"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946

OP NO. 38705 OF 2001

PETITIONER:

K.M.HABEEB MUHAMMED
S/O KAHDER KUNJU, AGED 51 YEARS,
S/O. KHADER AT 16/444, KOCHUKOTTARATHIL HOUSE,
KANNANKODE P.O., ADOOR PATHANAMTHITTA.
BY ADVS.
GIRIJA K GOPAL
B.SABITHA (DESOM)
K.N.VIGY

RESPONDENTS:

1 **THE MANAGING DIRECTOR,**
STATE BANK OF TRAVANCORE, HEAD OFFICE,
THIRUVANANTHAPURAM.

2 **THE CHIEF GENERAL MANAGER,**
STATE BANK OF TRAVANCORE, HEAD OFFICE,
THIRUVANANTHAPURAM

3 **THE GENERAL MANAGER (OPERATION)**
STATE BANK OF TRANVANCORE, HEAD OFFICE,
THIRUVANANTHAPURAM
BY ADV P.RAMAKRISHNAN

THIS ORIGINAL PETITION HAVING COME UP FOR ADMISSION ON 19.03.2024, THE COURT ON 27.03.2024 DELIVERED THE FOLLOWING:

CR

P.V.KUNHIKRISHNAN, J.

O.P.No.38705 of 2001

Dated this the 27th day of March, 2024

JUDGMENT

This is one of the oldest original petitions pending before this Court, which was filed under Article 226 of the Constitution of India. The folding files almost disappeared from the racks of our High Court, because, now the writ petitions are to be filed in book form and in flat style. This is a writ petition filed in a folded manner in the year 2001! Of course it had a checkered history. The writ petition was dismissed for non prosecution on 10.01.2012. Thereafter, it was restored only on 25.07.2023. At the time of filing the writ petition, the original petitioner was aged 51 years. Probably, he might have reached the age of 75 now. The way in which this original petition is argued by the petitioner's lawyer would show the fighting mood of the petitioner even now. Now the original petition is going to cross a quarter century as

far as the pendency is concerned. This is not the fault of this court, because the petitioner slept over the order dismissing the writ petition for non prosecution for a period of 11 years.

2. The petitioner was working as Deputy Manager at Kozhikode Main Branch of the State Bank of Travancore (hereinafter mentioned as 'Bank'). He joined the Bank as a Cashier in April, 1970 and was promoted as Assistant Manager and then as Deputy Manager. It is the case of the petitioner that he has got an unblemished service record of 30 years at various branches of the Bank in various capacities as mentioned above. The petitioner is aggrieved by disciplinary proceedings initiated against him which resulted in his removal from service.

3. While the petitioner was working as Deputy Manager (Accounts) at the Piravom Branch of the Bank, he was served with a memo by the 3rd respondent alleging that the petitioner had committed certain serious lapses/irregularities/ malpractices in the loan accounts in his name rendering him liable for disciplinary action under Chapter X of the State Bank of Travancore (Officers) Service

Regulations, 1979. Ext.P1 is the said memo calling upon the petitioner to submit a written statement of his defence. The petitioner submitted Ext.P2 reply. Dissatisfied with Ext.P2 reply, the 3rd respondent ordered an inquiry into the charges levelled against the petitioner. Accordingly, a preliminary hearing was conducted. Exts.P3 and P4 are the Presenting Officer's brief and the petitioner’s defence. Based on the same, Ext.P5 inquiry report was submitted in which it is observed that some of the charges are proved. The petitioner was served with Ext.P5 and he submitted Ext.P6 reply. It is submitted that, in spite of the Ext.P6 explanation submitted by the petitioner, the 3rd respondent-disciplinary authority imposed a punishment of dismissal from service as per Ext.P7 order. Aggrieved by Ext.P7, the petitioner filed an appeal before the 2nd respondent and the 2nd respondent dismissed the appeal except in scaling down the punishment to removal from service. Ext.P8 is the appeal filed by the petitioner and Ext.P9 is the order passed by the 2nd respondent-appellate authority. The petitioner again filed a review petition before the 1st respondent as evident by Ext.P10, the same was also

rejected as per Ext.P11. Aggrieved by Exts.P7, P9 and P11, this original petition is filed.

4. Heard Adv.Girija K. Gopal, the learned counsel for the petitioner assisted by Adv. B.Sabitha (Desom). I also heard Adv.P. Ramakrishnan who appeared for the respondent-Bank. After arguing the matter in detail, both sides filed argument notes also.

