

HIGH COURT OF GUJARAT**P P BHATT***Versus***BANK OF INDIA****Date of Decision:** 01 January 2008**Citation:** 2008 LawSuit(Guj) 2**Hon'ble Judges:** [S R Brahmbhatt](#)**Case Type:** Special Civil Application**Case No:** 8762 of 1998**Subject:** Constitution**Acts Referred:**[Constitution of India Art 16](#), [Art 226](#), [Art 1](#), [Art 14](#)

Abkari Act, 1967 Sec 67E

Advocates: [S P Majmudar](#), [Nanavati Associates](#)**Cases Referred in (+): 3**

[1] The petitioner has under Article 226 of the Constitution of India challenged his dismissal from service pursuant to the inquiry on the ground that the order of dismissal passed by the respondent authority on 31/12/1996, confirmed by the appellate authority vide order dated 21/7/1997, and further confirmed by the reviewing authority dated 28/1/1998 are bad as they were not passed in conformity with the principle enunciated in the provision of Article 14 and 16 of the Constitution of India, and therefore, same deserved to be quashed and set aside.

The facts in brief deserves to be set out in order to appreciate the controversy involved in the matter.

[2] The petitioner was working as an officer in the respondent Bank Of India at Gopipura Branch during period from 28/11/1988 to 13/6/1994. One K.J. Adhvaryu, Staff Clerk committed fraud wherein the bank was made to suffer huge loss of Rs.1,01,00,000=00. The petitioner at the relevant time was working in Gopipura branch of the bank and later on transferred to Surat branch. Petitioner was placed under suspension vide order dated 29/7/1994 and subjected to disciplinary proceeding.

Along with the petitioner many other officers who were found responsible in aiding and abetting the fraud perpetrated to Adhvaryu were also subjected to the disciplinary proceedings as various charge-sheets were issued against them. Petitioner was also issued charge sheet on 26/12/1994 enlisting five charges in respect of his aiding and abetting said Adhvaryu in perpetrating fraud upon the bank and also in respect of two payments of Rs.2000=00 and Rs.5000=00. The Inquiry Officer after concluding inquiry submitted his report, copy of the said report was furnished to the petitioner. The Inquiry Officer while furnishing copy of report on 11/7/1996 mentioned in the concluding statement which seems to be without any valid basis and was inconsistent with his findings on the various charges levelled against the charge-sheeted officer and the conclusion was not accepted. Petitioner replied to this vide his letter dated 31/7/1996 pointing out to the authorities that when the disciplinary authority is deferring from the conclusion of the Inquiry Officer, who is an independent authority, then it was duty cast upon the disciplinary authority to record its reasonings for disagreeing with the conclusion of Inquiry Officer and requested disciplinary authority's indulgence for making appropriate reply after receiving his submission which he made on 31/7/1996. The disciplinary authority did not respond to the letter of the petitioner dated 31/7/1996 and proceeded further and imposed penalty of dismissal from service vide order dated 31/12/1996.

[3] The petitioner preferred an appeal under his communication dated 11/3/1997. The appellate authority vide its order dated 21/7/1997 confirmed the order of penalty and rejected the appeal. The petitioner thereafter preferred review petition on 24/9/1997 to the executive director, Bank of India, ie., the reviewing authority, which also came to be dismissed by the reviewing authority under letter dated 28/1/1998. Being aggrieved by these orders petitioner has preferred this petition.

[4] Mr. Majmudar, learned counsel appearing for the petitioner has submitted that the petitioner ought not to have been visited with harshest punishment of dismissal from service looking to the allegations and misconduct alleged against the petitioner. Mr. Majmudar has submitted that the fraud committed upon the bank was perpetrated by one Mr. Adhvaryu which had ranged from 1988 to 1994, which could be said that it was the system failure and therefore the petitioner ought not to have been visited with such harsh penalty of dismissal. Mr. Majmudar has submitted that the disciplinary authority has not appreciated the findings of Inquiry Officer's report which in fact contains noting that the petitioner has not been monetarily benefited by the misconduct alleged against him. Mr. Majmudar has submitted that when the Inquiry Officer in his conclusion stated clearly that there was no deliberate misconduct on the part of the petitioner-delinquent, and when the said conclusion was not acceptable to the disciplinary authority, it was bounden duty of the disciplinary authority to record

the reasonings for his non-acceptance and to afford an opportunity to the delinquent on that basis. In the present case such an exercise is conspicuous by its absence and therefore, the impugned orders deserve to be quashed and set aside.

[5] Mr. Majmudar has invited this Court's attention to page no. 64 of the compilation and submitted that the charge did not relate to any misconduct as such. It was merely in respect of receiving an amount which was short-term borrowing. Mr. Majmudar has invited attention of this Court to page no. 36 to 54 of the compilation and submitted that the conclusion of Inquiry Officer ought to have been taken into consideration by all the three authorities which confirmed the order of penalty of dismissal.

