

***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+ WRIT PETITION No.13041 OF 2020

% 03—05—2024

P.T.M.Gopala Krishna

...Petitioner

\$ Chief General Manager &
Appellate Authority, SBI, Hyderabad and another

... Respondents

! Counsel for the petitioner : Sri Prabhakar Sripada, learned Senior
Counsel representing Sri Arshad Ahmed

^Counsel for Respondents : Sri B.S.Prasad, learned Senior Counsel
representing Pearl Law Associates

<Gist :

>Head Note :

? Cases referred

1. 2022 (13) SCC 329
2. 2022 (4) ALD 612
3. 2023 SCC Online Chh 3959
4. 1997 (1) SCC 301
5. (2015) 15 SCC 184
6. 2002 (10) SCC 473
7. 1998 (4) SCC 310
8. 1997 (4) SCC 565
9. 1995 (6) SCC 749
10. 2003 (4) SCC 364

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

* * * *

WRIT PETITION No.13041 OF 2020

Between:

P.T.M.Gopala Krishna

... Petitioner

and

Chief General Manager &

Appellate Authority, SBI, Hyderabad and another

... Respondents

JUDGMENT PRONOUNCED ON: 03.05.2024

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**WRIT PETITION No.13041of 2020****ORDER:**

This writ petition is filed challenging the order dated 18.07.2019 vide HR/AR/No.16 passed by the first Respondent confirming the order of punishment of "Removal from Service as provided in Regulation No.67(i) of the State Bank of Hyderabad (Officers) Service Regulations 1979" by the 2nd Respondent vide No.BCDM/LHO/HYD/347 dated 26.12.2018.

2. Heard Sri Prabhakar Sripada, learned Senior Counsel representing Sri Arshad Ahmed, learned counsel appearing for the petitioner and Sri B.S. Prasad, learned Senior Counsel representing Pearl Law Associates, learned counsel for the respondents.

3. The brief facts of the case are as follows:

i) The petitioner joined the respondent Bank as a Junior Associate on 05.09.1988, and his probation was confirmed after six months, i.e., on 05.03.1989. Later, the petitioner was promoted as Assistant Manager in normal channel on 01.12.2002.

Subsequently, he was promoted as Deputy Manager on 01.12.2006 and finally as Manager on 01.11.2012.

(ii) On 16.08.2016, an E-mail from one Sri Nishidhar Reddy Borra, General Secretary of the Association of Australian Education representatives (AAERI) in India, was addressed to the Deputy General Manager, State Bank of Hyderabad, Gunfoundry, informing about the receipt of fraud educational loan sanction letters issued by various Branch Managers of the State Bank of Hyderabad. It was further stated in the said e-mail that they have come across such fake education loan sanction letters issued by different branches of SBH, including the Green Park Colony and Panderghast Road Branches. It was further stated that some Branch Managers of the SBH were also involved along with their associates in the fraud. Some of the identified consultants are one Mr. Sagar and one Mr. Srinivas. It was further informed that a copy of the mail has also been marked to the integrity cell of the Department of Immigration and Border Protection Australia. Accordingly, he requested the competent authority of the SBH to conduct a detailed investigation in respect of the said branches and take appropriate action.

(iii) Pursuant to the developments above, the petitioner, during his tenure as MSME at Moulali Branch from August 2015 to October 2017, was issued a Show Cause Notice dated 12.10.2017, requiring him to offer his explanation in respect of the serious irregularities and lapses said to have been committed by him. The petitioner submitted his reply on 23.10.2017, denying the allegations against him in the Show-Cause Notice. Not being satisfied with the petitioner's reply, the Disciplinary Authority issued a Chargesheet dated 30.07.2018 under State Bank of Hyderabad (Officers) Service Regulations, 1979, against the petitioner framing the following articles of charges:

- (i) *You have influenced and pressurized Sri T Bhuvan Mohan, Branch Manager, Green Park Colony, Hyderabad and Sri K Chandra Sekhar, Branch Manager, Prenderghast Road Branch, Secunderabad and forced them to issue pre-printed fake educational loan sanction letters sent by middle man named Sri Sagar to several students, thus passed pecuniary benefit to third parties.*
- (ii) *You have sent such pre printed sanction letters through a middle man by name Sagar and pressurized the Branch Managers to sign the same in the pretext that there is no real financial loss to the bank and assuring that nothing will happen to anybody.*
- (iii) *Your above acts not are in gross violation of Bank's norms but also misguided, thereby cheated the Bank and International Educational Institutes and caused reputational loss to the Bank and Sovereign Nation.*

(iv) *It is, therefore, alleged that you have failed to discharge your duties with utmost devotion and diligence and violated Rule 50(4) of SBH Officer's Service Regulations, 1979 by which you are governed."*

(iv) The petitioner submitted his reply to the said chargesheet vide letter dated 24.08.2018, stating as follows:

"It is a fact that I have merely given a business lead to Sri. T. Bhuvana Mohan in good faith and without negligence. However, I have cautioned him to be diligent in following all systems and procedures. I have neither influenced, nor insisted, nor pressurized him in any manner. I have never forced him to give educational loan sanction letters unauthorisedly. I am not aware of the preprinted sanctioned letters by middle man by name Sri Sagar. I am not aware of the pecuniary benefit to the third parties. I cannot comment on the purported voice recordings in the absence of listening the same by me.

