

A PANCHMAHAL VADODARA GRAMIN BANK & ORS.

v.

D.M. PARMAR

(Civil Appeal No. 2093 of 2007)

SEPTEMBER 21, 2011

B

**[A.K. PATNAIK AND H.L. GOKHALE, JJ.]**

*Service Law – Dismissal from service – Charges against bank officer (manager of the bank) alleging grave lapses in sanction/disbursement in many loan accounts – Order of dismissal by the Disciplinary Authority – Representation thereagainst rejected – Writ petition by the bank officer – Single Judge of the High Court holding that though the Enquiry Officer had fully and properly scrutinized the relevant material and gave reasonable opportunity to the bank officer during the course of inquiry, there was non-application of mind by the disciplinary authority with regard to the quantum of punishment – Order of dismissal quashed and direction issued for reinstatement of the bank officer but without any backwages – Matter remanded back to the disciplinary authority for passing appropriate order with regard to the quantum of punishment – Said order upheld by the Division Bench – On appeal, held: Plea of the bank officer that non-furnishing/non-inspection of the documents showing irregularities committed by the previous manager of the bank, by the Enquiry Officer was violative of principle of natural justice, cannot be accepted – Enquiry Officer rightly took a view that the said documents had no relevance to the charges against the bank officer in the instant case – There were ten charges against the bank officer which were of serious nature and out of these almost eight were proved – Findings of the Enquiry Officer which include serious acts of negligence as also acts of dishonesty and lack of probity were based on adequate material, mainly bank records referred to, in the*

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*inquiry report – As such the High Court rightly did not interfere with the findings of the Enquiry Officer – Thus, the bank officer cannot avoid the punishment of dismissal from service – It cannot be held that punishment of dismissal was shockingly or strikingly disproportionate to the gravity of charges proved against the bank officer – Order passed by the High Court is set aside.*

*Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik 1996 (9) SCC 69; 1996 (1) Suppl. SCR 314; Chairman and M.D., United Commercial Bank vs. P.C. Kakkad (2005) 4 SCC 364; General Manager(P), Punjab and Sind Bank and Ors. vs. Daya Singh (2010) 11 SCC 233: 2010 (9) SCR 71; Narinder Mohan Arya vs. United India Insurance Co.Ltd. and Ors (2006) 4 SCC 713: 2006 (3) SCR 932; Union of India and Ors. vs. Prakash Kumar Tandon (2009) 2 SCC 541: 2008 (17) SCR 855; Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Ors. (2003) 9 SCC 480; Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulabhia M. Lad (2010) 5 SCC 775: 2010 (5) SCR 309; General Manager(P), Punjab and Sind Bank and Ors. vs. Daya Singh (2010) 11 SCC 233: 2010 (9) SCR 71 – referred to.*

**Case Law Reference:**

1996 (1) Suppl. SCR 314	Referred to	Para 6
(2005) 4 SCC 364	Referred to	Para 6
2010 (9) SCR 71	Referred to	Para 6
2006 (3) SCR 932	Referred to	Para 7, 9
2008 (17) SCR 855	Referred to	Para 7
(2003) 9 SCC 480	Referred to	Para 8
2010 (5) SCR 309	Referred to	Para 8

A 2010 (9) SCR 71 Referred to Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2093 of 2007.

B From the Judgment and Order dated 05.08.2005 and 28.09.2005 of the High Court of Gujarat at Ahmedabad in LPA No. 1736 of 2004 and MCA No. 1883 of 2005 in LPA No. 1736 of 2004.

WITH

C Civil Appeal No. 2094 of 2007.

C.U. Singh, Pramod B. Agarwala, Praveena Gautam and Anuj P. Agarwala for the Appellants.

Nachiketa Joshi for the Respondent.

D The following order of the Court was delivered

### ORDER

E 1. These are two appeals filed by way of special leave under Article 136 of the Constitution of India against the common order dated 5.8.2005 in Letters Patent Appeals No. 1736/2004 and 1869/2004 passed by the Division Bench of the Gujarat High Court.

