

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.14471 OF 2004

Between:

Yadavalli Venkata Satya Prabhakaram

... **Petitioner**

And

The Managing Director & Reviewing Authority
State Bank of Hyderabad, Gunfoundry, Hyderabad & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.14471 OF 2004****% 03.06.2024****Between:**

Yadavalli Venkata Satya Prabhakaram

... Petitioner**And**\$ The Managing Director & Reviewing Authority
State Bank of Hyderabad, Gunfoundry, Hyderabad & others**... Respondents**

< Gist:

> Head Note:

! Counsel for the Petitioner : Sri C.Nageswara Rao**^ Counsel for Respondents** : Sri A.Krishnam Raju

? Cases Referred:

- (1) (1991) 3 SCC 219
- (2) (2007) 4 SCC 699
- (3) (2001) (2) SCC 386
- (4) (1948) 1 KB 223
- (5) 1995 (6) SCC 749
- (6) 2013 (12) SCC 372
- (7) (1993) 1 SCC 13

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P. No.14471 OF 2004****ORDER:**

Heard the learned Senior Designate Counsel Sri C.Nageswara Rao, appearing on behalf of the petitioner and Sri A.Krishnam Raju, learned counsel appearing on behalf of respondents.

PRAYER:

2. **The petitioner approached the court seeking prayer as under:**

"...issue a Writ of Mandamus or any other appropriate writ order or direction declaring that the findings and the orders of the Disciplinary Authority 3rd respondent dated 01.04.2003, and subsequent and the consequential orders of the Appellate Authority dated 03.07.2003 and the orders of the Reviewing Authority dated 24.09.2003, are liable to be quashed and to set aside the same and in the interest of justice the petitioner be reinstated in service with all consequential benefits..."

3. **PERUSED THE RECORD:**

A) The counter affidavit has been filed on behalf of the Respondents, in particular, paras 4, 7, 48, 52, read as under:

4. It is submitted that the Departmental Enquiry was conducted as per the rules and the principles of natural justice were followed and the petitioner was given adequate opportunity to defend himself against the charges. The Disciplinary Authority, after considering entire material including Enquiry Officer's Report, passed a detailed order on 29.3.2003 assigning elaborate reasons for arriving at the conclusions recorded therein and imposed punishment of "compulsory retirement from bank service". The punishment imposed is proportionate for the misconduct committed by the petitioner and is as per the rules under which the Disciplinary Proceedings are initiated. The writ petition is not maintainable as the scope of judicial review is limited and as per settled legal position, the Hon'ble Court will not generally interfere or act as an Appellate Authority and re- appreciate the evidence available on the record and examine the proportionality of the punishment imposed to the petitioner.

7. In reply to Para 2 of the affidavit, it is submitted that the averments are relating to the impugned order and the reliefs sought by the petitioner in the above writ petition and they do not require any comments from the respondents. It is suffice to say that there are no valid and justified grounds to

seek the indulgence of the Hon'ble Court for the reliefs sought therein. The enquiry was conducted as per principles of natural justice and opportunity was also given to the petitioner to defend himself at all stages of enquiry. On having independently and carefully gone through the entire record of disciplinary proceedings including the report of the Inquiring Authority and the submissions thereon made by the Charge Sheeted Official (CSO), and taking into consideration the nature of charges/imputations held as established against the Official, the Disciplinary Authority/General Manager (Operations) has imposed on him the penalty of compulsory retirement from Bank's Service vide his orders dated 29th March, 2003. On having gone through the appeal preferred by the Official and since no extenuating factors were brought out in the appeal necessitating for reconsideration of the penalty imposed by the Disciplinary Authority and also the nature of serious misconduct established against the official, the Appellate Authority / Chief General Manager dismissed his appeal accordingly and upheld the punishment imposed by the Disciplinary Authority on the petitioner. On having carefully gone through the records of the enquiry into the charges and also his submissions in the review petition, the Reviewing Authority/Managing Director observed that the charge sheeted official (CSO) had merely repeated his submissions made during enquiry hearings and in appeal made by him against the orders of the Disciplinary Authority. The Reviewing Authority further observed that all the

submissions' have been thoroughly addressed and examined by the Disciplinary Authority. The Reviewing Authority further observed that the Charge Sheeted Official (CSO) had not brought forth any new argument or plea to warrant his interfering with the orders of the Disciplinary Authority or the Appellate Authority. The Reviewing Authority therefore rejected the review petition and ordered accordingly vide his order dated 23rd September, 2003.