I have not told anything to Sri. K. Chandra Sekhar. Branch Manager, Penderghast Road Branch. Therefore, the question of my pressurizing and influencing him does not arise. I am totally unaware of sanction letters issued by these officers as mentioned in the examples.

I cannot comment on the observations made by Sri.Nishidhar Reddy Borra, the General Secretary of the Australian Education Representatives of India on the issue of fake education loan sanction letters by branches of SBH in India, as I am not aware of anything in this regard.

I have never misguided or cheated the bank in any way. Therefore, it is not correct to say that my actions are in gross violation of Bank's norms causing reputational loss to the Bank and Sovereign Nation..."

(v) Not being satisfied with the above reply, the 2nd Respondent, vide letter dated 28.08.2018, ordered disciplinary proceedings against

the petitioner by appointing the Inquiring Authority. A preliminary enquiry was held on 15.09.2018, regular hearings took place on 01.10.2018 and 08.10.2018; and the enquiry concluded on 09.10.2018. The Inquiring Authority submitted its report dated 14.11.2018 to the 2nd Respondent Disciplinary Authority, *inter-alia* holding that Charges-1(a), 1(b), 2 and 3 as proved, which was communicated to the petitioner vide letter dated 15.11.2018.

(vi) The Disciplinary Authority, vide letter dated 17.12.2018, communicated to the petitioner the proposed major penalty, i.e., “Removal from service as provided in Regulation No.67 (i) of the State Bank of Hyderabad (Officers) Service Regulation, 1979” and called upon the petitioner to appear before the Disciplinary Authority on 20.12.2018 for personal hearing and make his submissions as to why the 2nd Respondent should not impose the proposed penalty on the petitioner. The petitioner submitted his response to the same, vide letter dated 20.12.2018. Thereafter, the Respondent bank issued a copy of the removal order dated 26.12.2018, wherein the Disciplinary Authority imposed the punishment of “Removal from Service” as provided in Regulation No.67(i) of State Bank of Hyderabad (Officers) Service Rules, 1979 and liberty was given to the petitioner to prefer an appeal before the

Appellate Authority, if he so desires. Accordingly, the petitioner has preferred an appeal before the Appellate Authority.

(vii) The Appellate Authority, under the impugned order dated 18.07.2019, rejected the appeal confirming the punishment of removal from service imposed on the petitioner by the Disciplinary Authority by observing as follows:

“Considering the fact that the official has influenced and pressurized Branch Managers to issue fake educational loan sanction letters and there was a huge reputational loss and dent in the image of the Bank. On account of the gravity of the lapses and in the absence of any new submissions offering mitigation, I am of the considered view that the punishment awarded is commensurate with the gravity of the proven lapses and adequately meets the ends of justices. I, therefore, do not intend to interfere in the process and the appeal is hereby rejected.”

The respondent authorities communicated the impugned order to the petitioner vide letter dated 22.07.2019. Aggrieved thereby, the petitioner has filed the present writ petition.

4. Learned Senior Counsel for the petitioner contended that the petitioner filed his reply on 24.08.2018 denying the allegations made against him, stating that he had merely given business leads to Sri T Bhuvan Mohan in good faith and without malice. Moreover, the

petitioner cautioned him to be diligent in following all systems and procedures. The petitioner stated that he did not influence, insist, or pressurize Sri T Bhuvan Mohan in any manner, nor did he force him to give any educational loan sanction letters unauthorizedly at any time. The petitioner denied being aware of the pre-printed sanction letters purported to have been prepared by a middleman named Sri Sagar, or about any pecuniary benefits to third parties. The petitioner also denied having told anything to Sri Chandrasekhar, Branch Manager, Panderghast Road Branch. Therefore, the question of the petitioner pressurizing or influencing the said Branch Managers does not arise.

5. Learned Senior Counsel for the petitioner contended that the petitioner belonged to MMGS-III Grade (Middle Management Grade Scale), K Chandrasekhar, who deposed as PW-2 in the domestic enquiry, belonged to SMGS-IV Grade (Senior Management Grade Scale), and T.Bhuvan Mohan, who deposed as PW-4, belonged to MMGS-II Grade (Middle Management Grade Scale). Sri K Chandrasekhar was in senior management grade and the petitioner was only in middle management grade at the time of the alleged incidents. Though Sri T Bhuvan Mohan belonged to a grade lesser than the petitioner at the time of the alleged incidents, the said individual was holding a more responsible position in the organization as a Branch Manager, and the petitioner was only a

Manager (Second-in-Charge) of SBH Moula Ali. The educational loan letters were issued by K Chandrasekhar and T Bhuvan Mohan and the charge-sheet issued against the petitioner is apparently on the basis of the statements made by K Chandrasekhar and T Bhuvan Mohan in the preliminary enquiry. It is not possible for the petitioner, who actually belonged to a lower grade (Middle Management Grade Scale), to have pressurized or coerced the said Bank Managers, who belonged to a higher grade than him. Therefore, the said allegations are not attributable to the petitioner.

6. Learned Senior Counsel for the petitioner further submitted that the Disciplinary Authority has also initiated disciplinary proceedings against the said Branch Managers pertaining to the same set of allegations, however, taking a lenient view in respect of the said Branch Managers, imposed minor punishments against them, whereas in respect of the petitioner, the disciplinary authority imposed the major punishment of removal from service, which is illegal and violation of principles of natural justice. When it is admitted by the respondent authorities that the purported fake loan sanction letters were authored by the respective Bank Managers, then the question of imposing the major punishment of removal from service on the petitioner is erroneous and wholly unjustified.