5. Adv.Girija K. Gopal submitted that the disciplinary authority, the appellate authority and the authority who considered the review had not considered the contentions raised by the petitioner. It is submitted that there is absolutely no loss of money to the Bank in this case. The learned counsel also submitted that the imposition of extreme penalty of dismissal or even removal from service is not justified for the reason that the disciplinary authority concluded the inquiry and imposed the punishment based on suspicions and presumptions. The counsel also submitted that the penalty is disproportionate to the charges levelled. According to the counsel, the allegations alleged do not

amount to any gross misconduct to impose a major penalty. It is also submitted by the counsel that the punishment imposed is highly excessive and the prosecution has not proved the charge against the delinquent. The counsel substantiated these contentions after taking me through the inquiry report in detail. The counsel for the petitioner also relies on the judgments of the Apex Court in **Union of India v. H.C. Goel** in [AIR 1964 SC 364], **State of Haryana v. Rattan Singh** [(1977) 2 SCC 491], **Jagdish Prasad Saxena v. State of Madhya Bharat** (AIR 1961 SC 1070), **Bagat Ram v. State of Himachal Pradesh and others** [(1983) 2 SCC 442], **The Andhra Pradesh Industrial Infrastructure Corporation Limited. v. Raj Kumar and others** [(2018) 6 SCC 410] and **The State of Karnataka and others v. Umesh** [(2022) 6 SCC 563].

6. Adv.P. Ramakrishnan, who appeared for the respondent-Bank supported the impugned order. The learned counsel submitted that charge No.1 which is proved to the extent mentioned in the report would show that the alterations made in the vehicle loan account benefited none

other than the petitioner himself. The counsel submitted that, as far as the second charge is concerned, all the eight credit vouchers for closure of his own loan accounts were both prepared and passed by the petitioner himself and that itself shows the seriousness of the charge. The counsel submitted that the degree of proof required in domestic inquiries is not that of a Court of Law. Evidence Act and strict rules of evidence are not applicable to domestic inquiries, is the submission. The counsel submits that even hearsay evidence is accepted on domestic enquiries. According to the counsel for the Bank, the jurisdiction of a Constitutional Court under Article 226 of the Constitution of India does not envisage a re-appreciation of evidence in domestic enquiries. Moreover, no fundamental or other rights of the petitioner is violated on account of the disciplinary action against the petitioner, is the submission. Adv.P. Ramakrishnan relies on the judgment in **DGM (Appellate Authority) and others v. Ajay Kumar** [(2021) 2 SCC 612], in which the Apex Court observed that strict rules of evidence are not applicable to departmental enquiries. It is submitted by the counsel appearing for the

Bank that the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. The counsel also submitted that the power of judicial review in the matters of disciplinary enquiries, by constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. It is further submitted that the petitioner was given full opportunity to participate in the inquiry and he examined his witness and marked documents in support of his contentions. It is also submitted that the entire inquiry was conducted in a fair and unbiased manner. Adv.Ramakrishnan also relied on the judgment in **State Bank of India and Another v. Bela Bagchi and Others** [2005 (7) SCC 435] to contend that a Bank Officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers and

therefore, every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank. According to the counsel for the Bank, the petitioner, who is the Deputy Manager (Accounts), had clearly falsified the Bank's records for deriving monetary benefits and thus forfeiting the confidence reposed on him by the Bank. The counsel also submitted that the punishment is proportionate to the misconduct committed by the petitioner. The counsel for the Bank also relied on the judgment of the Apex Court in **U.P. State Road Transport Corporation v. Vinod Kumar** [(2008) 1 SCC 115] wherein it was held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman.

7. This Court considered the contentions of the petitioner and the respondent Bank. Two points to be decided in this case are the following:

1. Whether this Court should interfere with the disciplinary proceedings and the findings in

it by the Inquiry Officer, appellate authority and revisional authority?

2. Whether the punishment imposed is proportionate to the charges levelled?

Point No.1

8. The jurisdiction of this Court to interfere with the disciplinary proceedings invoking the powers under Article 226 is well settled. In **Union of India v. H.C.Goel** [AIR 1964 SC 364] the Apex Court considered this question in detail. It will be better to extract paragraph 23 of the above judgment:

> "That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not.