F 2. The facts briefly are that D.M. Parmar was appointed in Panchmahal Vadodara Gramin Bank, 'the Bank' for short, as an officer by order dated 16.4.1988. He joined the bank on 25.4.1988 and was confirmed in service on 9.5.1991. He worked as a Manager at Chundadi branch of the bank during 25.3.1996 to 21.6.1997 and during this period he had granted advances, renewed various loan accounts and extended more finance to the borrowers under Crop Loan Scheme. A show cause notice dated 15/20.5.1999 was issued to him to show cause why disciplinary action should not be initiated against him for various acts of omission and commission committed during

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his posting as a Manager of Chundadi branch of the bank during the period 25.3.1996 to 21.6.1997. He replied saying that he was not fully experienced in handling a big branch and in discharging duties as a Branch Manager and the acts of omission and commission were on account of his inexperience. The reply furnished by him was not accepted by the bank and a charge-sheet dated 20.26.4.1999 was issued to him alleging various acts of misconduct committed by him. He submitted his reply dated 2.5.2009 and denied the charges. An Enquiry Officer was appointed to conduct the enquiry and the Enquiry Officer submitted his findings in his report dated 30.10.2000 holding that D.M. Parmar is guilty of most of the charges. The disciplinary authority thereafter gave an opportunity to D.M. Parmar to make a representation against the findings of the Enquiry Officer and he submitted his representation. The disciplinary authority granted a personal hearing to him to show cause as to why the proposed punishment of dismissal should not be imposed on him. He appeared before the disciplinary authority and prayed that leniency be showed to him. The disciplinary authority, however, passed an order of dismissal dated 6.12.2000.

3. D.M. Parmar then carried an appeal against the order of disciplinary authority. The appeal was dismissed by the appellate authority by order dated 17.2.2001. Aggrieved, he filed a writ petition registered as Special Civil Application No.6260/2001 before the Gujarat High Court. The writ petition was, however, withdrawn on 2.7.2002 by D.M. Parmar to enable him to make a representation to the concerned authority of the bank. He made a representation to the bank against the order of dismissal but the representation was rejected by order dated 6.8.2002.

4. D.M. Parmar then filed a fresh writ petition No.6260/2001 before the High Court. A learned single Judge of the High Court heard the writ petition and passed the judgment dated 13.8.2004. In the judgment, the learned single Judge observed that he had heard learned counsel for the respective parties.

A extensively and gone through the entire records of the Enquiry Office and he was of the opinion that the Enquiry Officer has fully and properly scrutinised the relevant material before him before recording the findings on the charges levelled against D.M. Parmar and that reasonable opportunity had been given

B to him during the course of enquiry. The learned single Judge, however, held in the judgment that no reason had been mentioned in the order of dismissal as to why the disciplinary authority selected the penalty of dismissal although in the rules there were other minor and major penalties mentioned. The

C learned single Judge also found in his judgment that there was almost total non-application of mind with regard to the quantum of punishment. The learned single Judge was of the view that the disciplinary authority was required to consider the fact that there was no finding that there was dishonest intention or dishonest act on the part of D.M. Parmar. The learned single

D Judge further observed in his judgment that in the absence of any adverse past record, he could not have been lightly dismissed from service on the charges. The learned single

E Judge has, therefore, quashed the order of dismissal and directed reinstatement of D.M. Parmar but further directed that he should not get any backwages since he had not done any work since he was dismissed from service. The learned single Judge remanded the matter to the disciplinary authority for passing appropriate order with regard to quantum of punishment with the observation that the disciplinary authority

F may impose any penalty except the penalty of dismissal, removal or termination from service.

5. Aggrieved by the judgment of the learned single Judge, the bank filed Letters Patent Appeal No.1736/2005 and D.M. Parmar filed Letters Patent Appeal No.1869/2005. The

G Division Bench of the High Court, after hearing learned counsel for the parties, however, sustained the judgment of the learned single Judge and dismissed both the appeals. The bank has, therefore, filed C.A. No.2093/2007 and D.M. Parmar has filed

H C.A. No.2094/2007 before this Court.

