

Sham A. Nemical Vs Canara Bank and Others

Court: Karnataka High Court

Date of Decision: July 29, 2015

Citation: (2015) 5 KarLJ 582

Hon'ble Judges: R.S. Chauhan, J

Bench: Single Bench

Advocate: T.B. Kiran Kumar, for the Appellant; T.R.K. Prasad, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Chauhan, J

Aggrieved by the order dated 08.02.2001, whereby the departmental enquiry was initiated with the submission of charge

sheet, aggrieved by the order dated 03.08.2001, whereby, the punishment of compulsory retirement was imposed, and equally aggrieved by the

order dated 24.09.2002, whereby the departmental appeal filed by the petitioner was rejected by the Appellate Authority, the petitioner has

approached this court.

2. Brief facts of the case are that, the petitioner namely, Mr. Sham N. Nemical was an employee of the Canara Bank. He had honestly served the

bank for 20 years. In the year 2000, the bank had introduced a Special Voluntary Retirement Scheme. In the year 2001, the petitioner had opted

for the same. But, before his option could be exercised, on 08.02.2001, he was served with articles of charges. The petitioner submitted his reply.

The bank appointed one Mr. Parthasarathy as the Enquiry Officer. The Enquiry Officer after holding a complete enquiry found the petitioner guilty

of charges; the Enquiry Officer submitted his report to the Disciplinary Authority. Thereupon, the Disciplinary Authority issued second show-cause

notice. The petitioner replied to the same. However, by order dated 03.08.2001, the Disciplinary Authority imposed the punishment of

"Compulsory Retirement" upon the petitioner. Since the petitioner was aggrieved by the said order, he filed a departmental appeal. However, by

order dated 24.09.2002, the Deputy General Manager, as the Appellate Authority, dismissed the departmental appeal. Since the petitioner was

aggrieved by the said order, he filed a Review Petition before the Executive Director. However, by order dated 19.06.2003, the said review

petition was also dismissed. Hence, this petition before this court.

3. This case was heard by a learned Single Judge of this Court. By order dated 19.12.2011, the learned Single Judge modified the punishment of

"Compulsory Retirement" to that of "retirement with consequential benefits." However, as the petitioner and the respondent bank were aggrieved

by the said order, they filed two different writ appeals, namely, W.A. No. 4817/2012 filed by the present petitioner and W.A. No. 5367/2012

filed by the respondent bank before the learned Division Bench of this court. By judgment dated 20.11.2014, the learned Division Bench has set

aside the order dated 19.12.2011, and has remanded the case back to the learned Single Bench. Hence, this petition before this court.

4. Mr. Kiran Kumar, learned counsel for petitioner has raised the following contentions before this court:-

Firstly, that the very initiation of departmental enquiry is highly misplaced. For, neither Mr. Chandrapa nor Mr. Thippeswamy, from whom the

petitioner is alleged to have taken Rs. 10,000/- and allegedly not deposited the said amount in a fixed deposit, have filed any complaint before the

respondent bank. In fact, the very articles of charges revealed that the same have been framed against the petitioner on the basis of news item

published in a local newspaper. Therefore, the bank was not justified in initiating the departmental enquiry on the basis of some news item

published in a local newspaper.

Secondly, although it is alleged that the misconduct had occurred in 1997-98, although, it is alleged that the news item appeared on 26.12.1999,

the charge sheet was not submitted till 08.02.2001. Thus, there was an inordinate delay of three years in submitting the charge sheet.

Thirdly, due to the said delay, the statements given by Mr. Chandrapa and Mr. Thippeswamy during the course of enquiry cannot be believed.

Fourthly, while deposing before the Enquiry Officer, Mr. Thippeswamy has turned hostile and has not supported the case of the bank. Therefore,

the Enquiry Officer was certainly not justified in finding the petitioner guilty of the offences.

