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SURESH PATHRELLA
v.
ORIENTAL BANK OF COMMERCE

OCTOBER 19, 2006

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[H.K. SEMA AND P.K. BALASUBRAMANYAN, JJ.]

Service law:

C *Termination—Misappropriation of funds of customer by Bank Officer—
Dismissal after giving opportunity to cross-examine the witness and obtaining
opinion of handwriting expert—Challenge against—Held, judicial review
not warranted as dismissal not tainted with mala fides nor in violation of
principle of natural justice—Officer had acted beyond his authority in breach
of Bank's Regulation—It is a case of loss of confidence in officer by Bank—
Fact that no loss caused to bank not a ground to take lenient view for proved
misconduct—Administrative law—Judicial review—Oriental Bank of
D Commerce Officer Employees (Conduct) Regulations, 1982—Regulation 3(1).*

*Disciplinary proceeding vis-a-vis criminal trial—Acquittal in criminal
case would not negate the findings in disciplinary proceeding, as standard
of proof is different in both—Criminal trial.*

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The appellant was a Chief Manager of the Respondent-Bank. A charge sheet was filed against him on the ground of misappropriation of funds of a customer of the Respondent-Bank. The charge-sheet stated that the Respondent-Bank had received a Pay Order of Rs.10 lacs sent by one party in favour of Customer 'G' for crediting it to his account. The appellant with *malafide* intention opened a saving account in the name of 'G' who already had a saving account and credited the proceeds to the newly opened account. Thereafter, appellant with his own handwriting signed some vouchers transferring Rs.10 lacs to three parties. The new account was closed on the same day.

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G Enquiry Officer found him guilty. Disciplinary Authority accepted the finding of Enquiry Officer and dismissed appellant from service. Appellant filed writ petition before the High Court. Single Judge held that the Bank had not suffered any loss and that the main allegation of misappropriation of Rs.10 lacs was the crux in both departmental proceedings and the criminal

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charge and that the police after investigation had closed the case as unfounded, therefore, nothing substantial remained in the matter for proceedings against the appellant. On appeal, Division Bench of High Court held that the transfer of funds to the credit of three parties without any instruction from the beneficiary amounts to misappropriation of funds and showed lack of devotion to duty and integrity on the part of the appellant. Hence the present appeal.

Dismissing the appeals, the Court

HELD: 1. The findings recorded by the Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. The yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. [570-C-D]

2.1. It is not the case of the appellant that the enquiry has been conducted without affording an opportunity to him or behind his back and thereby violated the principles of natural justice. [570-D]

2.2. The appellant after obtaining adverse statement against him in cross-examination did not further cross-examine 'G' by confronting him with the alleged signature of 'G'. At the close of the enquiry, the appellant himself requested the enquiry officer to obtain the opinion of a handwriting expert. It was done by him to test the denial of the statement of 'G' in cross-examination. The report so obtained confirmed the statement of 'G' in cross-examination. The appellant could not impeach the statement of 'G' in cross-examination that he never gave any letter of authority for transfer of funds from one account to another account. He had never issued any receipt of Rs.10 lacs towards the disposal of any property to M/s Moradabad Builders. The appellant has accepted the statement of 'G'. The handwriting expert confirmed the statement of 'G' in cross-examination. No prejudice, whatsoever, has been caused to the appellant by non-furnishing of the copy of the handwriting expert confirming the statement of 'G' in cross-examination. There is no allegation of *malafides*, bias or violation of principles of natural justice. [570-H; 571-A-B]

Narinder Mohan Arya v. United India Insurance Co. Ltd., JT (2006) 4 SC 404, distinguished.

Sohan Singh v. Union of India, AIR (1984) SC 498, referred to.