[6] Without prejudice to the aforesaid, Mr. Majmudar in the alternative submitted that, the disciplinary authority did not apply its mind to the gravity of misconduct in respect of the fraud perpetrated by said Mr. Adhvaryu who was the main culprit. The petitioner being part of the system had done his duty, may be some lapses in discharging, due to these lapses which are not so grave, does not warrant punishment of dismissal from service especially when the fraud had been perpetrated from 1988 till 1994 and as many as 88 employees/staff were subjected to various departmental proceedings. Out of the various departmental proceedings the petitioner along with five other officers have been inflicted with serious punishment of dismissal, whereas other officers/employees who were also facing identical and or similar charges of misconduct were let off by imposing minor penalties and in none of the cases baring aforesaid 86 employees the management has inflicted harshest punishment of economical death which had inflicted upon the petitioner and other five officers. Mr. Majmudar has further submitted that this non-application of mind in respect of petitioner has caused prejudice and victimization to the petitioner and therefore also the inquiry proceedings are said to be vitiated. Therefore, it is submitted by learned counsel for the petitioner that there was non application of mind on the part of the management which deserves to be deprecated and the impugned order deserves to be quashed and set aside.

[7] Mr. Prabhav Mehta for M/s Nanavati Associates, learned counsel appearing for the respondent bank has submitted that the charges were grave and the petitioner could not have escaped from the proceedings in view of the responsibility that he was to discharge at Gopipura branch where the fraud was mainly perpetrated. Mr. Mehta has explained the modus operandi adopted by said Mr. Adhvaryu and submitted that Mr. Adhvaryu is said to have defrauded the bank to the tune of Rs.1,01,00,000=00 and mainly the fraud at the Gopipura branch was by way of fake debit notes in his account in Surat main branch. The petitioner and other five who were visited with dire punishment of dismissal were mainly responsible to aid and abet wittingly or unwittingly the fraud on the part of Mr. Adhvaryu which has resulted into tremendous loss to the bank compared to the other officers. The role of charges against other

officers deserve to be viewed in its proper perspective. This was all in order to meet with the submission of Mr. Majmudar in respect of victimization of non application of mind in inflicting the punishment. Mr. Mehta invited this Court's attention to the summary & gist of role, the charges and punishment in respect of various officers at page 130 to the compilation and indicated that the bank/disciplinary authority have taken into consideration all the facts & circumstances attending the case and decided to inflict appropriate punishment and under Article 226 of the Constitution of India this Court may not go into the correctness of punishment imposed by the management upon the delinquents after successfully concluding the inquiry proceedings. Mr. Mehta has also relied upon a case in respect of INDIAN OIL CORPORATION AND ANOTHER Vs. ASHOK KUMAR ARORA, reported in (1997) 3 SCC pg. 72; and in case of UNION OF INDIA Vs. PARMA NANDA etc. reported in (1989) 2 SCC pg. 177; and in case of OBETTEE (P) LTD. Vs. MOHD. SAFIQ KHAN, reported in (2005) 8 SCC pg. 46; and submitted that two delinquents faced with same charges are not subjected to same penalty and the awarding of punishment depends upon the circumstances and gravity of each case and in a writ petition it would not be open to the court to go into this aspect. Suffice it to say that imposing of punishment is in the realm of administrative function which need not be interfered with under Article 226 of the Constitution of India.

[8] Mr. Mehta has further submitted that looking to the Inquiry Officer's findings, his conclusion can well said to be an attempt to show sympathy to delinquent officer and said conclusion was admittedly not in consonance with the findings of the Inquiry Officer and therefore, petitioner was not entitled to have further opportunity than what he was afforded to by the disciplinary and reviewing authorities.

[9] Mr. Mehta has further submitted that the submission with regard to non compliance of Banking Regulations, the disciplinary authority in the instant case can not be said to be disagreeing with the findings. In fact the communication by the disciplinary authority is in due compliance with the provision of Regulation 7 of the BANK OF INDIA OFFICER EMPLOYEES' (DISCIPLINE AND APPEAL) REGULATIONS, 1976, in as much as the disciplinary authority has pointed out to the delinquent that the inquiry officer has recorded the conclusion contrary to his own findings and therefore same need not be agreed to. This communication can well be said to be containing reason also for disagreeing with the conclusion. Moreover Mr. Mehta submits that Inquiry Officer has never said that the charges were not proved or it was proved partly and the conclusion is on the face of it beyond the scope of the Inquiry Officer.