7. The Assistant General Manager, State Bank of Hyderabad, issued Memo dated 17.10.2016 to Sri K. Chandrasekhar, Branch Manager, stating as follows:

“As per observations/Findings of Investigation done by our Vigilance department Official, we came to know that:

- 1. Based on the E-mail logs obtained data from EMS gateway and EMS help desk, fifteen (15) mails of “Educational Loan Verification” have been sent from the branch E-mail ID pgroad@sbhyd.co.in from November 2015 to August 2016.*
- 2. One PDF email attachment of sanction letter issued to Ms. P.Anusha for Rs. 20.00 lakhs could be traced from the PC of the Branch Manager.*
- 3. The inward mails received and outward/sent mails in this regard have been deleted from the branch E-mail system.*

The Branch Manager has sent the E-mail confirmations of having sanctioned the educational loans on his own.”

8. Learned Senior Counsel for the petitioner further submitted that the 2nd respondent has relied solely on an e-mail dated 16.08.2016 by one Nishidhar Reddy Borra, purported to be an educational consultant. The said individual stated in the said e-mail that there were students who possessed fake loan sanction letters issued by various branches of SBH and claimed that the said letters were prepared by the Branch Managers in collusion with their own middlemen, for which the students who are beneficiaries of such letters, typically pay the Branch Manager a sum of about Rs.60,000/- for a loan sanction letter amounting to

Rs.20,00,000/- . For better appreciation, the relevant and important portion of the said e-mail has been extracted below:-

“We have come across many education loan sanction letters from various branches of the State Bank of Hyderabad. Below are a list of such branches:

- 1) SBH, Nancherla Branch, Ranga Reddy District.*
- 2)SBH, PG Road Branch, Hyderabad.*
- 3)SBH, Kulakcherla Branch, Rangareddy District*
- 4)SBH, Maithri Womens College, Nalgonda*
- 5)SBH, Dharur Branch, Ranga Reddy District*
- 6)SBH, Green Park colony, Hyderabad.*

Our office received many loan letters submitted by students and as a part of the current streamlined visa processing arrangement, our role is also to verify the documents submitted. Our role also involves verification of such financial documents as this is a part of our agreement with the university we represent.

Here are some facts:

These loans are not prepared by any education consultant but have been prepared by the branch managers in association with his own middle men. These are fake loans and student or the parent has not visited the branch ever. The middle men arrange these loan letters in association with the bank managers. The consultant or the student is only the user of such document. These fraud loans are used for visa purpose.

This modus operandi involved a few of the branch managers of SBH and some of their agents. They are not education consultants nor are the students directly. The student or the education consultant is charged almost 2% to 3% of the loan amount for such document.

The student or the education consultant is only the user of such fraud where as the actual fraud document preparation is done by the branch managers themselves along with a few of their associates.

I would request your officer to investigate the above branches and punish the bank managers and also the personal involved so that more students don't use them. There has been many instances of students sent back to India due to such documents.

While I am aware that my allegations above are quite serious but they are the facts and I have sufficient evidence for the same. There are many genuine students from Hyderabad. But such instances spoil the name of our city and genuine students are also affected and immigration authorities label Hyderabad as a high risk area."

9. Learned Senior Counsel for the petitioner contended that the credentials of the said Nishidhar Reddy Borra are questionable. He is neither a government officer nor a bank employee. Though the entire disciplinary proceedings were based on his e-mail dated 16.08.2016, he neither deposed before the Inquiry nor did the respondent authorities attempt to contact him thereafter. Hence, imposing the major punishment of removal from service on the petitioner solely on the basis of the said e-mail is wholly unjustifiable. The said e-mail only mentions the names of some Branches and Branch Managers. There is no reference to the petitioner's name in the e-mail dated 16.08.2016.

10. Learned Senior Counsel for the petitioner further contended that the imposition of punishment by the disciplinary authority has not been

done in a fair and impartial manner. The respondent authorities were prejudiced against the petitioner and he has been made a scapegoat, when the Branch Managers were let off with lesser punishments.

11. Learned Senior Counsel for the petitioner further submitted that admittedly, even as per the charge-memo issued against the petitioner, there is no pecuniary loss to the bank at all; and only sanction letters were issued. Further, the sanction letters were not prepared by the petitioner, and they are pre-printed sanction letters authorized by the Branch Managers. The disciplinary authority targeted only the petitioner owing to his position as a pro-active executive member of e-SBH Officers Association.

12. Learned Senior Counsel for the petitioner further contended that the disciplinary proceedings were conducted based on mere conjectures and surmises of the Inquiring Authority. There was no monetary loss caused to the respondent Bank, and therefore, to hold the petitioner guilty of misconduct and imposing the punishment of removal from service, when the Branch Managers who actually authored the sanction letters were let off with minor punishments, is highly prejudicial to the petitioner. Further, under the impugned order, the appellate authority has failed to consider the above facts and has mechanically rejected the appeal without going into the reasons thereof. Therefore, appropriate

orders be passed in the writ petition by setting aside the impugned order and allow the writ petition.

13. Learned Senior Counsel appearing for the respondents filed a counter affidavit denying the allegations made by the petitioner. Learned counsel appearing for the respondents authorities submitted that the entire case has to be looked into on three aspects, *viz.* illegality in decision making, irregularity and proportionality.