48. In reply to Para 50, 51, 52, 53, 54 and 55 of the petitioner's affidavit, it is submitted that the submissions of the petitioner are totally false and intended to mislead the Hon'ble Court and it is a fabricated story. As per the guidelines issued by Central Vigilance Commission to all public sector Banks, Banks are required to obtain opinion of the commission through the Chief Vigilance Officer of the Bank before any action is taken against a Bank Official in any disciplinary matter involving vigilance angle in two stages, once at the time of initiation of a disciplinary action and second at the time of imposing the punishment. Following the above CVC guidelines does not in any way influence the decision of the Disciplinary Authority. The contentions made by the petitioner in this regard are totally baseless, completely false and illusionary. As already discussed in the earlier Paragraphs, after having independently and carefully gone through the entire record of the disciplinary proceedings including the findings of the Inquiring Authority and the CSO's

submission thereon as also taking into consideration the gravity and nature of charges/ imputations held as established, the disciplinary authority had imposed the penalty, keeping in mind the principles of natural justice to the CSO and it is evident that the decision of the Disciplinary Authority is in no way influenced by the Chief Vigilance Officer of the Bank.

52. In reply to Para 59 of the petitioner's affidavit, it is submitted that the contentions of the petitioner are illusionary, false and misleading this Hon'ble Court. Aggrieved by the orders of the Appellate Authority and Disciplinary Authority, the petitioner preferred a review petition vide his letter dated the 16th August, 2003. On having carefully and independently considered the entire record of disciplinary proceedings initiated against the CSO including the order of the Disciplinary Authority, it is observed that the Charge Sheeted Official had merely repeated his submissions made during the enquiry hearings and in appeal made by him against the Disciplinary Authority's orders and all the submissions have been thoroughly addressed and examined by the Disciplinary Authority. The Reviewing Authority / Managing Director therefore found that the charge sheeted official had not brought forth any new argument plea or evidence to warrant his interfering with the orders of the Disciplinary Authority or the Appellate Authority. The Review Petition was therefore rejected and the Reviewing Authority /

Managing Director ordered accordingly on 23rd September, 2003.

B) Paras 160, 161, 162, 163 and 164 of the Judgment dated 21.12.2018 passed in C.C.No. 39 of 2005 by the III Addl. Special Judge for CBI Cases, Hyderabad, is extracted hereunder :

160. In the light of the above facts and circumstances as well as findings arrived by me, I answered the points 1 to 4 against the prosecution that the prosecution failed to prove its case for the offence punishable under sections 120-B, 420 of the Indian Penal Code against the accused A1 to A4, and the offence punishable under section 477-A of the Indian Penal Code, and the offence punishable under section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 against the accused A1 beyond all reasonable doubt.

161. In the result, the accused A1 to A4 are found not guilty of the offence punishable under sections 120-B and 420 of the Indian Penal Code.

162. The accused A1 is found not guilty of the offence punishable under section 477-A of the Indian Penal Code and offence punishable under section 13 (2) r / w 13 (1) (d) of the Prevention of Corruption Act, 1988.

163. Hence, the accused A1 to A4 are acquitted under section 248(1) of the Code of Criminal Procedure for the offence punishable under sections 120-B and 420 of the Indian Penal Code.

164. The accused A1 is acquitted under section 248(1) of the Code of Criminal Procedure for the offence punishable under section 477-A of the Indian Penal Code and offence punishable under section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988."

