

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY 2018

BEFORE

THE HON'BLE MR. JUSTICE A S BOPANNA

W.P.No.18992/2003 (S-DE)

c/w

W.P.No.40590/2003 (S-R)

BETWEEN:

S M ADIGA
AGED ABOUT 56 YEARS
S/O S G ADIGA EARLIER WORKING
AS ASSISTANT GENERAL MANAGER
AN OFFICER IN SENIOR MANAGEMENT
GRADE SCALE-V AT SYNDICATE BANK
REGIONAL OFFICE DELHI
SINCE RETIRED & RESIDING AT
SRI GURU KRIPA, 158, 4TH CROSS
SARASWATHINAGAR,
VIJAYANAGAR EXTENSION
BANGALORE-560 040

**... PETITIONER
(COMMON)**

(BY SRI P S RAJAGOPAL, SR.COUNSEL FOR
SRI M N PRASANNA, ADV.)

AND:

SYNDICATE BANK
REP. BY ITS GENERAL MANAGER (P)
HEAD OFFICE: PERSONNEL DEPARTMENT
PERSONNEL ADMINISTRATION DIVISION (O)
HEAD OFFICE: MANIPAL-576 119
UDUPI DISTRICT.

**... RESPONDENT
(COMMON)**

(BY SRI K RADHESH PRABHU, ADV.)

W.P.No.18992/2003 IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE ORDER PASSED BY THE RESPONDENT BANK DATED 03.10.2001 VIDE ANN.L, DATED 26.12.2002 VIDE ANN.Y AND DATED 28.03.2003 VIDE ANN.AA AND DIRECT THE BANK TO PAY TO THE PETITIONER THE SUM OF RS.7,57,355/- BEING THE BALANCE 50% OF EX-GRATIA TOGETHER WITH INTEREST THEREON AT 18% PER ANNUM FROM 1-10-2001 UNTIL DATE OF PAYMENT.

W.P.No.40590/2003 IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE ORDER BY THE RESPONDENT /BANK DATED 16.07.2003 VIDE ANN-CC AND GRANT ALL CONSEQUENTIAL BENEFITS AND ALSO DIRECT THE RESPONDENT /BANK TO PAY TO THE PETITIONER ARREARS OF PENSION ETC TOGETHER WITH INTEREST AT 18% PER ANNUM FROM THE DATES THE RESPECTIVE PENSION AMOUNTS WERE DUE UNTIL DATE OF PAYMENT.

THESE WRIT PETITIONS HAVING BEEN RESERVED FOR ORDERS ON 19.06.2018, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING :

ORDER

The parties in both these petitions are the same and the issue being the same but ultimately the penalty imposed being different, the petitions are taken up together and disposed of by this common order.

2. The petitions at the earlier instance were disposed of through the order dated 20.10.2008 and subsequently by order dated 20.04.2011 whereby a coordinate bench had allowed the writ petitions, quashed the respective orders in the writ petitions and

the respondent-Bank was directed to release all the monies withheld. Respondent-Bank claiming to be aggrieved by the said order had preferred the writ appeals in WA No.4570/2011 and connected appeals. The Hon'ble Division Bench of this Court through the order dated 20.02.2015 on having taken note that the consideration made by the learned Single Judge related to the petitioner herein as well as to two other petitioners and in that light observed that the learned single Judge has not considered the case of each of the petitioners, the omission and commission in each case. It was therefore of the opinion that the charge leveled against each of the employees based on the evidence let in by the Bank is to be considered. Since the same had not been done, without adverting to the merits of the rival contentions, the Hon'ble Division Bench has set aside the order passed in these writ petitions and had requested that the writ petitions relating to this petitioner and the other petitioners be considered separately on merits after providing opportunity to both the parties. It is in that circumstance these two

petitions relating to the same petitioner are taken up together while the other petitions have been delinked.