14. Learned Senior Counsel appearing for the respondent authorities submitted that the e-mail by Sri Nishidhar Reddy Borra dated 16.08.2016, was merely the starting point for initiating a preliminary enquiry into the allegations of issuance of fake loan sanction letters, wherein it was alleged that certain students who had been issued such letters had obtained it without proper documents or eligibility. It is incorrect to state that the said e-mail was the only evidence relied upon by the Inquiring Authority to find the petitioner to be guilty of misconduct. A perusal of the domestic inquiry proceedings held on 15.09.2018, 01.10.2018, 08.10.2018 and 09.10.2018 would show that the same was conducted in an elaborate manner, with 19 Prosecution Exhibits amounting to 139 pages and 2 pen drives being presented, apart from four witnesses being examined. Further, it is incorrect to state that the petitioner merely issued business leads to Sri T Bhuvan Mohan

and Sri K. Chandrasekhar, Branch Managers. The petitioner's actions amounted to pressurizing and influencing the said Branch Managers, as was clearly shown through the deposition of Sri Bhuvan Mohan, examined as PW-4 in the domestic inquiry.

15. Learned Senior Counsel for the respondent authorities vehemently contended that the petitioner had repeatedly attempted to influence and pressurize Sri T Bhuvan Mohan and Sri K Chandrasekhar, owing to his clout as the active executive member of the e-SBH Officers' Association, and pressured them to issue the said sanction letters to fake educational loan borrowers. The said act of the petitioner resulted in the loss of reputation to the Bank, the sovereign nation, and prejudiced the students' future. It need not be proved that the said act of the petitioner necessarily resulted in any monetary loss to the bank, when it is clear that the petitioner indulged in conduct unbecoming of a bank official.

16. Learned Senior Counsel for the respondent authorities further stated that the evidence presented before the disciplinary authority include the transcript of the mobile conversations between Sri T Bhuvan Mohan and the petitioner. The transcript of these audio recordings point out to the fact that the petitioner has attempted to coerce Sri T Bhuvan Mohan into issuing the said fake sanction letters. Further, it also points out to the fact that Sri T Bhuvan Mohan expresses gratitude to the

petitioner for helping him get transferred to Hyderabad and that he issued the said fake sanction letters only because of his affection towards the petitioner. It further shows that the petitioner repeatedly advised Sri T Bhuvan Mohan to not disclose the name of the petitioner to the officers from the Vigilance or the Personnel Department.

17. The conversation between Sri T.Bhuvan Mohan, Branch Manager and the petitioner dated 19.08.2016 has been extracted below:-

Bhuvan :- Leave about consultancy. One thing Sir, I do not know whether other branch people have issued with a malafide intention, like cash or kind. But, if everybody treats me like that, that will be the biggest insult for me.

Bhuvan :- You helped me a lot while I was in distress, while I was suffering with ill-health. You are really a God for me, as you helped me in getting transferred to Hyderabad, I could do this only because of the respect towards you. I obeyed your word only because of the affection towards you, otherwise, I could ever never do such things. You believe it or not, so many people came to me for the same purpose, but I refused reluctantly. I worked with utmost honesty, but, only the reason behind this is you.

PTM :- Please don't reveal my name with Ravi Kiran and in any pressure. Unnecessarily, it will become a problem. Please disclose my name with nobody. Even if any body pressurizes, you also please do not disclose my name."

18. Learned Senior Counsel for the respondent authorities further contended that both disciplinary proceedings and the appellate proceedings were conducted in due adherence to the principles of natural justice and in consonance with the service regulations, as applicable to the petitioner. Further, the conclusions arrived therein were based on both oral and documentary evidence produced by both parties during the

course of the enquiry. Further, the proceedings were not tainted by any bias or malafide intent, nor were they actuated by any discrimination, as alleged by the petitioner.

19. Learned Senior Counsel for the respondent authorities also contended that it is now well settled that the courts shall not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, then the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries.

20. Learned Senior Counsel for the respondent authorities further contended that the petitioner, with no regard to the fact that he was a responsible officer in the Bank, had committed grave irregularities by influencing and pressurizing the Branch Managers of Green Park Colony Branch and Pendergast Road Branch, and was instrumental in getting the sanction letters issued to fake education loan borrowers. The contentions raised by the petitioner are totally illogical and superfluous. Therefore, the appellate authority has rightly rejected the appeal vide the impugned order. As such, there are no grounds to interfere with the

impugned orders passed by the respondent authorities. Hence, the writ petition is liable to be dismissed.

21. Per contra, learned Senior Counsel appearing for the petitioner, in support of his contentions with regard to judicial intervention in disciplinary proceedings, relied upon the judgment of the Hon'ble Apex Court in **United Bank Of India Vs. Biswanath Bhattacharjee**¹, wherein it was held as follows:

“22. In the present case, the impugned judgment [Biswanath Bhattacharjee v. United Bank of India, 2008 SCC OnLine Cal 766] discloses scrutiny of the record. The same level of scrutiny is absent in the decision of the learned Single Judge. That the Division Bench conducted the kind of scrutiny that it did, cannot be a factor to hold its decision erroneous. In this context, it would be worth recollecting Bernard Schwartz [In Administrative Law, 2nd Edn., p. 584.] that judicial review of administrative decisions: warrants a minimum level of scrutiny:

“If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial enquiry must not be so restricted that it prevents full enquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. It makes judicial review of administrative orders a hopeless formality for the litigant. ... It reduces the judicial process in such cases to a mere feint.”