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6. Mr. C.U. Singh, learned senior counsel appearing for the bank, the appellant in C.A. No.2093/2007, submitted that the findings of the Enquiry Officer would show that D.M. Parmar was guilty of very serious charges and was required to be dismissed from service on account of acts of integrity and dishonesty and lack of probity on the part of D.M. Parmar. He referred to the order of disciplinary authority dated 6.12.2000 to show that disciplinary authority after careful consideration of findings of the Enquiry Officer and the entire records of enquiry had come to the conclusion that grave lapses in sanction/disbursement in many loan accounts had been established against him and the magnitude of irregularities and blatant disregard of set procedures and norms for sanction/disbursement were of a serious nature. He submitted that the disciplinary authority after considering the nature of irregularities had come to the conclusion that the acts of misconduct committed by D.M. Parmar could not be viewed leniently and that he had abused his position and power which was detrimental to the interest of the bank. He was of the opinion that ends of justice would be met if the punishment of dismissal was imposed on him. Mr. Singh vehemently submitted that the finding of the learned single Judge which has been sustained by the Division Bench that the disciplinary authority did not apply his mind before deciding to impose the penalty of dismissal on D.M. Parmar was, therefore, factually not correct. He submitted that considering the serious nature of misconduct committed by D.M. Parmar, this is a fit case in which the order of dismissal should have been passed by the disciplinary authority and the High Court should not have interfered with the order of dismissal. In support of his submissions, he relied on the decisions of this Court in *Disciplinary Authority-cum-Regional Manager Vs. Nikunja Bihari Patnaik* (1996) 9 SCC 69 and in *Chairman & M.D., United Commercial Bank Vs. P.C. Kakkad*, (2005) 4 SCC 364 in which this Court has taken a view that officers/employees of the bank should be seriously dealt with for charges of misconduct in the interest of discipline of the bank and such officers are required to discharge their

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- A duties with utmost integrity, honesty, devotion and diligence and should not do anything which is unbecoming of a bank officer. He also relied on a recent decision of this Court in *General Manager(P), Punjab & Sind Bank & Ors. Vs. Daya Singh*, (2010) 11 SCC 233 in which this Court has taken a view that
- B conclusions arrived at by the Enquiry Officer on the basis of evidence should not be interfered with by the High Court lightly.

7. Mr. Nachiketa Joshi, learned counsel appearing for D.M. Parmar, the appellant in C.A. No. 2094/2007, on the other hand, submitted that there has been gross violation of principles

C of natural justice in as much as D.M. Parmar had filed a petition dated 3.11.1999 before the Enquiry Officer making a prayer that he should be furnished some papers, namely, chargesheet served on his predecessor in office, one L.K. Parmar, information in regard to working and functioning of L.K Parmar

D in Chundadi branch at the relevant time, copies of inspection report, completion report and rectification certificate issued by the Head Office of the bank during his tenure as the branch manager of Chundadi branch, statement of loans disbursed, crop loan schedules, extracts of land holding, renewal forms and Ikrarnama issued by him, P.S.S. Statement of loan accounts

E during his tenure and copies of letters written by him requesting the authority to post a second officer in the branch. He submitted that the prayer was not granted by the Enquiry Officer and instead the prayer was opposed by the Presenting Officer on

F behalf of the bank. He vehemently argued that these documents mentioned in his application dated 3.11.1999 before the Enquiry Officer were relevant for the defence of D.M. Parmar and as these have not been furnished to him, there was violation of principles of natural justice. Mr. Joshi cited the

G decision of this Court in *Narinder Mohan Arya Vs. United India Insurance Co.Ltd. & Ors*, (2006) 4 SCC 713 and *Union of India & Ors. Vs. Prakash Kumar Tandon*, (2009) 2 SCC 541, in which this Court has held that principles of natural justice and fair play have to be observed by the Enquiry Officer in a

H disciplinary enquiry. He submitted that in the latter case of

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*Union of India & Ors. Vs. Prakash Kumar Tandon* (supra), this Court also held that when an application was filed for summoning the witnesses by delinquent officer, it was obligatory on the part of the enquiry officer to pass an order on such an application. Relying on this observation in the aforesaid case, he submitted that in the present case, although an application was filed for furnishing the documents by D.M. Parmar, no order was passed by the enquiry officer and, therefore, this is case where principles of natural justice have been violated.

8. Mr. Joshi further submitted that this Court has held in *Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank & Ors.*, (2003) 9 SCC 480 that where the quantum of punishment is disproportionate to the gravity of charge, the Court will interfere with the quantum of punishment. He pointed out that in the aforesaid case, the Court, after going through the charge against the delinquent officer, held that the charge was only in respect of some procedural irregularities which did not warrant the extreme punishment of dismissal from service. He submitted that in this case also the charges, if held to be proved, are only acts of irregularities and no charge of misappropriation has been established against D.M. Parmar. He also relied on the decision of this Court in *Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad*, (2010) 5 SCC 775 wherein it has been held that exercise of discretion in imposition of punishment is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. He submitted that all these factors have not been taken into consideration by the disciplinary authority by imposing the punishment of dismissal from service.