3. In W.P.No.18992/2003 the petitioner is assailing the communication dated 03.10.2001 (Annexure-L), the communication dated 26.12.2002 (Annexure-Y) and the communication dated 28.03.2003 (Annexure-AA) whereby the respondent-Bank has intimated the petitioner that the earlier order for release of the remaining 50% of the ex-gratia on acceptance of VRS is withdrawn and the amount of Rs.7.57 lakhs being the balance 50% of the exgratia amount is appropriated towards financial loss likely to be caused to the Bank on account of the lapse by the petitioner. Through the last communication the request made by the petitioner to release the amount is rejected.

4. In W.P.No.40590/2003 the petitioner is assailing the order dated 16.07.2003 whereunder the respondent-Bank has ordered that one-third of the monthly pension payable to the petitioner be withheld permanently without affecting his family pension. The

said order is by way of penalty for the misconduct alleged against the petitioner having been proved. Since the petitioner had opted for the voluntary retirement under the scheme which had also been permitted by the respondent Bank and application was accepted, the petitioner was to be paid the ex-gratia amount payable under the scheme and the pension pursuant to the retirement. The respondent Bank however considering the charge against the petitioner was for a grave misconduct has resorted to impose the penalty as noted above. In that circumstance what arises for consideration herein is the nature of the charge and in that light whether it constitutes grave misconduct so as to deny the terminal benefits to the petitioner ?

5. The petitioner herein while working as a Chief Manager at Carnac Street Branch at Calcutta from 04.06.1999, in respect of certain loan transaction an allegation was made against the petitioner of unduly favoring the borrower and a detailed Article of charge and statement of imputations dated 01.01.2002 were issued as at Annexure-M to the petition. Pursuant

thereto, Enquiry was conducted and the charge was held to be established as per the report dated 06.07.2002 of the Enquiry Officer. A reply had been issued by the petitioner to the second show cause notice and no further proceeding was pending.

6. When this was the position, a scheme called the Syndicate Bank Employees Voluntary retirement scheme, 2000 was notified through the Circular dated 21.10.2000. The petitioner submitted his application dated 29.11.2000 seeking voluntary retirement under the scheme. The application was accepted through the order dated 20.02.2001 as at Annexure-G and accordingly the petitioner was relieved from the services of the Bank on 15.03.2001.

7. To put it in perspective, in respect of certain loan transaction regarding which irregularity was alleged as stated above, a show cause notice was issued to the petitioner on 13.07.2000, which was replied by the petitioner on 26.08.2000 denying the allegations, seeking to justify his action. When the matter was at

this stage, the respondent-Bank introduced the Voluntary Retirement Scheme on 21.10.2000. The petitioner submitted his application opting under the scheme which was accepted by the respondent Bank on 20.02.2001 and he was also relieved from his duty on 15.03.2001. Out of the total ex-gratia amount payable under the scheme, 50% of the same amounting to Rs.7,23,840/- was also paid to the petitioner. It is subsequent thereto an article of charge dated 01.01.2002 was issued to the petitioner, pursuant to which the Enquiry was held and on holding the charges proved against the petitioner, orders impugned to withhold the remaining 50% of the ex-gratia amount towards recovery of the loss and the penalty of withholding one-third of the pension amount permanently was imposed through the respective orders dated 26.12.2002 and 16.07.2003.

8. The learned senior counsel for the petitioner at the outset contended that the VRS provided that the employees against whom disciplinary proceedings are contemplated/ pending or are under suspension were

not eligible under the scheme. In that background, though a show cause notice had been issued to the petitioner, the petitioner had replied the same and the matter had concluded. It is subsequent to that the VRS scheme came into force and the application was accepted without demur as the matter was closed. Hence the subsequent action to issue charge sheet is without authority is the contention. It is in that view contended that the recovery made and the punishment imposed is not sustainable. In that regard reliance is placed on the decision in the case of ***R.K.Singhal -vs- General Manager, The Disciplinary Authority, Indian Overseas Bank, Madras, (1991(4)Kar. L.J. 333***), wherein this Court after taking note of the sequence which had indicated a quietus being given, but in respect of alleged commissions and omissions of the year 1977 a charge sheet being issued subsequently in 1988, it was held that the Disciplinary Authority cannot be permitted to exhume the charges which were stale. The decision of the Hon'ble Supreme Court, in the case of ***Bank of India and others -vs- O.P.Swarnakar***

