5,00,000/- granted further O.D.Rs. 10,26,218/- disbursed	119	Proved	2 suits filed
119	Prasham Trading- No proper appraisal /undated stock statement/No stock verification/No insurance policy/no security/End use of funds not ensure/C.C.limit Rs. 5,00,000/-but O.D.Rs. 5,05,989/-/Unauthorisedly advanced loan to Proprietor and his brother for Rs.2,80,000/- without ensuring end use.	121	Proved	Account adjusted

121	Span Enterprises and M.K. Corporation – Allowed unauthorised cheque purchase/Unauthorised O.D./Fraudulently debited Rs. 5,00,000/-to G.L.O.Code and credited to C.A./No entry in B.P.Ledger/Amoutn still outstanding/No proper appraisal/No additional security.
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9] Mr.Desai relied on findings recorded in the last paragraph of the report. Mr.Desai wants to suggest that these are findings in respect of all the charges levelled against the petitioner. It is difficult to accept this as we find that after every charge the enquiry officer has recorded his finding and as we have stated here-in-above certain charges are proved in entirety,certain charges are partly proved and one charge is held to be not proved. In any case even in the paragraph on which Mr.Desai wants to rely the enquiry officer has said that some transactions of C.S.O. are of such dubious nature that facts whereof cannot surface in a departmental enquiry and C.S.O. alone

knows the truth.

10] We shall now deal with Mr.Desai 's submission that no evidence was produced by the Bank to prove that lending powers of the petitioner were withdrawn after 18/4/2002 and that the petitioner did not disburse any amount during his tenure at the Malbar Hill branch. This argument relates only to the first charge which was that the petitioner was working as Bank-incharge at Malbar Hill branch from 11/9/2001 to 10/6/2002 . As per this charge the petitioner's lending powers were kept in abeyance from 18/4/2002, however even thereafter the petitioner continued to accommodate the parties. Upon considering the evidence the enquiry officer has recorded that the petitioner's tenure was from 11/9/2001 to 23/4/2002 ; that there was no documentary evidence to establish that his lending powers were suspended on 18/4/2002 and that there was no specific allegation that the petitioner disbursed advance after 23/4/2002. This

charge is thus held not proved. The manner in which the enquiry officer has dealt with this charge establishes that he has conducted the enquiry proceedings impartially . But because the first charge is not proved, the petitioner cannot contend that the entire enquiry is vitiated. In our opinion the other charges have been properly dealt with by the enquiry officer. His findings deserve to be upheld.

11] Mr.Desai's contention that during some part of the petitioner's tenure advances of the Bank increased and this shows that the petitioner was a good officer and the charges levelled against him are baseless ,cannot be accepted. In **Nikunja Bihari Patnaik** 's case the Supreme Court was considering somewhat similar situation.The respondent therein was an officer in Central Bank of India and he had acted beyond his authority.The question was whether that constituted misconduct. The Supreme Court noted that in number of instances the respondent allowed overdrafts or passed

cheques involving substantial amounts beyond his authority .In some cases no loss had resulted from such acts and in some other instances such acts yielded profit to the bank but it was equally true that in some other instances, the funds of the bank had been placed in jeopardy; the advances had become sticky and irrecoverable. The Supreme Court observed that it is not single act ; it is a course of action spreading over a sufficiently long period and involving a large number of transactions which needs to be considered and each officer of the bank cannot be allowed to carve out his own little empire where he dispenses favours and largesse. The Supreme Court further observed that 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. The Supreme Court further observed that such acts ,if permitted,may bring in profit in some cases but they may also lead to huge losses. Such adventures are not, observed the Supreme Court, given to the employees of banks which deal with public funds.

12] Therefore, assuming that during the tenure of petitioner there was some increase in deposits or that in some cases the Bank had not suffered loss that will not persuade us to absolve him of the charges which are held to be proved against him .Every bank officer or bank employee is expected to follow the path of utmost rectitude . Banks are custodians of people's funds and bank employees have to so conduct themselves as to prove worthy of the trust reposed in them by the customers. The petitioner has over a long period

misconducted himself. In our opinion in the light of the Supreme Courts judgment in **Nikunja Bihari Patnaik's** case serious lapses on the part of the petitioner cannot be overlooked because of some rise in deposits during his tenure.