> This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him? In exercising its jurisdiction under Art.226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence." (Underline supplied)

9. From the above decision, it is clear that while exercising its jurisdiction under Article 226, the High Court cannot consider the question about the sufficiency or adequacy of

evidence in support of a particular conclusion. The Apex Court observed that it is a matter which is within the competence of the authority which dealt with the question. But, of course the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. It is submitted that if the whole of the evidence led in the inquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent is the question to be decided. The Apex Court observed that this approach will avoid weighing the evidence and it will take the evidence as it stands and only examine whether on that evidence, the impugned conclusion follows or not. Bearing in mind the above principle, I will consider the evidence available in this case to find out whether the charges are proved against the petitioner. Ext.P5 is the report of the inquiry authority. The first charge alleged against the petitioner was that when he was transferred to the Piravom Branch of the Bank from Kumily Branch in 1995, the liabilities under demand loan (vehicle loan) No.17/95 for Rs.80,000/- dated 15.08.1991 was also transferred to Piravom Branch and

the petitioner carried out certain fraudulent alterations in the figures in the books of Piravom Branch and thereby principal component of his loan was reduced by Rs.4,000/- with a fraudulent intention to reduce the interest liability on the loan. It is also alleged that the petitioner made a number of other alterations/ manipulations of the figures in principal and interest applied columns in the above loan account during May 1997, November 1997, December 1997 and February 1998 with the amount aggregating Rs.9,000/- under the principal, in an attempt to defraud the Bank. It is stated in the report that the charge is that the undue benefit derived under the interest payable on the loan by the petitioner on account of the above series of fraudulent manipulations/alterations carried out in the figure of principal amount works out to Rs.2,847/-. As far as the first charge is concerned, the inquiry report shows that the petitioner's involvement in altering figures cannot totally be ruled out. According to the petitioner, the alteration may be the handwork of some enemies of the petitioner within the Branch. But the Inquiry Officer observed that if some

enemies had altered the figures in order to malign the petitioner, then why the petitioner failed to disclose the same is important. Based on the available evidence, the disciplinary authority found that the petitioner's involvement in altering the figures cannot totally be ruled out. This finding is accepted by the respondents who are the fact finding authorities. This Court cannot find fault with the respondents for accepting the report because this Court has no jurisdiction to re-appreciate the evidence. As observed by the Apex Court in **H.C.Goel's** case (supra), this Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion of the disciplinary authority. I see no reason to interfere with the findings of the respondents in accepting the report of the disciplinary authorities as far as charge No.I is concerned.

10. Charge No.II against the petitioner is that he, with an intention to defraud the Bank, closed certain demand loans sanctioned to him by the Bank under its staff loan scheme without paying the interest which fell due thereon. The disciplinary authority found that all works connected with the

closure of these accounts namely preparation of vouchers, passing of vouchers, posting in the ledgers and closure authorisation were done by the petitioner himself in his own handwriting. Therefore, the inquiry officer found that, from the evidences elucidated during the inquiry and from the circumstantial evidence, it is established that the action on the part of the petitioner in not debiting the upto date interest on the date of closure of the accounts is a deliberate omission and hence the charge is proved. The above finding of the inquiry officer was accepted by the respondents. I see no reason to take a different view by invoking the jurisdiction under Article 226 of the Constitution of India as far as the Charge No.II is concerned.

11. Charge No.III is that without any authorisation from the sanctioning authority, the petitioner fraudulently altered in the ledger sheet about the amount sanctioned limit of Rs.81,000/- to make the same as Rs.81,000/- + Rs.18,000/- and made withdrawals therefrom upto the amount of Rs.1,02,700/-. It is the case of the respondent Bank that the petitioner enjoyed the Bank’s funds beyond the facility

sanctioned to him by resorting to manipulations in the Bank's ledger. This loan account was closed on 24.05.1997 without applying interest which works out to Rs.1,839/- is the charge. As far as this charge is concerned, the inquiry officer found that the same is partly proved. I see no reason to take a different view to the findings of the respondents as far as this charge also.

12. The Disciplinary Authority, the Appellate Authority and the Review Authority considered the charges and the findings in the inquiry report about the charges in detail, and accepted the report. This Court cannot reappreciate the evidence and take a different view invoking the powers under Article 226 of the constitution of India. Therefore, I am of the considered opinion that there is nothing to interfere with the finding of the Authorities as far as charges are concerned. As far as charge No.4 is concerned the inquiry officer himself found that the same is not proved.