Fifthly, there is no proof of the fact that Mr. Chandrapa and Mr. Thippeswamy had given Rs. 10,000/- each to the petitioner.

Sixthly, the omission allegedly committed by the petitioner in not depositing Rs. 10,000/- each of Mr. Chandrapa and Mr. Thippeswamy does not

come within the definition "misconduct" contained in Regulation 3(1) of the Canara Bank Officer Employees' (Conduct) Regulations 1976 (for

short, "the Regulations")

Seventhly, the petitioner had merely taken a loan from Mr. Chandrappa and Mr. Thippeswamy. Therefore, it was a private affair of the petitioner;

it does not concern the bank.

Lastly, that the punishment of compulsory retirement is shockingly disproportionate to the alleged misconduct committed by the petitioner.

According to the learned counsel, neither the Disciplinary Authority nor the Appellate Authority nor the Reviewing Authority has considered the

mitigating circumstances that the petitioner had served the bank for 20 years without a blemish. Therefore, the petitioner, in fact, should have been

punished with a minor penalty of mere Warning" or "Censure". Hence, the impugned orders deserve to be set aside and the penalty of compulsory

retirement deserves to be reduced to a mere warning. Therefore, the respondent should be directed to reinstate the petitioner with back wages.

In order to buttress this contention, the learned counsel has relied upon the judgments of the Hon"ble Supreme Court in the case of Kailash Nath

Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, AIR 2003 SC 1377 : (2003) 97 FLR 556 : (2003) 3 JT 322 : (2003) 2 LLJ

367 : (2003) 3 SCALE 428 : (2003) 9 SCC 480 : (2003) SCC(L&S) 1137 : (2003) AIRSCW 1813 : (2003) 3 Supreme 318 and in the case of

Jai Bhagwan Vs. Commr. of Police and Others, (2013) 7 AD 694 : AIR 2013 SC 2908 : (2013) 138 FLR 776 : (2013) 9 JT 176 : (2013)

LabIC 3139 : (2013) 8 SCALE 392 : (2013) 11 SCC 187 : (2013) 4 SCT 607 : (2013) 3 SLJ 56 .

5. On the other hand, Mr. T.R.K. Prasad, the learned counsel for respondent bank, has submitted the following pleas before this court:-

Firstly, it is incorrect to say that the entire departmental enquiry was initiated on the basis of a news item in a newspaper. In fact, since the

petitioner had refused to repay Rs. 10,000/- each to Mr. Chandrappa and Mr. Thippeswamy, the amounts which he had drawn from their loan

accounts, and which he had promised to put in a fixed deposit on their behalf, these two persons along with other villagers had staged a protest

(Dharna) in front of the bank. The Dharna had caused immense embarrassment to the bank in the village. The local newspaper has merely reported

about the Dharna by the villagers. Therefore, considering the protest, the bank had ordered for a preliminary enquiry. On the basis of finding of the

preliminary enquiry, the departmental enquiry was initiated. Therefore, it is incorrect for the learned counsel for petitioner to contend that the

departmental enquiry was initiated merely on a newspaper report.

Secondly, that there is no inordinate delay. The Dharna occurred in the year 1999. After completing the preliminary enquiry, the charge sheet was

issued on 08.02.2001. Therefore, the delay is not fatal to the departmental enquiry.

Thirdly, both Mr. Chandrapa and Mr. Thippeswamy have supported the case of the bank. Even after Mr. Thippeswamy was declared to be

hostile, in his cross-examination by the Presenting Officer, he has reverted back to his testimony given by him in the examination-in-chief.

Therefore, both Mr. Chandrapa and Mr. Thippeswamy have supported the case of the bank.

Fourthly, since they have supported the case of the bank, even if there is no documentary proof that money was so given, their testimony does not

stand diluted.