29. An interesting side is this — Shri Madan Mohan Saha, who confessed to the misconduct, was charged and proceeded with

¹ 2022 (13) SCC 329

departmentally. The confession of guilt, which he owned up to, nevertheless resulted in a mild penalty of withholding of increments. However, the respondent, who did not admit his guilt, or confess to it, and in respect of whom there was no credible evidence, even going by the lower standards of acceptable proof in departmental inquiries, was held to be guilty and visited with the penalty of dismissal. A reading of the disciplinary authority's order reveals that his past record of minor misconduct played a major role in determining his guilt, despite lack of evidence, and the extreme penalty of dismissal.”

22. Learned Senior Counsel appearing for the petitioner further relied upon the judgment of the Hon'ble Apex Court in **J Venkatamani Vs Vigilanceiv Hyderabad And Ors. (A.P.H.C.)**², wherein it was held as follows:

“15. Coming to the case on hand -- As observed in the preceding paragraphs, this Court finds a lot of contradictions in the evidence of P.Ws.1 and 2, whose evidence was strongly relied upon by the Tribunal for Disciplinary Proceedings for arriving at the conclusions. In the considered opinion of this Court, the Tribunal for Disciplinary Proceedings thoroughly failed in appreciating the evidence available on record from proper perspective and came to the conclusions without there being any foundation and basis. While dealing with the career and future of an individual, the Inquiring and Disciplinary Authorities are required to conduct the proceedings with care, caution and circumspection and

² 2022 (4) ALD 612

cannot jump into conclusions on the basis of assumptions and presumptions.”

23. It is needless to state that the scope of judicial review in disciplinary proceedings is well settled and the Hon’ble Apex Court has repeatedly emphasized that illegality, irregularity and proportionality of the punishment imposed are the only grounds for judicial intervention. If it has been made out that the conduct of the proceedings suffer from either of the aforementioned deficiencies, then judicial intervention is certainly warranted.

24. Learned Senior Counsel appearing for the petitioner further relied upon the judgment of the Hon’ble Apex Court in **Aasha Lata Soni VS Durgesh Soni**³, with regard to the recordings made without the consent of the other person not being admissible as valid evidence, wherein it was held as follows:

“10. The High Court of Madhya Pradesh (Indore Bench) in the matter of Arunima @ Abha Mehta (supra), reported in AIR 2016 MP 112 has observed in para-6 and 7 as under:—

“6. On considering the above submissions and the impugned order, I find that the sole question that arises in consideration is whether the tapes produced by the husband are admissible evidence? Admittedly, the conversation was recorded without the knowledge of the wife, behind her back, and is definitely an infringement of her right to privacy. Besides, it is violative of article 11 & 21 of

³ 2023 SCCOnLineChh 3959

the Constitution of India and has rightly pointed out by the Counsel for the petitioner/wife, that interception in the recording conversation is permitted only under the circumstances. Besides, there is also penalty under section 72 of the Information Technology Act and it could not be used as instrument to create evidence of such nature. The cases cited by the Counsel for the respondent are not applicable in the present context and are of no use to the respondent.

7. I find that to say anything beyond the aforesaid would affect the merits of the case and hence it is held that impugned orders dated 10.07.2014 are contrary to the provisions of law and are hereby set-aside. The trial Court, however, may continue in accordance with the provisions of law. The tapes, however, cannot be admitted in evidence but it may be kept on record.”

11. *Now coming to the facts of the present case in the light of aforesaid discussed judgments, it appears that the respondent has recorded the conversation of the petitioner without her knowledge behind her back which amounts to violation of her right to privacy and also the right of the petitioner guaranteed under Article 21 of the Constitution of India. Further, the Right of Privacy is an essential component of right to life envisaged by Article 21 of the Constitution, therefore, in the opinion of this Court, the learned Family Court has committed an error of law in allowing the application under Section 311 of the CrPC along with the certificate issued under Section 65 of the Indian Evidence Act. Accordingly, the order passed by the learned Family Court on 21.10.2021 in Case No. F-118/2019 is hereby set-aside.”*

25. Learned Senior Counsel appearing for the petitioner further relied upon the judgment of the Hon’ble Apex Court in **PUCL Vs Union Of India**⁴ in this regard, wherein it was held as follows:

⁴ 1997 (1) SCC 301

“18. The right to privacy — by itself — has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as “right to privacy”. Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.”

26. During the domestic enquiry proceedings held on 15.09.2018, 01.10.2018, 08.10.2018 and 09.10.2018, PW-4 Sri T Bhuvan Mohan submitted the audio conversations and the messages exchanged with the petitioner, which point out to the latter's role in influencing PW-4. It is needless to say that such recordings are not relied upon by Courts to prove or disprove the guilt of an individual. However, while the learned Senior Counsel for the petitioner has weight in his submissions that the privacy of an individual ought not to be compromised by recording conversations without his knowledge, when the said recordings have been voluntarily submitted by one of the co-delinquents, then it is no defence to say that the Inquiring Authority ought not to have taken such evidence into cognizance. More so, when the substance in those conversations points out to the petitioner's role in attempting to

influence the co-delinquents Sri T Bhuvan Mohan and Sri K Chandrasekhar having no regard for ethics or the bank's regulations. It is also clear that the recording of conversations was done by PW-4 to protect his interest. This gives rise to the suspicion that Bank Managers have developed an attitude of protecting their own backs with no concern for the costs or consequences of their actions.