and others [(2003) 2 SCC 721] is also relied to contend that the VR scheme is of contractual in nature and as such once the offer is accepted the same cannot be altered. Hence it is contended that as per the letter dated 20.02.2001 (Annexure-G), the right reserved at clause-4 is only to recover any loss or damage caused while in service. There is no such loss caused and no action could have been initiated to withhold the amount.

9. The learned senior counsel has also relied on the decision in the case of **Lal Audhuraj Singh -vs- State (AIR 1967 MP 284 -DB)** wherein the Division Bench of the Madhya Pradesh High Court has held that if the authority concerned knowing about the misconduct promotes the Civil servant without reservation cannot thereafter punish him for the lapse or misconduct. The learned counsel for the respondent Bank would however refer to the VR scheme and also to the Syndicate Bank (Employees') Pension Regulations 1995, to contend that such right is available to the employer. The decision in the case of **Union of India -**

vs- B.Dev (AIR 1998 SC 2709) wherein a similar rule was under consideration and it is held that such power can be exercised in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service is relied.

10. In the above background, in the instant case though the VR scheme provides that the benefit would not be available to employees against whom proceedings are pending and despite that it has been accepted, it cannot be assumed that all acts are condoned and the VR is accepted. This is for the reason that in the letter of acceptance, the employer has reserved the right to recover any loss. That apart the Regulations 1995 makes a provision for such procedure. The Regulations No.43, 44, 45 and 48 based on which the power is exercised by the employer reads as hereunder;

“43. Withholding or withdrawal of pension: *The competent Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave*

misconduct; Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations.

44. Conviction by Court: *Where a pensioner is convicted of a serious crime by a Court of law action shall be taken in the light of the judgment of the court relating to such conviction.*

45. Pensioner guilty of grave misconduct: *in a case not falling under Regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in Syndicate Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 or in Settlement as the case may be.*

46. XXX

47. XXX

48. Recovery of Pecuniary loss caused to the Bank:

1) *"The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the*

pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service;

Provided that the Board shall be consulted before any final orders are passed;

Provided further that departmental proceedings, if instituted while the employee was in service, shall after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

2. No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution: Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

3. Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee:

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations.”

11. Having taken note of the same though it is clear that the regulation permits the action, the question that has been raised for consideration is as to whether the charge alleged and held to be proved against the petitioner could be treated as a 'grave misconduct' so as to impose the punishment and recover the amount in the manner as has been done as it is permissible only in that circumstance. However, before adverting to that aspect, the contention with regard to the improper conduct of the Enquiry and denial of opportunity as alleged is to be addressed.

12. On that aspect the learned senior counsel for the petitioner has contended that the disciplinary Enquiry held against the petitioner is based on the preliminary investigation said to have been held by the Bank, but the preliminary investigation report was not made available to the petitioner. In that regard the

learned senior counsel has relied on the following decisions:

(i) In the case of ***Tirlokh Nath -vs- Union of India and others [(1967) 1 SLR 759]*** wherein it is held that if the public servant requires for his defence, he has to be furnished with copies of all the relevant documents, that is, the documents relied on by the Enquiry Officer or the documents required by the public servant for his defence;

(ii) In the case of ***G.V. Ashwathanarayana -vs- Central Bank of India, by Chairman, Bombay and others (ILR 2003 Kar 3066)*** wherein a Hon'ble Division Bench of this Court has held that a delinquent is entitled to demand and receive two sets of documents, one which is the basis on which the charges are framed and the disciplinary authority places reliance, the other on which the disciplinary authority does not rely but they are required by the delinquent to effectively defend himself and

(iii) In the case of ***Bindurao Jivaji Kulkarni -vs- State of Mysore & others (1968 ILR Kar 98)*** wherein

it is held that the copies of the documents relied on should be given to provide an opportunity to defend. Police complaint copy is necessary to effectively cross examine the Police Inspector.