4. The case of the Petitioner in brief as per the averments made in the affidavit filed by the Petitioner in support of the present writ petition is as under :

a) The petitioner joined as cashier cum clerk on 05.07.1982 in the Respondent bank and has been promoted as an officer in JMGS I on 14.07.1993 with effect from December 1990. The petitioner while working as branch manager was promoted as MMGS- II during the year 1997 and in the year 1998, the petitioner was transferred to Secunderabad Branch as branch manager.

b) On the date of taking of charge by the petitioner, company namely Ms Prime Pharmatech (India) Pvt Limited had already been sanctioned credit facility by the zonal office,

Secunderabad, with an aggregate limit of ₹90,00,000 by way of cash credit, OD, Inland LC. These loan Facilities were already sanctioned and were to be released from the old Bowenpally, Branch. The proposals and recommendations relating to these facilities were made by the predecessor branch manager and processed by the Zonal Office, Secunderabad even prior to the reporting of the petitioner as branch manager.

c) After taking charge as Manager, the petitioner in process of recovery had insisted one Prime Pharmatech (India) Private limited to bring down their outstanding to avoid classifying the account as NPA and Prime Pharmatech (India) Private Limited had issued 6 cheque drawn on various banks and requested the branch to discount these cheques and credit the amount to their cash credit account. On the assurance that the cheques will be honoured, the petitioner having no reason to suspect, had discounted the cheques and credited amount to the company's account on 31.03.2000, on the hope that the account could be controlled within the sanctioned limit.

d) Thereafter, the petitioner was on leave from 04.05.2000 to 05.05.2000 and again from 23.05.2000 to

24.05.2000 and due to other reasons the discounting of cheques escaped the petitioner's mind. The controlling authority upon verifying the accounts of Prime Pharmatech (India) Private Limited, had found that the said 6 (Six) discounted cheques were not entered in the dispatch register. The controlling authority advised the petitioner to follow up the matter with Prime Pharmatech (India) Private limited and thereafter the Managing Director of the company had issued two (02) cheques of Rs.20 Lakhs each and requested to collect the amount and credit to the company account on 27.05.2000.

e) Subsequently, on 30.05.2000 the petitioner was placed under suspension and lost access to the branch records and the Prime Pharmatech (India) Pvt limited records and could not trace the course of earlier cheques discounted.

f) Further it is the case of the petitioner that regarding posting of credit and debit entries of Rs. 1 Lakh in the petitioner's S.B.Joint Account was the duty of the accountant. As on that day it was found that, there were no sufficient funds in the branch for further transactions and the petitioner had to arrange a deposit of Rs.1 Lakh in his account which was used for that day's transactions,

the said amount was withdrawn from the Petitioner's account and returned to the person from whom the amount was arranged.

g) While, things stood thus, the 3rd respondent had placed the petitioner under suspension on 29.05.2000 vide Lr.No.1829 alleging the petitioner had purchased (6) six cheques on 30.03.2000 and 31.03.2000 amounting to Rs. 55 Lakhs from Prime Pharmatech (India) Private Limited beyond the petitioner's discretionary powers and called for petitioners comments.

h) Further, the disciplinary authority had issued charge sheet against the petitioner dated 04.06.2001 in relation to the alleged transactions in the advances account of Prime Pharmatech (India) Private Limited, Timber India, Capricorn Bleach Private limited and in relation to fictitious account in the name of Mr. B.Shekhar and operations by the Accountant of the branch, A.Jagannath Rao and the escaped credit and debit entry of Rs. 1 Lakh in the petitioner's joint SB Account.

i) Consequently, the inquiring authority appointed, had examined only one witness and none of the directors or the officials of the above mentioned companies, and none of the staff members

or the accountant were examined to clarify the position regarding the operations of the accounts and the circumstances in which the cheques were discounted and the inquiring authority had submitted findings dated 07.09.2002 and made 8 charge reports and submitted the same to the 3rd respondent.

j) On account of this 8 charge report, a major punishment of compulsory retirement, was imposed on the petitioner causing serious Prejudice to the petitioner, as all the charges from 1 to 7 were to be treated as one. Further, the petitioner has not committed any act of Commission or omission which amounts to violation of Regulation 50(4) of SBHC Service regulations, in any case, causing jeopardy to the interests of the bank.

k) However, the 3rd respondent having been convinced that the findings of the Inquiring authority were not supported by evidence, at the first instance, have revoked the suspension vide orders dated 16.11.2002 and posted the petitioner to Manthani branch as Deputy Manager vide the orders dated 20.11.2002.