27. With regard to parity in the matter of punishment with co-delinquents, the learned Senior Counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in **Pawan Kumar Agarwala Vs. General Manager-II and Appointing Authority, State Bank of India and others**⁵, wherein it was held as follows:

“17. The charge-sheet was issued on 28-10-2004 against the appellant making 6 allegations against him and it is undisputed fact that list of witnesses and the copies of the documents were not furnished to the appellant. Further, the disciplinary authority has reversed the findings on Charges 3 and 5 without giving an opportunity to the appellant to show cause in the matter, and thereafter, the order of removal was passed by the appointing authority on the advice of the CVO vide his opinion dated 1-2-2006 and further it is brought on record that similarly placed person, namely, Mr Pradeep Kumar Das, the Manager of Hallydayganj Branch, who has loaned the loan to one Mr Tapan Kumar Sangma, in his case they have imposed lesser punishment of withholding on increment thereby making discrimination in differently treating the

⁵ (2015) 15 SCC 184

appellant herein, which is violation of Article 14 of the Constitution of India.”

28. In the instant case, an e-mail by one Nishidhar Reddy Borra triggered the entire disciplinary proceedings, wherein the role of a few Bank Managers in issuing fake pre-printed loan sanction letters was alleged. The respondent authorities conducted the domestic enquiry, where the petitioner's name was adduced by the respondent authorities by virtue of the depositions of PWs 2 and 4, which led to the petitioner's removal from service. However, the manner of imposing the punishments with regard to the PWs-2 and 4, who have admitted to the act of sanctioning the purported letters, is surprising. The self-serving depositions of PWs 2 and 4 seem to have played a significant role in convincing the disciplinary authority that they deserved a differential treatment in imposing punishments, as against the petitioner, who was squarely removed from service. As such, it is apparent that the respondent authorities have not maintained parity while imposing punishments on all the co-delinquents.

29. With regard to the question of the appellate authority's order not being a speaking order, the learned Senior Counsel for the petitioner has relied upon the judgment of the Hon'ble Apex court in **S.Ramanathan vs**

vs. Chief Judicial Magistrate, Chengalpattu and others⁶, wherein it was held as follows:

“6. Having considered the provisions of Rule 8(v) of the Rules as well as the appellate order, as has been indicated in Annexure P-15 dated 6-12-1985, we have no hesitation to come to the conclusion that the aforesaid appellate order cannot be held to be a speaking order and, therefore, the same cannot be sustained in law. We therefore, set aside the appellate order so far as it relates to affirming the direction of the disciplinary authority directing recovery of Rs 12,07,529.30 paise from the delinquent and remit the matter to the Appellate Authority for reconsideration of the same by passing a reasoned order thereon. The Appellate Authority would do well in disposing of the appeal in respect of the direction regarding recovery of the amount from the appellant within a period of three months from today. This appeal is disposed of accordingly.”

30. A perusal of the impugned order dated 18.07.2019 issued by the Appellate Authority shows that the petitioner had submitted his grounds of appeal pertaining to the lapses/imputations 1(a), 1(b), 2 and 3. The comments/observations of the Appellate Authority with respect to each of these imputations are as follows:

“LAPSE-1/IMPUTATION 1(a):

Both Inquiry Authority and Disciplinary Authority have held the Lapse/Imputation as 'Proved'.

The submissions of the Appellant that Disciplinary Authority has prejudiced without taking into account the proceedings of Defence Representative's views but relied on Inquiry Authority's findings is not acceptable.

It is observed from the case records that the Appellant has forced Sri T.Bhuvan Mohan for issue of preprinted fake educational loan sanction letters.

⁶2002 (10) SCC 473

Accordingly, we hold the Lapse/Imputation as **Proved**.

LAPSE-1/IMPUTATION 1(b):

Both Inquiry Authority and Disciplinary Authority have held the Lapse/Imputation as 'Proved'.

The contention of the Appellant in this regard that the Disciplinary Authority only relied on I.A. findings without looking into the factual proceedings is not acceptable.

From the records it is observed that Sri K.Chandrasekhar has issued educational loan sanction letters without following Banks systems and procedures under the influence and pressure from the appellant.

Accordingly, we hold the Lapse/Imputation as **Proved**.

LAPSE-2/IMPUTATION 2:

Both IA and AA held the Lapse/Imputation as 'Proved'.

We observe from the submissions made by the Appellant that without looking into the factual proceedings, the Disciplinary Authority has taken the decision is not acceptable.

We observe from the submission made by the Appellant that he has reproduced what he has presented as Defense Brief during the Inquiry which was thoroughly discussed during the Inquiry. We also observe that no new facts are presented now to review our decision on the Lapse.

We, therefore hold the Lapse/Imputation as **"Proved"**.

LAPSE-3/IMPUTATION 3:

Both Inquiry Authority and Disciplinary Authority have held the Lapse/Imputation as 'Proved'.

From the records, it was established in the inquiry from circumstantial evidence that the Appellant has influenced the Branch Managers to issue Educational loan sanction letters which has resulted in huge reputation loss.

Further, the contention of the Appellant that his submissions were not considered in any aspect with an unbiased opinion is not acceptable.

We, therefore hold the Lapse as "Proved".