Fifthly, Banks depend on the trust of the people. Any act which causes mistrust in the mind of the people would be fatal to the very existence of the

bank. Keeping in mind, the relationship of trust between the bank and its customers, Regulation 3(1) defines the conduct which is considered

essential for the bank's employees. It is in this light that Regulation 3(1) clearly laid down that "Every officer employee shall, at all times, take all

possible steps to ensure and protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do

nothing which is unbecoming of an officer employee.

In order to ensure the confidence of people in the banking transactions, integrity and honesty of the employee is sine-quo-non condition. Since, the

petitioner had taken Rs. 10,000/- each from Mr. Chandrapa and Mr. Thippeswamy under a promise to deposit the same in a fixed deposit, since

he had failed to open the fixed deposit account on their behalf, and to deposit the said amount, he had acted dishonestly and his integrity had

become doubtful. Therefore, he committed misconduct, warranting initiation of departmental enquiry.

Sixthly, as an employee of the bank, the petitioner is not permitted under Regulation 15 of the Regulations to borrow any loan from any persons

who is dealing with the bank. Even if, for the sake of argument it is accepted that the petitioner had taken a temporary loan of Rs. 10,000/- each

from Mr. Chandrapa and Mr. Thippeswamy, the said taking of loan is in violation of Regulation 15 of the Regulations. Thus, his act of taking loan

tantamounts to misconduct committed by him.

Emphasising the need for a Bank Officer Employee to observe honesty and integrity, the learned counsel has relied upon judgment of the Hon^{ble}

Supreme Court in the case of State Bank of India and Others Vs. Ramesh Dinkar Punde, (2006) 110 FLR 1159 : (2006) 7 JT 383 : (2006) 3

LLJ 563 : (2006) 8 SCALE 11 : (2006) 7 SCC 212 : (2006) SCC(L&S) 1573 : (2006) 4 SCR 511 Supp : (2007) 2 SLJ 78

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Lastly, that punishment of compulsory retirement commensurates with the misconduct committed by the petitioner. Merely because the petitioner

has worked for 20 years without any complaint, would not mitigate the severity of misconduct. It is due to his misconduct that the bank had to face

embarrassment of a protest against the bank in a small village. Thus, the bank's reputation has been tarnished beyond repair.

Most importantly, despite the fact that petitioner deserves to have his service terminated, considering the fact that he has served the bank for 20

years, as a benevolent gesture, a lesser punishment, that of compulsory retirement was imposed upon the petitioner. The petitioner was

compulsorily retired so as to ensure that he would be entitled to retirement benefits and would not suffer financial death due to a single act of

misconduct. But, in case, such penalty was not imposed upon the petitioner, then the other employees would be motivated to commit similar

misconduct thereby further damaging the reputation and goodwill of the bank. Thus, the punishment commensurates with the extent of misconduct

committed by the petitioner.

6. Heard the learned counsel for parties and perused the record and examined the impugned orders.

7. A bear perusal of the charge sheet clearly reveals that the charges were framed after holding preliminary enquiry. The preliminary enquiry was

triggered by the fact that the villagers had protested before the bank with regard to the omissions committed by the petitioner in relation to Mr.

Chandrapa and Mr. Thippeswamy. After the investigation and preliminary enquiry were completed, the bank realized that it was a fit case for

initiation of departmental enquiry. Therefore, it framed charges against the petitioner. The charges are as under:

You have been working as an Officer at currency chest, Chiradurga since 30.6.98. Earlier, you were working as an officer at our Chikkajajur

Branch from 21.8.95 to 29.6.98.

While working at Chikkajajur Branch, the following two loans have been granted for cultivating mulberry crop, The applications were sponsored

by Sericulture Department under Government Sponsored scheme.

1. ALAA1/97 Sri. Thippeswamy: Rs. 23,500/-

2. ALAA2/97 Sri. Chandrappa: Rs. 23,500/-

The two Borrowers have alleged that with an assurance to open Fixed Deposits to their names, you had taken Rs. 10,000/- each from them. But

no such deposit accounts have been opened in the names of the borrowers. A news item has appeared in a local daily newspaper on 26.12.98

stating that you have failed to open the Fixed Deposit as assured by you and you had also reportedly threatened the borrowers. The news item

further revealed that with the unreservation of Locals and compromise was arrived at with your assurance to refund the amount you had obtained.