13. The learned counsel for the respondent Bank on the other hand would however contend that the preliminary investigation report is an inter departmental communication which was not produced nor relied in the Enquiry and as such a copy was not necessary to be furnished. The decision in the case of **Syndicate Bank -vs- A.M.Suganasundaram (W.A.No. 4599/2001 dated 12.10.2004 -DB)** is relied to indicate that it is held therein that the preliminary investigation report which did not constitute the statement of the Investigating Officer is not liable to be supplied. The decision in the case of **Krishna Chandra Tandon -vs- Union of India (AIR 1974 SC 1589)** wherein it is held that the non supply of the preliminary Investigation report did not vitiate the Enquiry nor would it violate the principles of natural justice is also relied upon.

14. From the above, the position is also clear that a mere contention of non supply of the document by itself will not be sufficient but the prejudice caused due to that is also to be brought out. In the instant case a perusal of the papers in that background will disclose that it is not the preliminary investigation report alone which was made as the basis. The witness who was examined in the Enquiry as PW-1 has narrated the entire aspect before the Enquiry Officer and the petitioner who is the delinquent had the opportunity of cross-examining the witness. In that circumstance, the evidence available in the Enquiry proceedings was analysed and a finding was rendered. Hence, no prejudice is shown due to the non-supply of the preliminary report even if that be a correspondence. That apart the contention on behalf of the respondent is also that it is not in the nature of an Enquiry report, but it is a communication based on which the Enquiry was initiated. In that regard no case is made out to set aside the Enquiry or to hold it as vitiated on that ground.

15. Having taken note of the above aspects, the issue to be considered is as to whether the charge alleged and held to be proved against the petitioner could be termed as 'grave misconduct' so as to invoke the Regulations 1995 and to order withholding of the ex-gratia amount and a portion of the pension as has been ordered in the instant case. Since the term 'grave misconduct' has not been defined in the Regulations, it is contended that the act herein does not constitute such misconduct and the learned Senior counsel for the petitioner has relied on the decisions;

(i) In the case of ***Inspector Prem Chand -vs- Govt of NCT of Delhi and others [(2007) 4 SCC 566]*** wherein it is held that it was necessary for the disciplinary authority to arrive at a finding of fact that the unlawful behaviour is wilful in character. An error of judgment per se is not a misconduct. A negligence simpliciter also would not be a misconduct. It is held that misconduct means misconduct arising from ill motive. Acts of negligence, errors of judgment, or innocent mistake do not constitute such misconduct.

(ii) In the case of ***State of Punjab and others -vs- Ram Singh, Ex-constable [(1992) 4 SCC 54]*** wherein, an earlier decision is noticed in which it is held that the word misconduct is a relative term and had to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct.

(iii) In the case of ***Mallappa.K -vs- State of Karnataka [1985(2) Kar. L.J. 199]*** wherein a learned Judge of this Court has held that the two essential ingredients required to initiate and continue the proceedings are pecuniary loss to the state and that the loss must have occurred on account of grave misconduct or negligence. It is held, Epithet 'grave' connotes enormity of misconduct.

(iv) In the case of ***H.L.Gulati vs. Union of India and others [(2015)12 SCC 408]*** wherein it is held that on the establishment of the charges the punishing authority will record a finding whether the conclusions

lead to the further inference that the delinquent has committed acts of grave misconduct or grave negligence and

(v) In the case of ***Union of India vs. Dr.V.T.Prabjalaram*** **[(2010)171 DLT 556 (DB)]** wherein the Division Bench of Delhi High Court has considered the aspect relating to the term 'grave misconduct' as hereunder:

“33. Acts of moral turpitude, acts of dishonesty, bribery and corruption would obviously be an aggravated form of misconduct because of not only the morally depraving nature of the act but even the reason that they would be attracting the penal laws. There would be no problem in understanding the gravity of such kind of offences. But that would not mean that only such kind of indictments would be a grave misconduct. A ready example to which everybody would agree with as a case of grave misconduct, but within the realm of failure to maintain devotion to duty, would be where a fireman sleeps in the fire office and does not respond to an emergency call of fire in a building which ultimately results in the death of 10 persons. There is no dishonesty. There is no acceptance of bribe. There is no corruption. There is no moral turpitude. But none would say that the act of

failure to maintain devotion to duty is not of a grave kind.