31. The impugned order, by any standard of measure, does not appear to be a Speaking Order. The appellate authority seems to have mechanically reproduced the findings of the disciplinary authority. Such an indifferent attitude taken by the appellate authority frustrates the cause of justice. When an appeal is preferred, an appellate authority ought to appreciate the evidence examined by the Inquiring Authority and look into the aspect of whether the charges made out against the delinquent officer could be reasonably inferred on the basis of such evidence. Additionally, it must render its independent findings and record the reasons for either considering or rejecting the appeal. Appellate proceedings are not to be conducted hastily, without going into the appellant's contentions, or without going into the detailed reasons and rationale behind the rejection of such appeal. The learned counsel for the petitioner has rightly relied upon the judgment of the Hon'ble Apex Court (**6th supra**) in contending that the impugned order dated 18.07.2019 does not assign any reasons or rationale behind its findings.

32. Per Contra, learned Senior Counsel for the respondents relied upon the judgment of the Hon'ble Apex Court in **Vishwamohan Vs. Union Of**

India⁷, wherein it was held that trust is the cornerstone of Banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee. If it is not observed the confidence of the public/depositors would be impaired.

33. Learned Senior Counsel for the respondent authorities further relied upon another judgment of the Hon'ble Apex Court in **Tarachand Vyas Vs. Chairman, Disciplinary Authority**⁸, wherein it was held that the Bank employees are required to exercise higher degrees of honesty and integrity. They deal with the money of the depositors and customers. As such, they are required to take all possible steps to protect the interest of the Bank and to discharge their duties with utmost integrity, honesty and devotion and to do nothing which is unbecoming of a bank employee/officer. It is no defence to say that there is no loss or profit resulted in the case.

34. Learned Senior Counsel for the respondent authorities also relied upon the judgment of the Hon'ble Apex Court in **B.C. Chaturvedi Vs Union of India**⁹, wherein it was held as follows:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant

⁷ [1998 (4) SCC 310]

⁸ [1997 (4) SCC 565]

⁹ [(1995) 6 SCC 749]

to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. *The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers*

from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

35. Learned Senior Counsel for respondent authorities also relied upon the judgment of the Hon'ble Apex Court in **Chairman And Managing Director, United Commercial Bank And Others Vs P.C. Kakkar**¹⁰, wherein it was held as follows:

“11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

14. 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

¹⁰ ¹⁰ [2003 (4) SCC 364]

Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] 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.”

36. This Court is conscious of the fact that the High Court, while exercising its jurisdiction under Article 226 while dealing with disciplinary proceedings, should restrict itself to the Wednesbury Test and not interfere in the orders of a disciplinary authority, which is quasi-judicial in nature, unless the punishment imposed is grossly disproportionate to the charges levelled. Though the learned Senior Counsel for the respondent authorities is right in contending that a Writ Court has no jurisdiction to re-appreciate the evidence when the quantum of punishment is rightly imposed, in the present case, the disparity in the imposition of punishments would require judicial review. As such, the above judgments are now well established principles of law, which do not warrant any specific re-emphasis in the facts and circumstances of the present case.

37. This court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that

the charges levelled against the petitioner pertain to his alleged role in getting issued educational loan sanction letters to fake borrowers by influencing the Branch Managers of SBH Penderghast Road, Hyderabad and SBH Green Park Colony, Hyderabad. The initiation of preliminary inquiry was on the basis of an e-mail dated 16.08.2016 of one Nishidhar Reddy Borra, who informed the respondent Bank about purported fake loan sanction letters, following which, the role of Sri T Bhuvan Mohan and Sri K Chandrasekhar, who were the Branch Managers of State Bank of Hyderabad Penderghast Road, Hyderabad and Green Park Colony, Hyderabad, respectively, came to light. The said Branch Managers deposed before the Inquiring Authority, revealing the name of the petitioner about his purported role of influencing them in getting issued the said letters.

38. A perusal of the transcript shows that the recordings which have been presented as PEX 13/2 to PEX 13/3 by the P.O. in the domestic inquiry proceedings pertain to the purported conversations that the petitioner had with PW-4 Sri Bhuvan Mohan, who categorically deposed that the said conversations were held in the context of issuance of sanction letters, where the petitioner, through one Mr. Sagar, had approached PW-4 with pre-prepared sanction letters, which PW-4 signed and delivered back to Mr. Sagar. It also goes to show that the petitioner

repeatedly urged PW-4 Sri Bhuvan Mohan to not reveal the name of the petitioner, and that the Association would not come to the rescue of PW-4 in case he reveals any names.

39. This Court finds it surprising that though the disciplinary proceedings were initiated based on the e-mail dated 16.08.2016, the name of the petitioner was not mentioned in the said e-mail. Further, the respondent authorities have not made any attempt to either contact or examine the sender of the E-mail, Nishidhar Reddy Borra, and neither was the petitioner given any chance to cross-examine him. This lapse has not been addressed in the impugned appellate order dated 18.07.2019. This Court is not inclined to agree with the view expressed by the learned counsel for the respondent authorities that the deposition or examination of the said Nishidhar Reddy Borra was of no consequence. While it has been held several times in a catena of decisions by the Hon'ble Apex Court that disciplinary proceedings need not require strict standards of proof beyond all reasonable doubt, and the only test is the preponderance of probability, the same has to be answered by following the Wednesbury Test, namely:

A) Have relevant facts not been taken into consideration?

B) Have irrelevant facts been taken into consideration?

C) Is the conclusion drawn so inappropriate that no reasonable person could have arrived at such a conclusion?

40. This Court is of the considered view that Sri Nishidhar Reddy Borra, who was the author of the e-mail dated 16.08.2016, ought to have been examined by the Inquiring Authority, which would have lent more credence to the disciplinary proceedings instituted against the petitioner. Denying an opportunity to the petitioner to cross-examine the said person amounts to a procedural lapse which would warrant the interference of this Court.