An investigation conducted into the matter of confirmed the above facts.

The details of irregularities/lapses are morefully enumerated in the statement of imputation to the Articles of Charge.

By your above acts, you have failed to discharge your duties with utmost devotion and diligence, honesty and integrity thereby contravened

Regulation 3(1) read with Regulation 24 of Canara Bank Officer, Bangalore, (Conduct), Regulations 1976 was committed a mis-conduct which is

punishable under the provisions of Canara Bank, Officer Employees (Discipline Appeal) Regulations 1976.

STATEMENT OF IMPUTATION TO ARTICLES OF CHARGE

Shri. Sham A. Nemical (33322) is working as an Officer of our currency chest, Chitradurga Branch since 30.6.98. Earlier, he was working as an

Officer of our Chitradurga Branch from 21.8.95 to 29.4.98.

While so working at Chikkajajur Branch, the following two loans have been granted for cultivating mulberry crops. The applications were

approved by sericulture Department under Government Sponsored scheme with an undertaking the provide subsidy.

1. AL AA 1/97 - Sri. Thippeswamy Rs. 23,500/- Equal subsidy Rs. 23500/-

2. AL AA 2/97 - Sri. Chandrappa Rs. 23,500/- -do-

The loans were disbursed in stages. The two borrowers have alleged that Sri. Sham A. Nemical, with an assurance to open Fixed Deposits to the

names of borrowers had taken Rs. 10,000/- each from them. But no such deposit accounts have been opened in the names of borrowers.

An investigation conducted into the matter has revealed the following:

Sri. Thippeswamy withdrew Rs. 15,000/- on 1.1.1998 being the second installment under the loan account AL AA 1/97 granted to him. Sri.

Siddappa of sericulture department has received Rs. 5,000/- and the balance amount of Rs. 10,000/- was taken by Shri. Sham A. Nemical,

informing the borrower that the amount would be kept in Fixed Deposit in his name. After receiving the amount of Rs. 10,000/- Shri. Sham A.

Nemical never deposited the amount in the FD. Sri. Thippeswamy borrower after coming to know that Rs. 10,000/- paid by him has been

deposited in the FD account, approached Shri. Sham A. Nemical and demanded refund of the amount. Shri. Sham A. Nemical refused to pay

back the amount and also threatened the borrower of lodging a police complaint against him if he persistently visited currency chest, Chitradurga.

Shri. Chandrappa has alleged that when he withdrew the second installment of Rs. 13,000/- on 10.11.1997 the sericulture Department

Representative Sri. Siddappa took Rs. 5000/- and the balance amount of Rs. 10,000/- was taken by Shri. Sham A. Nemical informing him that

the amount will be kept in Fixed Deposit in his name. Sri. Chandrappa approached Sri. Sham A. Nemical several times seeking the FD receipt and

each time he was told not to worry about the receipt. Subsequently when Sri. Sham A. Nemical was transferred from Chikkajajur branch, the

borrower Sri. Chandrappa came to know that the deposit was made in his name for the amount. He has allegedly approached Sri. Sham A.

Nemical at Chitradurga several times but could not receive the amount.

Aggrieved by the behaviour of Sri. Sham A. Nemical Sri. Thippeswamy lead a group of villagers and staged a Dharna in front of currency chest,

Chitradurga, which has ultimately culminated in gathering of local citizens and the incident appearing as a news item in local daily ""Vijaya

Karnataka"" on 26.12.1999.

Sri. Sham A. Nemical agreed to repay the amount of Rs. 1000/- to the borrower as appeared in the news item which was published in the above

local daily on 26.12.1999.