34. *It would be difficult to put in a strait jacket formula as to what kinds of acts sans moral turpitude, dishonesty, bribery and corruption would constitute grave misconduct, but a ready touchstone would be where the 'integrity to the devotion to duty' is missing and the 'lack of devotion' is gross and culpable it would be a case of grave misconduct. The issue needs a little clarification here as to what would be meant by the expression 'integrity to the devotion to duty'. Every concept has a core value and a fringe value. Similarly, every duty has a core and a fringe. Whatever is at the core of a duty would be the integrity of the duty and whatever is at the fringe would not be the integrity of the duty but may be integral to the duty. It is in reference to this metaphysical concept that mottos are chosen by organizations. For example in the fire department the appropriate motto would be: 'Be always alert'. It would be so for the reason the integrity of the duty of a fire officer i.e. the core value of his work would be to be 'always alert'. Similarly, for a doctor the core value of his work would be 'duty to the extra vigilant'. Thus, where a doctor conducts four operations one after the other and in between does not wash his hands and change the gloves resulting in the*

three subsequent patients contracting the disease of the first, notwithstanding there being no moral turpitude involved or corruption or bribery, the doctor would be guilty of a grave misconduct as his act has breached the core value of his duty. The example of the fireman given by us is self explanatory with reference to the core value of the duty of a fireman to be 'always alert'."

16. The learned counsel for the respondent on the other hand has contended that the case being put forth on behalf of the petitioner to contend that the acts are not grave misconduct has not been pleaded in the writ petition and as such the respondent Bank did not have an opportunity to controvert the same. It is contended that the charge sheet dated 01.01.2002 itself has described the misconduct as grave misconduct and the same has been proved in the Enquiry. The order of the competent authority dated 16.07.2003 has also recorded that the petitioner is held guilty for acts of grave misconduct within the meaning of the Regulations, 1995. It is his contention that whether an act constituted grave misconduct or not is a question of

fact to be assessed on the basis of the charges which would differ from one faculty to other.

17. The learned counsel for the respondent has in this regard relied on the decision in the case of **V.Narayana Rao vs. Syndicate Bank (ILR 2015 (5) Kar 4007)** relating to the power of recovery in case the pensioner is found guilty of the grave misconduct or negligence of criminal breach of trust, forgery, or acts done fraudulently during the period of his service. In the said case the Court found the grave misconduct of the petitioner therein to be writ large and in that view the power under Regulation 48 was held justified and in the case of **Union of India and others vs. B.Dev [(1998)7 SCC 691]** to contend with regard to power under Rule 9 therein which was considered to hold that in the case of grave misconduct being committed, the power to recover the pecuniary loss is available. It is held therein that the gravity of the misconduct would depend on the nature of conduct.

18. In the background of the above contentions, though the learned counsel for the respondent has contended with regard to the pleading not being raised, I am of the opinion that the same would not preclude the petitioner from raising the contention in a circumstance where the very action initiated by the respondent Bank is by invoking the regulations which permits the action only in cases of grave misconduct and the entire case of the respondent Bank regarding the action initiated against the petitioner being on that basis. Hence, the consideration in the instant case as to whether the action is justified in that regard and more particularly in the circumstance where the Division Bench has set aside the earlier order and restored for reconsideration on that aspect with respect to the charges involved herein would make it incumbent for this Court to consider that aspect.