41. Regulation 50 of the State Bank of Hyderabad (Officers) Service Regulations, 1979 reads as follows :-

“(4) Every Officer 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 an officer.

Every Officer shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.”

42. Learned Senior Counsel for the respondent authorities, while rightly contending that Bank Officials ought to maintain the highest standards of integrity and probity as they deal with public money, has surprisingly not dealt with the Bank Managers (PWs-2 and 4), in an equally stringent manner. It is strange to note that the person holding

the position of a Bank Manager can so easily be influenced and pressurized so as to go to the extent of issuing fake loan sanction letters merely on the apprehension that the petitioner is an influential executive member of the e-SBH Officers' Association. If such were indeed the case, then every Branch Manager would start succumbing to the pressures of the employees' unions and act in a manner which is prejudicial to the interest of the banks, only to protect their personal interest. A perusal of the transcript of the audio recordings of the conversation between the petitioner and PW-4 Sri T Bhuvan Mohan also shows that PW-4 is seen to be expressing gratitude to the petitioner for helping him in getting transferred to Hyderabad, and affection he had towards the petitioner.

43. This Court considers such behaviour to be unbecoming of an Officer holding the post of a Bank Manager. The act of issuing the loan sanction letters has seemingly been done as a *quid pro quo* for the help rendered by the petitioner to Sri T Bhuvan Mohan for getting him transferred to Hyderabad, by virtue of his position as the member of e-SBH Officers' Association. As such, this Court is unable to understand the preferential attitude shown by the respondent authorities to the co-delinquent Bank Managers by imposing lesser punishments on them. There is merit in the contention of the learned counsel for the petitioner

that with respect to the imposing of punishments, there ought to be parity in dealing with co-delinquents.

44. Learned Senior Counsel for the petitioner has rightly relied upon the judgments of the Hon'ble Apex Court (**5th supra**), wherein it was held that while it was not essential for the disciplinary authority to hold the co-delinquents to be guilty of identical charges, parity is to be maintained while imposing punishments on such co-delinquents, who are similarly placed. As such, the respondent bank has failed to satisfy this Court regarding the parity of punishments imposed on the petitioner, Sri T Bhuvan Mohan and Sri K Chandrasekhar. Further, the appeal proceedings appear to be a namesake exercise undertaken by the appellate authority, as no reasoning or rationale has been given for rejecting the petitioner's appeal, in the impugned order dated 18.07.2019.

45. The punishments imposed on the other Branch Managers are as follows:

“Sri T Bhuvan Mohan : Reduction to a lower stage in the time scale of pay by one stage(s) for a period of one year(s) with further direction that the officer will not earn increments to pay during the rigor of such reduction and on the expiry of such period the reduction will have effect of postponing the future increments of his pays as provided for in Regulation No.67(f) of State Bank of Hyderabad (Officers) Service Rules, 1979”; and

“Sri K.Chandrasekhar: Reduction to a lower stage in the time scale of pay by three stages for a period of two years with further direction that the officer will not earn increments to pay during the rigor of such reduction and on the expiry of such period the reduction will have effect of postponing the future increments of his pays as provided for in Regulation No.67(f) of State Bank of Hyderabad (Officers) Service Rules, 1979”

46. While the said Branch Managers who are co-delinquents were let off with a mere reduction of time scale of pay, the petitioner was imposed the major penalty of “Removal from Service” under Regulation 67(i) of the Regulations. It is distinctly obvious that the petitioner was meted out such a stringent treatment owing to him being an executive member of the officers’ union. This Court is of the firm view that such a prejudicial attitude by the Disciplinary Authority impairs the cause of justice.

47. It is apparent that the said sanction letters were not prepared by the petitioner, but were pre-printed and consequently signed by the Bank Managers. Therefore, the attitude of the disciplinary authority in treating the petitioner with a differential lens shows bias, and is therefore violative of the principles of natural justice. This Court is of the considered view that the Bank Managers should not succumb to the pressures and clout of unions and associations. Associations are welfare bodies, which are established with the sole purpose of advocating and advancing the employees’ rights, and at no cost should they be deemed

as external centers of power which influence the business decisions of banks. If such a situation were to arise, then the public would lose faith in the established channels of approaching the bank, which would lend the banking system in jeopardy, and would be a great disservice to the nation.

48. In view of the foregoing discussion, it is apparent that the punishment imposed on the petitioner is highly disproportionate and disparate with the co-delinquents. Therefore, this Court is of the considered view that it is just and proper to direct the petitioner to make a fresh representation before the respondent authorities to impose any lesser punishment other than that of "dismissal" and "removal from service" in terms of the State Bank of Hyderabad (Officers) Service Regulations, 1979.

49. Accordingly, the writ petition is disposed of directing the petitioner to make a fresh representation before the respondent authorities for imposing any lesser punishment other than that of "dismissal" and "removal from service" in terms of the State Bank of Hyderabad (Officers) Service Regulations, 1979 within a period of four (04) weeks from the date of receipt of a copy of this order. On such representation being made, the respondent authorities are directed to consider the same and

pass appropriate orders in accordance with law, within a period of eight (08) weeks thereafter. No order as to costs.

Pending Miscellaneous petitions, if any, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

Date: 03.05.2024
L.R.copy to be marked
(B/o)
Prv