13] It is well settled that in matters pertaining to the departmental enquiry interference of the Court in its writ jurisdiction is very limited. This Court will not lightly upset findings of the enquiry officer upheld by disciplinary authority unless they are perverse or not borne out by evidence . In this connection it will be appropriate to quote relevant paragraphs of the Supreme Court's judgment in **Damoh Panna Sagar Rural Regional Bank's** case .They read as under.

“The common thread running through in all these decisions is that the Court should not interfere with the administator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the

conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

“To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed “.

14] In this case we do not find any procedural impropriety in the departmental proceedings. The decision impugned in this petition is not illogical nor does it shock our conscience warranting interference with it. We are also not able to come to a conclusion that the punishment imposed on the petitioner is shockingly

disproportionate.

15] It was argued by Mr.Desai that the orders of the Appellate Authority and the Reviewing Authority indicate non application of mind. He submitted that these authorities have merely repeated what the enquiry officer has said and hence they must be set aside. We are unable to accept this submission . The said orders do not verbatim repeat what the enquiry officer has said . In any case when the Appellate Authority and the Reviewing Authority have concurred with the enquiry officer it is not necessary for them to give a detailed order. In this connection we may usefully refer to the judgment of the Supreme Court in **Madhya Pradesh Industries Ltd.Vs.Union of India & Ors., AIR 1966 S (671)**. In that case an application for grant of lease in mining manganese ore was rejected by the State Government by giving full reasons for the order . A revision application filed against the same was rejected by the Central

Government . It was argued that the order of the Central Government was bad as it did not give reasons. The Supreme Court considered the distinction between a Court and an administrative tribunal. The Supreme Court observed that a judge is trained to look at things objectively, uninfluenced by the considerations of policy and expediency but an executive officer generally looks at things from the stand point of policy and expediency . Therefore, the tribunals should give reasons for their orders. However, the Supreme Court clarified that ordinarily, the appellate or revisional tribunal shall give its reasons succinctly; but in case of affirmance, where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or revision, as the case may be, agreeing with those reasons. The Supreme Court observed that reasons can be given by the appellate or revisional tribunal expressly or by reference to those given by the original tribunal. In our opinion these observations can be applied to departmental

proceedings also. Here the enquiry officer has passed a detailed reasoned order . The Appellate Authority and Reviewing Authority have concurred with that order. It is therefore not necessary for them to pass lengthy orders of affirmance or concurrence. They can pass orders by reference to enquiry officer's order. In **Dainik Deshdoot's** case this judgment has been followed by this Court. We therefore cannot fault the Appellate Authority or Reviewing Authority because they have passed brief orders or because they have referred to the contents of the enquiry officer's order while concurring with him. This submission of Mr. Desai is therefore rejected.

16] We may also add that while the petitioner was working as a Branch Manager in Surat two prosecutions have been lodged against him . Special Case no.7 of 2004 is pending against him in the Court of the Special Judge (CBI) ,Court no.4, Ahmedabad under section 120(b) read with sections 409 and 420 of the Indian Penal Code and

under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 . Special Case no. 8 of 2004 is pending in the same Court where the petitioner is charged for similar offences. Besides one F.I.R. Is filed with the Special Crime Branch, Surat in respect of irrerregular loans extended to one Virendra Patel under sections 406, 420, 465, 467 of the Indian Penal Code . We are informed by learned counsel for the petitioner that out of these charges, two charges have been dropped. Learned counsel for the petitioner submitted that while the co-accused in the above criminal cases was compulsorily retired, the petitioner's services have been terminated. The co-accused's case is not before us. We do not know under what circumstances he was compulsorily retired. In any case the petitioner cannot claim parity on this ground. His case must be judged against the background of its own peculiar facts. The only conclusion we can draw in this case is that the findings of the enquiry officer, confirmed by the disciplinary

authority ,further confirmed by the Appellate Authority  
and by the Reviewing Authority call for no interference.  
The petition is therefore dismissed.

(Smt.Ranjana Desai,J.)

(Mrs.Mridula Bhatkar,J.)



*This print replica of the raw text of the judgment is as appearing on court website (authoritative source)*

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*Publisher has only added the Page para for convenience in referencing.*

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