A 3.1. The Regulation 3(1) of the Oriental Bank of Commerce Officer
 Employees (Conduct) Regulations, 1982 ensures that every officer shall at
 all times take all possible steps to protect the interests of the bank and
 discharge his duties with utmost integrity, honesty, devotion and diligence
 and do nothing which will be unbecoming of a bank officer. Such regulations
 B are made to instil the public confidence in the bank so that the interests of
 customers/depositors are well safeguarded. In such a situation the fact that
 no amount was lost to the bank would be no ground to take a lenient view for
 the proved misconduct of a bank officer. [572-F-G]

C *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari
 Patnaik, [1996] 9 SCC 69; Regional Manager, U.P.SRTC. v. Hoti Lal, [2003]
 3 SCC 605 and Chairman and Managing Director, United Commercial Bank
 v. P.C. Kakkar, [2003] 4 SCC 364, referred to.*

D 3.2. In the present case the appellant acted beyond his authority in
 breach of bank's Regulation. It is a case of loss of confidence in the officer
 by the bank. In such a situation, it would be a futile exercise of judicial review
 to embark upon the decision of the disciplinary authority removing the officer
 from service, preceded by an enquiry, and to direct the bank to take back the
 officer in whom the bank has lost confidence, unless the decision to remove
 the officer is tainted with *malafide*, or in violation of principles of natural
 E justice and prejudice to the officer is made out. No such case is made out in
 the present case. [573-G-H; 574-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4573 of 2006.

F From the final Judgment and Order dated 7.12.2005 of the High Court
 of Delhi at New Delhi in L.P.A. Nos. 1168-1169 of 2005.

Dinesh Dwivedi, Manoj K. Sharma, Sanjay Visen, Amit Yadav, Anju
 Sheela and Anish Kumar Gupta for the Appellant.

G R.K. Jain, Jagat Arora, Rajat Arora, Shikha Sapra, Rahul Aggarwal,
 Mohd. Fuzail Khan and Rajiv Nanda for the Respondent.

The Judgment of the Court was delivered by

H.K. SEMA, J. Leave granted.

H The challenge in these appeals is to the order dated 7.12.2005 passed

by the Division Bench of the High Court of Delhi, whereby the appeal preferred by the respondent-bank was allowed by setting aside the order dated 28.4.2005 of the learned Single Judge passed in W.P. (C) No.6805 of 2002. A

We have heard the parties. B

The appellant was appointed by the respondent-bank as Officer Grade Scale-I. Thereafter, he was promoted to Officer Grade Scale-II, Scale-III and Scale-IV. At the relevant time, he was working as Chief Manager at Gurgaon branch of the respondent-bank.

By an order dated 23.12.1995, the appellant was placed under suspension in contemplation of the drawing up of the disciplinary proceedings. By the memorandum dated 20th August, 1998 he was served with the charge memo on the ground that he has violated Regulation 3(1) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 (in short "the Regulations, 1982"). C D

The statements of imputation of misconduct in respect of article of charge framed against the appellant are as follows:-

"Sh. Suresh Pathrella, Chief Manager (under suspension) while posted and functioning as Incumbent-in-charge at B/O Gurgaon had misappropriated an amount of Rs.10.00 lac of a customer namely Sh.G.C. Luthra without his authority/consent. E

On 27.1.1994, one party of B/O, Saket, New Delhi namely M/s Moradabad Builders Pvt. Ltd., had sent a Pay Order No.536966/128/94 of Rs. 10.00 lacs in favour of Sh.G.C. Luthra to our B/O Gurgaon for crediting to his account. Sh.Suresh Pathrella while functioning as Incumbent-in-Charge at B/O. Saket, New Delhi with an endorsement to the effect that 'Payee's account will be credited on realisation' and also instructed vide his letter dated 27.1.94 to issue TPO in favour of Sh.G.C.Luthra for the proceeds. Accordingly, a TPO No.153935/22/94 dated 28.1.94 for Rs.10.00 lac favouring Sh.G.C. Luthra was issued and sent by B/O Saket to B/O Gurgaon. On 29.1.94, Sh. Suresh Pathrella opened a new saving bank account No.13392 with the malafide intention in the name of Shri G.C.Luthra without obtaining any account opening form and without the consent/authority of Sh.G.C.Luthra who was already maintaining his saving bank account No.12154 at B/O. Gurgaon F G H