l) Subsequently, the 3rd respondent vide orders dated 29.03.2003 had given findings in support of prejudiced letter and

awarded the punishment to the Petitioner. The proceedings of the Disciplinary Authority and the Enquiring Authority are a sham and exercise of empty formality and influenced by the Chief Vigilance Officer of the respondents bank and hence the punishment awarded by the disciplinary authority is illegal and malafide, biased and against the principles of natural justice.

m) Aggrieved by the same, the petitioner preferred an appeal vide appeal dated 22.05.2003, but the appellate authority continued the findings of the disciplinary authority without proper appreciation and application of mind by simply changing the Language. Thereafter, the review petition filed before the 1st respondent was rejected without proper appreciation and application of mind and the 1st respondent vide orders dated 24.09.2003 had dismissed the review petition. Aggrieved by the said orders passed by the appellate Authority and the orders passed in the Review Petition, the present writ petition is filed.

DISCUSSION AND CONCLUSION :

5. It is the specific case of the Petitioner that the Disciplinary Authority had come to the conclusion basing on an enquiry report

to impose a punishment of reduction of basic pay by two stages in the time scale for a period of two years without earning any increments but however without assigning any reasons merely since the Vigilance Department had recommended, the same had been converted to the penalty of compulsory retirement and hence the Disciplinary Authority's proceedings and the Enquiry Authority's proceedings are sham and exercise of empty formality and activated and influenced by the Chief Vigilance Officer of the Respondents Bank, and hence the orders impugned are illegal and vitiated.

6. It is further the specific case of the Petitioner that the proposed punishment originally given by the General Manager (Operations), Disciplinary Authority has been quoted in the proceedings dated 10.12.2002 as follows:

"Reduction of Basic pay by 4 stages in the time scale for a period of 2 years without earning any increments to his pay during such reduction and on expiry of such period, the reduction will have the effect of postponement of his future increments by treating the period of suspension of the official as off duty whereby he will not be eligible for any payment other than the subsistence allowance already paid to him and will not be eligible for any increment during the period of suspension and the period of such pension will not be counted for service."

The Disciplinary Authority issued Pad Note by awarding reduction of Basic pay on 16.1.2003 as follows:

"the Disciplinary Authority / General Manager (Operations) earlier proposed a "reduce Basic Pay by four stages in the time scale for a period of two years treating the period of suspension as off duty and also the effect of punishment will be with postponement of further increments."

7. The pad note (undated) of the Chief Manager filed as material document by the Petitioner in support of the present writ petition, in particular, the paras 2, 3, 4 and 5, read as under :

"2. In this connection, we submit that the Disciplinary Authority/General Manager (Operations) earlier proposed to "reduce Basic Pay by four stages in the time scale for a period of two years treating the period of suspension as off duty and also the effect of punishment will be with postponement of future increments."

3. On a reference made to Chief Vigilance Officer, Head Office seeking second stage advice, we were advised to put up the papers before **the Disciplinary Authority for reconsideration of the punishment, since the above proposed punishment will not commensurate with the gravity of the lapses** established and also the lapses

committed by the official were serious in nature and the Bank is likely to incur substantial loss.

4. The Disciplinary Authority re-examined the matter and revise the proposed the punishment as referred above at Para-I **where again the Chief Vigilance Officer advised to re-submit the papers for proposing stiffer punishment against the official vide the letter under reference.**

5. In view of the foregoing, the Disciplinary Authority, General Manager (Operations) is requested to examine while keeping in view the observations of the Chief Vigilance Officer and filed his directions in the matter."