19. It is no doubt true that as contended by the learned counsel for the respondent Bank the consideration as made in the various decisions referred to supra by the learned senior counsel for the petitioner

is under the different nature of employment and keeping in view the nature of the misconduct with reference to the same it is not found to be grave. It is in fact very well articulated in the decision of the Delhi High Court in the case of **Dr. Prabajalaram** (supra), by explaining the core duty, its fringe aspect and in that context to understand what would be the core duty in the different nature of employment so as to determine the graveness of the misconduct, the illustration is also stated. If in that circumstance the contention of the learned counsel for the respondent Bank is kept in view, certainly the integrity of a person working in a Bank or financial institution will have to be of the highest order since such employee would day in and day out be dealing with the financial matter relating to the employer and any deviation would lead to financial loss. Even if this aspect is kept in view what would require examination is the nature of the allegation, the manner in which the Enquiry Officer has dealt with the same and in that circumstance whether the penalty imposed is justified, more particularly in a circumstance it is not

in the nature of punishment when the petitioner is still in service, but the penalty is in the nature of denying the terminal benefit to that extent for the service already rendered.

20. Hence, at the outset it is necessary to take note of the charges alleged and the manner of consideration made by the Enquiry officer. The Enquiry report is at Annexure- W, wherein after referring to the Article of Charge and the evidence tendered, the analysis of the evidence is made and the finding is recorded.

21. In that regard, the Enquiry Officer in the background of the charge alleged against the petitioner with regard to the pre-sanction appraisal not being ensured for taking over the liabilities from Canara Bank and not obtaining the permission from the competent authority, thereby exceeding the discretionary powers as also not ensuring sufficient care to obtain proper and adequate securities, has on analyzing the evidence held that the enhancing the limit was not justified and also not following the procedure laid down in the

guidelines. The ultimate findings is that the Articles of charge framed against the petitioner is “sufficiently established”. The nature of the analysis and finding does not refer to the said acts of the petitioner to be of such a grievous nature. That apart insofar as taking over the liability relating to M/s Cadet Advertising and Marketing Pvt. Ltd, the matter had been considered at an earlier point by the respondent Bank and as seen from the letter dated 23.09.1999 (Annexure-C), which was marked as MEX-14 in the Enquiry, the competent authority had approved the action of the petitioner as a special case. The conclusion no doubt is that the approval was subject to following the guidelines.

22. Insofar as the aspect relating to ratification by the superior authority which would make the act valid, the following decisions relied on by the learned senior counsel for the petitioner would be relevant, i.e.,

i) In the case of ***National Institute of Technology and another vs. Pannalal Choudhury and another [(2015) 11 SCC 669]*** - wherein the purport of the expression 'ratification' is considered and

taking note that it is the making valid of an act already done and that subsequent ratification of an act is equivalent to a prior authority to perform the act and in the case which was being considered it was held that the dismissal order which was passed without authority had stood ratified and therefore valid.

ii) In the case of ***Maharashtra State Mining Corporation vs. Sunil*** [(2006) 5 SCC 96] - wherein also it is held that ratification is the approval of the act that was improperly performed

iii) In the case of ***Sri Parmeshwari Prasad Gupta vs. The Union of India*** [(1973) 2 SCC 543] wherein the purport of ratification was considered and it was held that ratification would always relate back to the date of the act ratified and the termination was held to be valid.

23. Yet the consideration to be made herein is also whether the finding that the guidelines have been violated would be sufficient enough for the action that has been initiated against the petitioner since the learned counsel for the respondent Bank contends that apart from the approval given by DGM to one action,

there are other charges also. This is moreso in the circumstance wherein the punishment imposed is not under the service rules while continuing in service but under the pension regulations after retirement which permits the action only in respect of grave misconduct moreso in the circumstance where the benefits earned by the employee during his service would stand denied to him. In that background, when the charge sheet issued was alleging 'grave misconduct' and when the Enquiry Officer has held it to be 'sufficiently established', can that still be construed as grave misconduct. Since the Regulations 1995 provides for action only in cases of 'grave misconduct', merely using the expression 'grave misconduct' in the Articles of Charge so as to invoke the Regulation and also use such expression in the order of penalty without there being appropriate consideration in that regard in the findings of the Enquiry and in the order of the competent authority will not be a fair procedure, moreso when there is nothing on record to establish that the petitioner has benefited from the same or that he had

involved in similar misconducts earlier and lighter punishments had been imposed.