Sri. Sham A. Nemical with the deliberate intention of covering up the entire transaction purchased the D.D. for Rs. 10,000/- in favour of Sri.

Thippeswamy, S/o. Rangappa, AL AA 1/97 through E. Mallikarjun, sub-staff of Chitradurga, Gramina Bank, by handing over the amount to him.

Further with the deliberate intention of covering up of his identify behind the transaction, he had caused the name of Sri. E. Mallikarjun to be

incorporated as the name of the purchaser of the said D.D. in the relevant challan. The proceeds of the above D.D. was credited to the loan

account of the borrower on 7.2.2000 at our Chikkajajur Branch.

By withholding Rs. 1000/- belonging to Sri. Thippeswamy under AL AA 1/97 as above Sri. Sham A. Nemical had mis-appropriated the loan

proceeds by mis-using his to official position in the Bank.

By his action of mis-appropriating the borrowers money and refusing to pay the same, he had given cause for publishing the ness item in local daily

Vijaya Karnataka"". Thus lowering the image of the Bank in the eyes of the public.

An explanation into the matter was called for from Sri. Sham A. Nemical by S.S.(0) CD, Bangalore, vide letter No. BLC/ESO/3523/EO dated

27.10.2000 and the reply date 25.11.2000 submitted by him is neither convincing nor satisfactory.

By his above action Sri. Sham A. Nemical has failed to perform his duties with utmost devotion and diligence, honesty and integrity, and thereby

contravened Regulation 3 Clause 1 read with Regulation 24 of Canara Bank Officers Employees (Conduct) Regulation 1976, which is a mis-

conduct punishable under Canara Bank Officers Employees (Discipline) and Appeal Regulation 1976.

8. Considering the facts narrated above, the learned counsel for petitioner is unjustified in claiming that the entire domestic enquiry was initiated

only because of a news item which had appeared in the daily newspaper called Vijaya Karnataka". Therefore, the said contention is unacceptable.

9. The delay in submitting the charge sheet is not so great as to be fatal to the initiation of departmental enquiry. Although, a charge sheet should be

filed as soon as possible, mere delay of three years would not adversely affect the right of the petitioner in gathering the evidence and submitting the

same before the Enquiry Officer. This court cannot ignore the fact that before initiating departmental enquiry, a preliminary enquiry was held and

the report of the investigating officer was submitted. Since the said investigation report does not bear any date, the petitioner is not justified in

claiming that initiation of departmental enquiry is delayed by three years. Even if it is delayed by three years, the delay does not prevent the

petitioner from collecting all the evidence which were in his favour. Therefore, the contention with regard to the delay is without any merit.

10. Although it is true that neither Mr. Chandrapa and Mr. Thippeswamy have submitted any documentary evidence to prove the fact that they had

given Rs. 10,000/- each to the petitioner for being deposited in Fixed Deposit to be opened by the petitioner, but, in the present case, their

testimony is sufficient to prove the charges against the petitioner. During the course of investigation Mr. Chandrappa's statement was recorded. It

was marked as MEX-2 during the enquiry proceedings. In his statement given to the investigating officer, Mr. Chandrappa states that he had taken

a loan from Canara Bank, Chikkajajur Branch for a sum of Rs. 47,000/- through Sericulture department. He was sanctioned Rs. 23,510/- from

the Sericulture Department as subsidy. The Canara Bank had sanctioned a loan of Rs. 23,500/-. In order to procure the said loan, on 07.10.1997,

the witness had handed over the original title deeds of his lands to the Bank. He received first installment of the loan amount. On 10.11.1997, he

received the second installment of Rs. 15,000/-. A sum of Rs. 5,000/- was paid to Mr. Siddappa who was working in the Sericulture department.

The remaining balance of Rs. 10,000/- was received by the petitioner to keep the same in fixed deposit in the name of the witness.