8. A bare perusal of the above said pad note as borne on record clearly indicates that the Disciplinary Authority/ General Manager (Operations) earlier proposed to reduce basic pay by four stages in the time scale for a period of 2 years treating the period of suspension as off duty and also the effect of punishment will be postponement of future increments, but however, on a reference made to the Chief Vigilance Office, Head Office, seeking second stage advice it is stated in the said pad note that the Chief Manager was

advised to put up the papers before the disciplinary authority for reconsideration of the punishment since the above proposed punishment will not commensurate with the gravity of lapses established. The pad note further indicates that the disciplinary authority re-examined the matter and reviewed the punishment proposed earlier and again the Chief Vigilance Officer advised to resubmit the papers for proposing stiffer punishment against the official vide letter under reference dated 09.01.2003 received from the Vigilance Department, Head Office and further in conclusion the pad note indicates that the disciplinary authority General Manager, Operations, was requested to examine while keeping in view the observations of the Chief Vigilance Officer and directions in the matter and accordingly the penalty of compulsory retirement of bank service was proposed.

9. The last paragraph of the letter of the Chief Manager, Vigilance Department, Head Office, dated 10.12.2002, addressed to the Chief Manager, Disciplinary Proceedings Department, Head Office, is extracted hereunder :

“In view of the above and taking into consideration the nature of charges/imputations held as established against the official, the Chief Vigilance Officer held that the proposed punishment of **“Reduction of Basic pay by 4 stages in the time scale for a period of 2 years without earning any increments to his pay during such reduction and on expiry of such period, the reduction will have the effect of postponement of his future increments by treating the period of suspension of the officials as off duty whereby he will not be eligible for any payment other than the subsistence allowance already paid to him and will not be eligible for any increment during the period of suspension and the period of suspension will not be counted for service is not commensurate with the gravity of the lapses established .” Hence, we request you to resubmit the papers to the Disciplinary Authority for reconsideration of the punishment proposed against the above official.**

10. A bare perusal of the contents of the last paragraph of the letter dated 10.12.2002 of the Vigilance Department, Head office, addressed to the Chief Manager, Disciplinary Proceedings, Head Office, clearly indicates that the Vigilance Department requested the Disciplinary Proceedings Department to resubmit the papers to the disciplinary authority for reconsideration of the punishment proposed initially against the Petitioner very clearly observing that

the said punishment will not commensurate with the gravity of the lapses established.

11. A bare perusal of the averments made in the counter affidavit filed on behalf of the Respondents indicates a specific stand of the respondents contending that the orders impugned in the present writ petition had been passed independently by the concerned authorities after carefully going through the entire record of the disciplinary proceedings including the findings of the inquiring authority and the CSOs submission there on and also taking into consideration the gravity and nature of charges/imputations held as established in accordance to law in conformity of principles of natural justice uninfluenced by the Chief Vigilance of the Bank. It is further contended by the Respondent Bank that as per the guidelines issued by the Central Vigilance Commission to all Public Sector Banks, Banks are required to obtain opinion of the Commission through the Chief Vigilance of the Bank before any action is taken against the bank official in any disciplinary matter involving vigilance angle in two stages, once at the time of

initiation of a disciplinary action and second at the time of imposing the punishment.

12. A bare perusal of the pad note of the Chief Manager and the letter dated 10.12.2002 of the Vigilance Department, Head Office, (referred to and extracted above) however does not indicate that the Respondent Bank obtained opinion of the Commission through the Chief Vigilance Officer of the Bank **but had infact resubmitted the papers for proposing stiffer punishment against the Petitioner as per the instructions of the Chief Vigilance Officer and at para 5 of the pad note** infact very clearly it is observed that the Disciplinary Authority General Manager, Operations, is requested to examine while keeping in view the observations of the Chief Vigilance Officer and also his directions in the matter.

13. **This Court is of the firm opinion that the findings and orders of the Disciplinary Authority i.e., the 3rd Respondent dated 01.04.2003 and subsequent and consequential orders of the Appellate Authority dated 03.07.2003 and the orders of the Reviewing Authority dated 24.09.2003, admittedly as borne on record had not been passed independently,**

uninfluenced by the observations and directions of the Chief Vigilance Officer in the said regard.

14. This Court on perusal of the record is of the firm opinion that the Disciplinary Authority's mind admittedly had been influenced by the observations of the Chief Vigilance Officer, made in letter No.Vigil/1460, dated 09.01.2003 received from Vigilance Department, Head Office, advising the second stage advice in respect of the proposed punishment on the Petitioner herein. This Court opines that it is not a case where the disciplinary authority consulted the Chief Vigilance Commissioner and obtained his views on the subject issue, but it is a clear case where the disciplinary authority acted upon the instructions of the Chief Vigilance Commissioner, hence the findings of the disciplinary authority and the consequential orders passed by the authorities concerned admittedly are tainted with illegality.