9. We have considered the submissions of learned counsel for the parties and we find that in the enquiry report, the Enquiry Officer has dealt with the request of D.M. Parmar

A with regard to the documents he had asked for and he has held  
 that the documents were asked for in connection with the  
 irregularities of L.K. Parmar but these irregularities committed  
 by the earlier officer have no connection with the serious  
 irregularities committed by D.M. Parmar. The Enquiry Officer  
 B has further held that if any irregularities were committed by the  
 earlier officer L.K. Parmar, the same have not to be included  
 in the chargesheet issued to D.M. Parmar. Thus, the Enquiry  
 Officer has taken a view, and we think it is a right view, that  
 the documents to show the irregularities committed during the  
 C time of the previous manager of the bank L.K. Parmar had no  
 relevance to the charges against D.M. Parmar. As has been  
 held by this Court in *Narinder Mohan Arya Vs. United India  
 Insurance Co.Ltd.* (supra) cited by Mr. Joshi, it is not possible  
 to lay down any rigid rules of principles of natural justice which  
 D depends on the facts and circumstances of each case but the  
 concept of fair play in action is the basis. In the facts and  
 circumstances of the case, we find that the documents called  
 for by D.M. Parmar during the enquiry have been found by the  
 Enquiry Officer as not to be relevant for the charges against  
 E D.M. Parmar and we are of the considered view that if the said  
 documents were not allowed to be inspected by D.M. Parmar  
 as delinquent officer, there has been no violation of principles  
 of natural justice.

10. On an examination of the enquiry report, we find that  
 F there were as many as ten charges against D.M. Parmar and  
 the charges were of serious nature and out of these charges,  
 only one charge was not fully proved, one charge was partly  
 proved and one charge was deleted and rest of the charges  
 were proved. In the conclusion, the enquiry officer has recorded  
 G the following findings:

#### "FINDINGS

(1) He did not take all possible steps to ensure and protect  
 the interest of the Bank. In fact he took such steps and did  
 H such acts of omission and commission, which were

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derogatory, detrimental, prejudicial and injurious to the interest of the Bank. .... Proved. A

(2) He showed gross negligence and indifference in discharge of his duties. .... Proved.

(3) He did not discharge his duties with utmost integrity and honesty but in fact did such acts of lack of probity on his part. .... Proved. B

(4) He did not maintain discipline in all transactions and in discharging his duties as a Manager. In fact, he misused and abused his position as a Manager of the branch. .... Proved C

(5) He did not perform his duties with devotion and diligence and violated and flouted the rules of the Bank. .... Proved. D

(6) He committed acts of breach of trust. ....Proved.

(7) By his acts of misdeeds, he tarnished the image of the bank. .... Proved. E

(8) He did acts of unbecoming of a Bank Officer. ....Proved."

These findings are all based on adequate material referred to in the inquiry report and these materials are mainly bank records. As has been held by this Court in the recent decision in *General Manager(P), Punjab & Sind Bank & Ors. Vs. Daya Singh*, (2010) 11 SCC 233, in which one of us (H.L. Gokhale, J.) was a party, as long as there are materials and evidence in support of the findings, the High Court cannot interfere with such findings in exercise of powers of judicial review under Article 226 of the Constitution of India. The learned single Judge of the High Court and the Division Bench of the High Court have, therefore, rightly not interfered with the findings. Once the H

- A findings of the Enquiry Officer, which have been quoted above, are not interfered with, we fail to see how the delinquent officer can avoid the punishment of dismissal from service. The findings include not only serious acts of negligence but also acts of dishonesty and lack of probity.
- B The Court cannot probably take a view that punishment of dismissal was shockingly or strikingly disproportionate to the gravity of charges proved against D.M. Parmar.

C 11. In the result, the impugned judgment of the Division Bench and the learned single Judge are set aside and the writ petition filed by D.M. Parmar is dismissed. Accordingly, C.A. No.2093/2007 is allowed and C.A. NO.2094/2007 is dismissed. There shall be no order as to costs.

N.J.

Appeals disposed of.