According to the witness, he had repeatedly asked the petitioner to give him receipt of the Fixed Deposit. He had merely assured that he would

give it but, the same was never given to the witness. According to this witness, when he needed the money for his son's marriage, he asked the

petitioner to give him the said amount. The petitioner, in fact, denied receipt of any amount from him. Due to the failure of petitioner to pay him Rs.

10,000/-, the witness claimed that he could not repay the loan amount. Even in the re-examination by the Presenting Officer, the witness has

confirmed the fact that "this is the very statement recorded by the investigating officer as per his deposition." Since Mr. Chandrappa does not have

any animosity with the petitioner, there is no reason to disbelieve his statement given to the investigating officer.

11. A perusal of testimony of Mr. Thippeswamy does reveal that in his cross-examination, he has resiled from his examination-in-chief.

However, in his re-examination, he has reiterated what he had claimed in the examination-in-chief. To the query placed by the Presenting Officer,

whether he had given Rs. 10,000/- to the petitioner for being deposited in a Fixed Deposit? The witness has clearly stated "Yes, I have given Rs.

10,000/-". He had further clarified that he had contacted the petitioner repeatedly for getting back his amount of Rs. 10,000/-. In his statement

given before the investigating officer, he has clearly stated that "finally I requested my villagers to strike before the Canara Bank." Since Mr.

Thippeswamy also does not have any animosity against the petitioner, there is no reason to disbelieve his statement given before the Enquiry

Officer.

Considering the fact that both Mr. Chandrappa and Mr. Thippeswamy have supported the case of the bank, the Enquiry Officer was certainly

justified in concluding that the petitioner is guilty of misconduct alleged against him.

12. According to Batt's Law of Master and Servant (4th Edn. at Page 63) the word "misconduct" is said to "comprise positive act and not mere

neglect of failure". Thus, the positive act would be an act or omission which tantamounts to commission of a forbidden act. It differs from

carelessness. Generally, the Conduct Rules of the Government and Public Sector Corporations constitute a code of permissible acts and behaviour

of their servants.

Regulation 3 of the Regulations is as under:

1) Every officer employee shall, at all times, take all possible steps to ensure and protect the interest of the bank and discharge his duties with

utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee.

2) Every officer employees shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and

negotiations.

3) No other employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best

judgement except when he is acting under the direction of his official superior.

Provided wherever such direction are oral in nature and same shall be confirmed in writing by his superior official.

Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control

and authority.

13. A bare perusal of Regulation 3 clearly reveals that, while Regulation 3(1) prescribes General Rule of conduct to ensure and protect the interest

of the bank and discharge duties with utmost integrity, honesty, devotion and diligence, Regulations 3(2) and (3) deal with specific instance of

misconduct.

14. Undoubtedly, the keystone of the relationship between the customer and the bank is faith that the customer reposes in the functioning of the

bank. Any Act which would shake the very faith of the customer would ipso-facto adversely affect the reputation of the bank and eventually its

performance. Thus, the employees of the bank hold a position of trust. Since they deal with the monies belonging to individuals or other entities,

they hold the monies as trustees. Therefore, the slightest act of dishonesty or an act causing aspersions on the integrity of an employee can damage

the reputation of the bank. This is more so in the rural areas where a single bank may be operational. In such a scenario, the faith of the entire

village or town rests upon the conduct of the bank employees.

15. Considering the charges leveled against the petitioner that he had intentionally delayed depositing Rs. 10,000/- belonging to Mr. Chandrappa

and Mr. Thippeswamy, obviously, his act amounts to a "dishonest act". It certainly casts a cloud of doubt about his integrity, and his bonafide. The

small marginal farmers who are dependant on loans and subsidies, for them, an amount of Rs. 10,000/- that too, in the year 1998 is not an

insignificant amount. As mentioned by Mr. Chandrappa, since petitioner did not return Rs. 10,000/- to him, he defaulted in repaying the loan.