15. The Apex Court in its judgment dated 30.04.1991 reported in (1991) 3 SCC 219 in Nagaraj Shivarao Karjagi Vs. Syndicate Bank, Head Office, Manipal & Another observed at paras 7, 17 as under :

"7. The petitioner has been complaining throughout and also before us that the punishing authorities did not apply their mind and did not exercise their power in considering the merits of his case. They have imposed on him the penalty of compulsory retirement in obedience to the advice of the Central Vigilance Commission which has been made binding on them by the direction dated 21 July 1984 issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). They have blindly followed the advice given by the Central Vigilance Commission without regard to the merits of the matter and contrary to the statutory Regulations governing the departmental inquiries. The subject matter of inquiry was only regarding irregularities in the banking practice and the action complained of has not affected the interests of the Bank. The petitioner by his own efforts has recovered the money due under the discounted cheque and credited the same with interest to the Bank. The findings recorded by the Inquiry Officer on the alleged misdemeanour does not warrant any major penalty like the compulsory retirement. Reference was also made to certain representations said to have been made by the Bank to the Central Vigilance Commission for approval to impose a lesser punishment. It is said that the Bank pleaded in the representations that the punishment of compulsory retirement advised by the Commission was too harsh.

Sydicate Bank Officers Employees' (Discipline and Appeal) Regulations, 1976

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. [Regulation 20](#) provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to [Article 320\(3\)](#) of the Constitution. The [Article 320 \(3\)](#) like [Regulation 20](#) with which we are concerned provides that the Union Public Service Commission or the State Public Commission, as the case may be, shall be consulted-on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in [A.N. D'Silva v. Union of India](#), [1962] Suppl; 1 SCR 968 has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory

upon the punishing authority to accept the advice of the Central Vigilance Commission.

16. A bare perusal of Para 7 and para 17 of the Apex Court judgment referred to and extracted above, clearly indicates that the advice tendered by the Central Vigilance Commission is not binding on the bank or the punishing authority and hence it is not obligated upon the punishing authority to accept the advice of the Central Vigilance Commission.

17. A bare perusal of the judgment dated 21.12.2018 in C.C.No.39/2005 passed by the Hon'ble III Addl. Special Judge for CBI Cases, Hyderabad, clearly indicates that the Petitioner had been acquitted U/s.248(1) of the Code of Criminal Procedure for the offence punishable U/s. 120-B and 420 of Indian Penal Code.

18. A bare perusal of the letter dated 08.02.2021 of the Respondent bank to the Petitioner pertaining to Petitioner's particulars in response to Petitioner's request for sanction of pension reads as under :

PENSION OPTION FOR OFFICIALS RETIRED UNDER CRS

With reference to your letter dated 01.02.2021, received at this office on 04.02.2021, duly enclosing a copy of your letter dated: 12.04.2018, the contents of which are self-explanatory, requesting to consider for sanction of pension, we advise here under the details of your date of appointment, date of retirement and suspension period and pensionable service for your information: -

S.No.	Particulars	
01	Date of Appointment	05.07.1982
02	Date of Retirement under Compulsory Retirement	09.04.2003
03	Total Number of years of service rendered in the Bank	20Y-09M-04D
04	Period of suspension during service From 29.05.2000 to 20.11.2002 which will not count for pensionable service.	02Y-05M-26D
05	Pensionable service after excluding period of suspension (03-04)	18Y-03M-08D

2. In view of the above, as you have not completed minimum pensionable service of 20 years you are not eligible for pension option as per Bank's extant instructions and the same was already orally advised to you by the dealing official at the time of your visit to our Department."

19. This Court opines the punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved the Respondents have to exercise the judicial discretion having regard to the facts and circumstances of each case. The Respondents cannot act as per the dictates of the Chief

Vigilance Officer as to how they should exercise their power and what punishment they should impose on the Petitioner.