A since January, 1993. The proceeds of the said instrument amounting to Rs.10.00 lac was credited to newly opened-saving bank account No.13392 of Sh.Luthra and Sh.Suresh Pathrella himself with his own hand writing prepared and signed following three transfer vouchers by debiting Rs.10.00 lacs to the said account on the same day i.e. on 29.1.1994 without any authority;

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(a) Rs.2.00 lac transferred to Cash Credit A/C of M/s. M.K.Fertilizers.

(b) Rs.3.00 lac transferred to current Account No.1408 of M/s. Maharishi Aurvedic Corporation.

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(c) Rs.5.00 lac transferred to Cash Credit Account of M/s. Agro Chemicals.

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Thereafter the newly opened saving bank account No.13392 was closed on the same day leaving nil balance. Thus, Sh.Suresh Pathrella had misappropriated an amount of Rs.10.00 lac without the consent and authority of the beneficiary. By his above acts Sh.Suresh Pathrella has violated Regulation 3(1) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which is punishable under Officers' Discipline and Appeal Regulations."

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An Enquiry Officer was appointed, who submitted a Report that the charge is proved. The disciplinary authority accepted the findings of the Enquiry Officer and the appellant was removed from service by an order dated 28.5.1998. Aggrieved thereby, the appellant challenged the order by filing Writ Petition. The learned Single Judge was of the view that the main allegation of misappropriation of Rs.10 lacs is unfounded and the amount actually went

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to the account of the Bank to be set off against overdrafts of the three firms. In other words, no loss thereby was occasioned to the Bank. He was further of the view that the main allegation of misappropriation of Rs.10 lacs was the crux in both departmental proceedings and the criminal charge and that the Gurgaon police after investigation has closed the case as unfounded before the CJM, Gurgaon, therefore, nothing substantial remains in the matter for proceedings against the appellant. The learned Single Judge was of the view that the argument of the Bank that departmental proceedings and the criminal case are different does not hold good and his removal from service was incorrect.

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The Division Bench of the High Court pointed out that on 27.1.1994 one

party, namely, M/s. Moradabad Builders Pvt. Ltd. had sent a pay order of Rs.10.00 lacs to Shri G.C. Luthra to the branch office Gurgaon for crediting it to his account. The appellant while working as Chief Manager at Gurgaon branch of the respondent-bank sent the said pay order to the branch office Saket, New Delhi, with an endorsement to the effect that payee's account will be credited on realization and also instructed vide his letter dated 27.1.1994 to issue TPO in favour of Shri G.C. Luthra for the proceeds. Accordingly, a TPO No.153925/22/94 dated 28.1.1994 for Rs.10.00 lacs favouring Shri G.C. Luthra was issued and sent by branch office Saket to branch office Gurgaon on 29.1.1994 and the appellant opened a saving bank account No.13392 with malafide intent in the name of Shri G.C.Luthra without obtaining his authority and consent. Shri G.C. Luthra was already having a saving bank account No.12154 at the branch office Gurgaon since 1993. The proceeds amount of Rs.10.00 lacs was credited to the newly opened saving bank account No.13392 of Shri G.C. Luthra and the appellant himself prepared and signed three transfer vouchers and debited Rs.10.00 lacs from the said account on 29.1.1994 without any authority from Shri G.C. Luthra. It was also pointed out that the saving bank account No.13392 was closed on the same day leaving a nil balance. It is in these circumstances, the Division Bench was of the opinion that the transfer of amounts to the credit of three parties without any instruction from the beneficiary amounts to misappropriation of funds and, in any event, it was a grave irregularity in financial transactions indulged in by the appellant. It was also pointed out that the appellant had been indulging in all sorts of irregularities, which were totally inconsistent with his duties as a bank officer. The Division Bench held that the factum of crediting the proceeds of the pay order to a newly opened saving bank account of Shri G.C.Luthra without his consent or authority and thereafter withdrawing the same and transferring into three different accounts shows lack of devotion to duty and integrity on the part of the appellant.