13. In the light of the above discussion, I am of the considered opinion that this Court cannot interfere with the finding of the Inquiring Authority which is accepted by the

Disciplinary Authority, the Appellate Authority and the Review Authority invoking the jurisdiction under Article 226 of the Constitution of India. As observed by the Apex Court, this Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion in a disciplinary proceeding invoking powers under Article 226 of the Constitution of India. Therefore, the 1st point is found against the petitioner.

Point No.2

14. The 2nd contention of the petitioner is that the penalty imposed by the respondents is disproportionate to the charges levelled. As evident by Ext.P7, the Disciplinary Authority found that the charges proved are serious and therefore it is a fit case for imposition of penalty of dismissal of the petitioner from Bank services. The petitioner submitted Ext.P8 Appeal before the 2nd respondent appellate authority. After considering Ext.P8, the 2nd respondent appellate authority found that there is nothing to interfere with the order passed by the disciplinary authority. But in

Ext.P9, it is clearly stated that since there has been no loss to the Bank and considering the family behind the official, the punishment is scaled down to removal from service. Therefore, the 2nd respondent appellate authority itself found that there is no loss to the Bank and therefore the punishment of removal from service is enough. It is an admitted fact that the petitioner had about 30 years of service in the Bank. There is no evidence to show that there was any misconduct on the part of the petitioner during his entire service. Since, admittedly, there is no loss sustained to the respondent bank and considering the facts of this case, I am of the considered opinion that the penalty now imposed to the petitioner is disproportionate to the charges levelled. As I stated earlier the appellate authority in Ext.P9 clearly stated that there is no loss to the Bank. There is no case to the disciplinary authority or the Bank that there was any misconduct on the part of the petitioner earlier. It is also an admitted fact that the petitioner completed about 30 years of unblemished service in the Bank. In such circumstances, I am of the considered opinion that the punishment of “removal

from service" is disproportionate to the charges levelled against the petitioner. Moreover, in paragraph No.17 of the writ petition the petitioner pointed out certain instances where serious similar irregularities were proved, and the officers concerned were imposed minor penalties. There is no specific denial of the above in the Counter filed by the respondent. That shows an element of discrimination as far as the petitioner is concerned. Therefore, I am of the opinion that the punishment imposed on the petitioner is to be reconsidered. To facilitate the same, punishment imposed can be set aside. Now the State Bank of Travancore merged with the State Bank of India. Therefore, the 1st respondent or the competent authority will pass appropriate orders as far as the punishment to be imposed on the petitioner in the light of the discussion and observations in this Judgment.

Therefore, this writ petition is disposed with following directions.

1. Ext.P7, P9, and P11 are set aside to the extend of the punishment imposed on the petitioner alone.
2. The 1st respondent or the competent authority is directed to reconsider the

punishment of “removal from service” imposed on the petitioner and impose appropriate punishment proportionate to the charges proved against the petitioner.

3. The above exercise shall be completed by the 1st respondent/competent authority as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this Judgment.

4. Based on the punishment imposed, if the petitioner is entitled to any monetary benefits, the same also should be disbursed to the petitioner within two months from the date on which the orders are passed as directed above.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

NP/JV/SMK

APPENDIX OF OP 38705/2001

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE MEMO NO. DPD/673/261 OF THE 3RD RESPONDENT**
Exhibit P2	**TRUE COPY OF THE EXPLANATION OF THE PETITIONER.**
Exhibit P3	**TRUE COPY OF THE WRITTEN BRIEF OF PRESENTING OFFICER**
Exhibit P4	**TRUE COPY OF THE DEFENCE BRIEF OF THE PETITIONER**
Exhibit P5	**TRUE COPY OF THE ENQUIRY REPORT (DPD/673/500)**
Exhibit P6	**TRUE COPY OF THE REPLY OF THE PETITIONER.**
Exhibit P7	**TRUE COPY OF THE PUNISHMENT ORDER NO. DPD/673/1534 OF THE 3RD RESPONDENT**
Exhibit P8	**TRUE COPY OF THE APPEAL SUBMITTED BEFORE THE 2ND RESPONDENT**
Exhibit P9	**TRUE COPY OF THE ORDER NO. PAD/8/673/52 OF THE 2ND RESPONDENT**
Exhibit P10	**TRUE COPY OF THE REVIEW PETITION FILED BEFORE THE 1ST RESPONDENT**
Exhibit P11	**TRUE COPY OF THE ORDER NO. PAD8/673/100 OF THE 1ST RESPONDENT**