24. Further pursuant to such Enquiry report, dual action has been initiated against the petitioner by withholding 50% of the exgratia amount on acceptance of VRS and also withholding one-third of the pension as a penalty. The learned counsel for the respondent Bank would no doubt contend that the penalty imposed is referable to Regulations 43 and 48 for withholding one third of pension and the action of non payment of 50% of the exgratia is not a penalty but recovery of the loss suffered by the Bank due to the act of the petitioner. Though such contention is put forth what is necessary to be taken note is that the ultimate action with reference to the Enquiry by terming the guilt as 'grave misconduct' was taken through the proceedings dated 16.07.2003 by the Competent Authority by passing the order as at Annexure-CC in W.P.40590/2003. However, even prior to the same the impugned communication dated 26.09.2002 as at Annexure-Y to W.P.No.18992/2003 was issued appropriating Rs.7.57

lakhs being 50% exgratia amount towards the alleged financial loss caused to the Bank. As noticed the Articles of Charge does not quantify the amount of actual loss alleged to have been caused, except stating that the Bank was exposed to serious risk of financial loss. The finding in the Enquiry report is also to the effect that the guidelines have not been adhered and there is no specific finding with regard to the actual loss caused due to the act of the petitioner. Further the impugned communication dated 26.12.2002 (Annexure-Y) only indicates that the Bank is likely to suffer a loss of Rs.36.66 lakhs on account of the lapses. But it has been thereafter stated that the exgratia amount is withheld towards the financial loss. Therefore the manner in which the power has been exercised is without reference to the factual aspect but on surmises.

25. Even insofar as withholding a portion of the pension as penalty, the order dated 16.07.2003 (Annexure-CC) would refer to the Enquiry proceedings and the conclusion of the competent authority that the petitioner has failed to discharge his duties with utmost

devotion and diligence and also failed to protect the interest of the Bank and thereby exposed the Bank to grave financial risk. Having taken note of such finding the competent authority, keeping in view that the charges have been substantially proved has concluded that it constitutes grave misconduct, without independent application of mind to that aspect of the matter. When the action is initiated under the Regulations which permits such action only for 'grave misconduct', there should be application of mind to that aspect to conclude so and thereafter take action. While so concluding the policy guidelines of the Bank is also to be taken into consideration wherein one of the considerations enumerated is as follows:

“2.3. Loan Failures and Accountability

When loan failures occur, as they at times do, it becomes necessary for the Bank to examine the causes for the failure and record them in its institutional memory so that such failures can be avoided in future. Only if such failures are the result of direct acts or omissions on the part of the staff, the accountability aspect has to be examined. Wherever it is found that staff lapses by way of acts or omissions have not contributed to the

failure of the credit facility, the mere presence of such lapses should not become a cause for proceeding against the employee concerned. The rationale for this approach is the fact that deficiencies and lapses involving procedural and other aspects can always be found even in well conducted accounts.”

26. Therefore if all the above aspects are taken into consideration, the action of the respondent-Bank against the petitioner would not be justified in the facts and circumstance of this case. Accordingly, the following;

ORDER

(i) The communication and order dated 03.10.2001, 26.12.2002 and 28.03.2003 as at Annexures-L, Y and AA insofar as W.P.No.18992/2013 are quashed.

(ii) The order dated 16.07.2003 as at Annexure-CC to W.P.No.40590/2003 is quashed.

(iii) The respondent Bank is directed to pay the withheld amount to the petitioner within two months.

(iv) The petitions in W.P.Nos.18992/2003 and 40590/2003 are allowed with no order as to costs.

**Sd/-
JUDGE**

akc/bms