[10] This Court heard learned counsels appearing for the parties, perused the record & proceedings of the case. The fact remains to be noted is that the petitioner at the relevant time was an officer in the Gopipura branch of the Bank and said Mr. Advaryu

was also working in the Gopipura branch. Said Mr. Advaryu perpetrated fraud resulting into more than Rs.1,01,00,0000=00 for the period from 1988 to 1994. Almost 88 employees were subjected to various disciplinary proceedings and keeping all these facts & circumstances in mind the punishment came to be imposed after the inquiry. In the instant case learned counsel for the petitioner has raised a ground that the disciplinary authority has not complied with provision of Regulation 7 (2) of the Bank of India Officer Employees' (Discipline And Appeal) Regulations, 1976. Regulation 7(2) of the Regulations read as under :-

"7.Action on the inquiry report:

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The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. "

[11] In order to appreciate this provision perusal of the order of the disciplinary authority calling upon the petitioner to make statement in Inquiry Officer's Report deserves to be noted. The communication at page 52 in the compilation is in respect of his inability to agree with the conclusion of the Inquiring Officer and he has given reasoning for not accepting the conclusion as it could be seen from para no.3 which deserves to be set out as under.

" Page-53, para no.3: I have gone through the records of the inquiry vis-a-vis the charges levelled against you. The concluding statement made as above seems to me to be without any valid basis and inconsistent with his findings on the various charges levelled in the Chargesheet. It is difficult to accept such a conclusion. "

[12] Thus, the disciplinary authority has in unequivocal terms put the delinquent to the notice that the delinquent has been found guilty by the Inquiring Officer and Inquiring Officer's conclusion was not warranted looking to the Inquiring Officer's own findings and therefore, disciplinary authority was not agreeing with the Inquiring Officer's conclusion. What is requirement of Regulation 7 (2) is to inform delinquent about any disagreement and invite his comments thereon. Looking to this communication this Court has no hesitation in coming to the conclusion that the said communication did comply with the requirements of Regulation 7(2) of Disciplinary Regulations and therefore, this submission of learned counsel for the petitioner is of no avail to the petitioner. It deserves to be noted that submission with regard to non-supply of co-delinquents charge-sheets to the petitioner is also of no avail. Mr. Majmudar has strenuously taken this Court through the decision of this Court wherein

in a co-delinquent matter the concerned Labour Court in an industrial dispute by way of interim order observed that the documents demanded was not supplied which was in the charge sheet. In this context, now it is to be examined whether Mr. Adhvaryu can be said to be a co-delinquent. Because so far as the present petitioner is concerned it is an independent charge sheet and therefore, there is no question of terming Mr. Adhvaryu to be a co-delinquent. At the best it can be said that he was a man who has abetted and aided said Adhvaryu. The petitioner was subjected to independent disciplinary proceedings wherein he was called upon to answer independent charges pertaining to his misconduct only. Besides this, Mr. Majmudar has fairly conceded that present petitioner has never demanded charge sheet which was served to Mr. Adhvaryu. In this view of the matter also there is no prejudice caused to the petitioner when he did not demand even the charge sheet in respect of co-delinquent. Therefore, even this submission is also of no avail as it is not furthering the cause of the petitioner any more.

[13] This brings this Court to consider the aspect of non application of mind and the order of punishment disproportionate to the charge. Before adverting to this, it deserves to be noted that learned counsel for the petitioner has not pointed out any other lacuna in the inquiry proceeding, except what is stated herein above, nor has he pointed out breach of principles of natural justice warranting interference of this Court under Article 226 of the Constitution of India. Bearing this in mind and against this backdrop the submission with regard to disproportionate penalty and non application of mind is to be dealt with. As it is stated herein above, 88 other officers/ employees were subjected to various departmental proceedings and in each of the cases the management has applied its mind and inflicted appropriate punishment. The question arise as to under Article 226 how far the Court can take upon the test to examine justification of penalty imposed upon a delinquent vis-a-vis the other delinquents when two separate departmental proceedings are conducted. The observations of the Apex Court reported in (1989) 2 SCC 177; (1997) 3 SCC 72; and (2005) 8 SCC 46 would be of-course helpful to the respondent Bank that in such case the task is better left to the management and the Court need not take upon its task of undergoing and examining justification for awarding punishment, especially when no plea of non-compliance with natural justice could be said to have been sustained / successfully made out. Mr. Majumdar has at this stage submitted that principle of natural justice is pleaded. Unfortunately pleading is not made at the time of oral submission. As stated herein above, except aforesaid lacuna no other lacuna or infringement of principle of natural justice is pointed out. This Court is therefore unable to agree with the submission of Mr. Majumdar. The petition has no merits as the impugned order need not be interfered with under Article 226 of the Constitution of India and therefore, it fails and it deserved

to be dismissed. Accordingly it is dismissed. Rule discharged. Interim relief, if any granted earlier, shall stand vacated. No costs.