The Division Bench further said that Shri G.C.Luthra appeared as a witness before the Enquiry Officer. The appellant was given an opportunity to cross-examine Shri G.C.Luthra. In his complaint dated 10.1.1996 he denied his signature on the letter dated 27.1.1994. The Division Bench was of the view that all these disputed questions of fact have been considered by the disciplinary authority and the reviewing authority and it is not open to the Court in writ jurisdiction to interfere with the findings of fact. The Division Bench was of the view that the subsequent statements made by Shri G.C. Luthra in criminal cases would have no bearing on the concluded inquiry

A against the appellant.

It was also brought to the notice of the Division Bench that there are three other criminal cases pending against the appellant being RC1(E)/97 SIU (X), RC 2(E)/96-SIU(X) and RC6(E)/96 SIU(X) where the amount of loss involved to the bank is stated to be Rs.1.64 crores, Rs.1.77 crores and Rs.2.55 crores, respectively.

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In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

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It is not the case of the appellant that the enquiry has been conducted without affording an opportunity to the appellant or behind the back of the appellant and thereby violated the principle of natural justice. It is, however, contended by the counsel for the appellant that the opinion of hand writing expert in respect of the complainant-GC Luthra said to have been procured by the Enquiry Officer after the enquiry was closed had not been furnished to the appellant, despite request and, therefore, a reasonable opportunity has been denied to him.

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Mr.G.C.Luthra went to the box as PW-2. He denied to have received the amount of Rs.10 lacs. In cross-examination he denied to have given any letter of authority for transfer of funds from one account to another account. He also denied to have issued any receipt for Rs.10 lacs towards the disposal of any property to M/s Moradabad Builders. Mr. G.C.Luthra in cross-examination further denied that he either collected the TPO for Rs.10 lacs or gave instructions to the appellant for crediting to various accounts. The appellant after obtaining adverse statement against him in cross-examination did not further cross-examine Mr. G.C.Luthra by confronting him with the alleged signature of Mr.G.C.Luthra. At the close of the enquiry, the appellant himself requested the enquiry officer to obtain the opinion of a handwriting expert. It was done by him to test the denial of the statement of Mr. G.C.Luthra in cross-examination. The report so obtained confirmed the statement of Mr.G.C.Luthra in cross-examination. The appellant could not impeach the statement of Mr.G.C.Luthra in cross-examination that he never gave any letter

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of authority for transfer of funds from one account to another account. He had never issued any receipt of Rs.10 lacs towards the disposal of any property to M/s Moradabad Builders. The appellant has accepted the statement of Mr.G.C.Luthra. The handwriting expert confirmed the statement of Mr. G.C.Luthra in cross-examination. No prejudice, whatsoever, has been caused to the appellant by non-furnishing of the copy of the handwriting expert confirming the statement of Mr.G.C.Luthra in cross- examination. There is no allegation of malafides, bias or violation of principles of natural justice, which has been brought to our notice.

The next contention of counsel for the appellant is that the Board has decided the memo filed by the appellant without considering the subsequent events. According to him, the disclosure statement made by Mr. G.C.Luthra subsequently on 19.7.2001 under Section 406/420 IPC should have been considered. This contention deserves to be rejected outright. The disciplinary enquiry was completed on 3.2.1998. The appellant was removed from service by an order dated 28.5.1998. In the alleged disclosure statement made on 19.7.2001 under Section 406/420 IPC Mr.G.C.Luthra is seen to have stated that he got a typed letter issued to the Senior Manager, Oriental Bank of Commerce to open a new saving bank account and credited in that new bank account the amount of Rs.10 lacs.