Therefore, the action of the petitioner had a cascading effect on the reputation of Mr. Chandrappa as a customer. Therefore, the petitioner's act

has not only tarnished the reputation of the bank, but has also stained the reputation of Mr. Chandrappa. Therefore, the learned counsel for

petitioner is absolutely unjustified in claiming that the petitioner has not committed any "misconduct".

16. Regulation 15 of the Regulations clearly lays down that no officer employees shall borrow any money from any persons having dealing with the

bank. The only exception to this rule is that the officer employee may accept from a relative or personal friend a purely temporary loan of a small

amount free of interest. However, it is not the petitioner's case that Mr. Chandrappa and Mr. Thippeswamy are his relatives or his personal friends.

The stand of the petitioner is that he had temporarily borrowed the money from these two gentlemen. But such a stand is in violation of Regulation

15 of the Regulations. Thus, the act would ipso-facto come within the definition of "misconduct". For, the petitioner has violated the prohibition

contained in Regulation 15 of the Regulations.

17. Considering the facts and reasoning mentioned above, the learned counsel is not justified in claiming that since petitioner has merely borrowed

money from two persons, mentioned above, it is merely a private affair. The learned counsel has ignored the fact that such a borrowing is not only

debarred by law, but the petitioner's action has also embarrassed the bank and tarnished its reputation. Hence, he is unjustified in claiming that

petitioner's action does not concern the bank.

18. As far as the quantum of punishment is concerned, the learned counsel for petitioner is unjustified in claiming that the punishment of compulsory

retirement is shockingly disproportionate to the alleged misconduct. Since the petitioner's act has shaken the faith of the people in the villages, in

the banking functioning, since it has unnecessarily tarnished Mr. Chandrappa's reputation as a borrower, the punishment of compulsory retirement

seems to be a lenient view taken by the Disciplinary Authority. Merely because the petitioner may have served the bank for 20 years is not a

mitigating factor. Considering the honesty and devotion which is required of a bank employee, and by keeping in mind that the petitioner had

served the bank for 20 years, the Disciplinary Authorities had decided not to impose the most severe penalty of termination or dismissal. Not

wanting to deprive the petitioner of his retirement benefits, the Disciplinary Authorities in his wisdom had inflicted the lesser of the three options

between Termination, Dismissal and Compulsory retirement. Therefore, the punishment of compulsory retirement commensurates with the

misconduct proven against the petitioner.

19. The case of Kailash Nath Gupta (supra) is certainly distinguished from the present case. In the said case the High Court had not decided the

question of disproportionateness of the punishment. Therefore, the case was remitted back to the High Court. In the said case, the Hon'ble

Supreme Court was of the opinion that there was some procedural irregularity which would tantamount to negligence. Therefore, the extreme

penalty of dismissal from service was disproportionate. However, in the present case mere procedural irregularities have not been committed

merely by the petitioner. In fact, he had totally denied his responsibility to repay the amount which he had pocketed from Mr. Chandrappa and Mr.

Thippeswamy. As stated earlier, he had shaken the faith of the customers in the bank and in the banking system itself. Therefore, his misconduct

does not amount to a mere negligence as his act of keeping the money was an intentional or willful act.

20. Even the case of Jai Bhagwan (supra) is distinguished on factual matrix. In the said case, the petitioner therein had merely misbehaved with the

Inspector while the petitioner was a mere Head Constable. It is in these circumstances that the Hon"ble Supreme Court was of the opinion that the

punishment of dismissal from service for a mere misbehavior is shockingly disproportionate to the alleged misconduct.

21. In the present case, as discussed above, petitioner"s misconduct has adversely effected both on the bank, its functioning and the reputation of

Mr. Chandrappa. Thus, it is not a minor misconduct which could be dealt with by a minor penalty.

22. For the reasons stated above, this court does not find any illegality in the impugned orders. This petition is devoid of any merit. Hence, it is

hereby dismissed. No order as to costs.