20. The Apex Court in a judgment reported in (2007) 4 SCC 699 in Coimbatore District Central Co-operative Bank Vs. Coimbatore District Central Co-operative Bank Employees Association explained the concept of proportionality in the following manner -

‘proportionality’ is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of the decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise – the elaboration of a Rule of permissible priorities. De Smith states that ‘proportionality’ involves ‘balancing test’ and ‘necessity test’. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative’.

21. In the judgment of the Apex Court in *Omkumar v Union of India* reported in 2001 (2) SCC 386, the Court after considering the *Wednesbury* principles and the doctrine of proportionality, has observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as 'Wednesbury principles'.

In the *Wednesbury* case, (1948) 1 KB 223, it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

22. In the case of B.C.Chaturvedi v Union of India reported in 1995(6) SCC 749 it was observed and held at para 18 as under:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact- finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. **If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”**

23. In the case of Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) v Rajendra Singh reported in 2013 (12) SCC 372 at para 19, observed as under:

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

24. The Apex Court in the judgment reported in (1993) 1 SCC 13 in State Bank of India and others Vs. D.C. Agarwal & Another, at para 5 observed as under :

“5. Reliance was placed on Sub-rule 5 of Rule 50 which reads as under:

(5) Orders made by the Disciplinary Authority or the Appointing Authority as the case may be under Sub-rules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.

It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed the Court was not justified in misinterpreting the rule. The learned Counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned Counsel submitted that, in any case, the Disciplinary Authority having passed

detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule **(5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry.** From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation to the CVC which is considered sufficient'. Taking action against as employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that

is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that the reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him **the High Court in our opinion did not commit any error in quashing the order.** No supply of the Vigilance report was one of the ground taken in appeal. But that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Addl. Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority."

25. This Court opines that the judgments relied upon by the counsel for the Respondents filed by Memo dated 11.04.2022 do not apply to the facts of the present case.

26. Taking into consideration:

i) The aforesaid facts and circumstances of the case.

- ii) The judgment in C.C.No.38/2005, dated 21.12.2018 passed by the III Addl. Special Judge for CBI Cases, Hyderabad, referred to and extracted above.
- iii) The averments made in the counter affidavit filed on behalf of the Respondents, referred to and extracted above.
- iv) The view and observations of the Apex Court in the various judgments reported in
- (a) (1991) 3 SCC 219 in Nagaraj Shivaro Karjagi Vs. Syndicate Bank, & another,
 - (b) (2007) 4 SCC 699 in Coimbatore District Co-operative Bank Vs. Coimbatore District Central Co-operative Bank Employees Association,
 - (c) 2001 (2) SCC 386 in Omkumar Vs. Union of India,
 - (d) (1948) 1 KB 223 in the Wednesbury case,
 - (e) 1995 (6) SCC 749 in B.C.Chaturvedi v. Union of India,
 - (f) 2013 (12) SCC 372 in Lucknow Kshetriya Gramin Bank (now Allahabad, Uttar Pradesh Gramin Bank) v. Rajendra Singh,
 - (g) (1993) 1 SCC 13 in State Bank of India and others Vs. D.C.Agarwal & Another (referred to and extracted above,

The writ petition is allowed, the findings and the impugned orders of the Disciplinary Authority i.e., 3rd Respondent dated 01.04.2003 and the consequential orders of the Appellate Authority dated 03.07.2003 and the orders of the Reviewing Authority dated 24.09.2003 are set aside and the matter is remitted to the 3rd respondent with a direction to the Disciplinary Authority to reconsider and dispose of the Petitioner's case in accordance to law in the light of the observations made by the Apex Court in the Judgments referred to and extracted above and also in the present order within a period of 8 weeks from the date of receipt of the copy of the order, in conformity with the principles of natural justice and duly communicate the decision to the petitioner. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Date: 03.06.2024

Note : L.R. Copy to be marked.

B/o. *Yvkr*

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P.No.14471 OF 2004
(L.R.copy to be marked)

Date: 03.06.2024.

Yvkr