Counsel has referred to the decision of this Court in *Sohan Singh v. Union of India*, AIR (1984) SC 498. In that case, the appellant was accused in a criminal case and was likely to be convicted of the charge of theft and on that ground he was discharged considering him to be unsuitable. Subsequently, he was acquitted of the charge of theft and in that connection this Court held that he was entitled to be compensated by a lump sum amount in lieu of the benefits to which he would have been otherwise entitled, had he continued in service for the extended period of 6 years.

He has also referred to the decision of this Court rendered in *Narinder Mohan Arya v. United India Insurance Co. Ltd.*, JT (2006) 4 SC 404. In that case, the appellant was an employee of insurance company. The disciplinary proceeding was initiated against him on the ground of antedating an insurance cover, which was decided against him. His appeal was dismissed by the appellate authority. The firm whose goods were destroyed in fire filed a suit against the insurance company impleading the appellant as a defendant. The Trial Court decreed the suit holding that there was no antedating of the cover note. The appeal filed by the insurance company was dismissed by the High Court. Thereafter, the matter attained finality, since no further appeal was

A preferred by the insurance company. It is in that given facts this Court held that the Managing Director when approached by the appellant ought to have applied his mind to the subsequent event namely the decision of the civil court rendered in the suit filed by the firm. It is in these circumstances, this Court was of the view that since the proceedings were initiated as late as in 1976, instead of remitting the matter to the disciplinary authority, the appellant was directed to be reinstated with only 50 per cent of back wages. The facts of that case are distinguishable from the facts of the present case. In the present case there was no such civil suit filed in which the decree was passed in favour of the appellant. This decision, therefore, would be of no help to the appellant.

C The third contention of the appellant is that the charge as framed was for misappropriation of Rs.10 lacs. But during the enquiry misappropriation of Rs.10 lacs was not established and in fact no loss was occasioned to the bank thereby. Therefore, the punishment of removal is disproportionate to the offence charged and proved.

D It will be noticed that the appellant was charged for the alleged violation of Regulation 3(1) of the Regulations, 1982. Regulation 3(1) reads:

E “Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer”.

F The Regulation ensures that every officer shall at all times take all possible steps to protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a bank officer. Such regulations are made to instill the public confidence in the bank so that the interests of customers/depositors are well safeguarded. In such a situation the fact that no amount was lost to the bank would be no ground to take a lenient view for the proved misconduct of a bank officer.

G In *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik*, [1996] 9 SCC 69 this Court held that a bank officer’s acting beyond his authority constituted misconduct and no further proof of loss is necessary.

H In the case of *Regional Manager, U.P.SRTC. v. Hoti Lal*, [2003] 3 SCC 605, this Court held in paragraph 10 at SCC p.614 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 transaction or acts in a fiduciary capacity, the highest degree of integrity and trust-worthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding order of dismissal”.

In the case of *Chairman and Managing Director, United Commercial Bank v. P.C.Kakkar*, [2003] 4 SCC 364, this Court said in paragraph 14 at SCC p.376 as under:

“A Bank officer is required to exercise higher standards of honesty and integrity. He deals with the 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 the present case the appellant acted beyond his authority in breach of bank’s Regulation. Regulation 3(1) of the bank’s Regulation required that every officer of the bank at all times take all possible steps to protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a bank officer. It is a case of loss of confidence in the officer by the bank. In such

A a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service, preceded by an enquiry, and to direct the bank to take back the officer in whom the bank has lost confidence, unless the decision to remove the officer is tainted with *malafide*, or in violation of principles of natural justice and prejudice to the officer is made out. No such case is made out in the present case.

In the result, these appeals being devoid of merits are, accordingly, dismissed. There will be no order as to costs.

D.G.

Appeals dismissed.