

## Shri P.K. Mudgil (since deceased) through Legal heirs Vs Union of India (UOI) and Another

**Court:** Delhi High Court

**Date of Decision:** Aug. 10, 2009

**Hon'ble Judges:** Sunil Gaur, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Sunil Gaur, J.

In the year 1979, petitioner- P.K. Mudgil, was the Branch Manager of The State Bank of Indore (hereinafter referred to as

the "respondent-bank.), at Patankar Bazar, Lashkar, Gwalior and is said to have committed certain irregularities in the conduct of the affairs of the

Branch office of respondent-bank and in March, 1985, a charge-sheet was served upon him which was followed by a Departmental enquiry. The

Enquiry Officer, vide his Report of 14th January, 1986, Annexure-A (Colly.), found that charge of recklessly giving overdraft to the parties,

causing loss of over Rupees Eight lacs to the respondent-bank, stood proved against the petitioner. Consequently, the Disciplinary Authority, vide

order of 19th March, 1986, Annexure -A (Colly.), imposed the penalty of "removal from service" upon the petitioner. Appeal, Annexure-C, was

preferred by the petitioner against the order of his "removal from service". Before that, the petitioner had filed this writ petition challenging the order

of the Disciplinary Authority. During the pendency of this writ petition, petitioner's appeal was decided by the respondents vide order, Annexure

R-15. Thereafter, petitioner had to amend the writ petition to impugn the order, Annexure R-15, of the Appellate Authority. Quashing of order of

removal from service" and of reinstatement was sought by the petitioner in this writ petition. However, during the pendency of this writ petition, the

petitioner had left this world and his legal representatives have been substituted, who are now seeking quashing of the order of "removal from

service" and the consequential benefits.

2. The grounds on which the impugned order of "removal from service" is assailed are that the order of the Appellate Authority as well as of the

Disciplinary Authority are not reasoned one and that the Disciplinary Authority did not call for the bank records of Lashkar Branch, which could

have shown that the petitioner was not at fault. Non-application of mind is alleged by contending on behalf of the petitioner that the impugned order

has been passed at the instance of the Executive Committee, which was pre-determined to punish the petitioner.

3. The stand of the petitioner is that vide letters, Annexure- C-1 & C-2, documents were sought by the petitioner to meet the charge-sheet

effectively but the said documents were not given to the petitioner as the Presenting Officer had purposely said that the documents are not on the

record.

4. According to the Petitioner, yearly Audits and Inspections are carried out in the Bank and it is surprising that the alleged irregularities were

detected after a period of five years and, in fact, the alleged loss to the bank is not of Rupees Eight lacs but is of Rupees Three lacs and rest of it, is

the interest component. Petitioner claims that a grave prejudice has been caused to him because the documents required to meet charge were not

supplied to him and the alleged irregularities were committed by the Petitioner in the year 1979, whereas he was charge-sheeted after inordinate

delay of five years, i.e., in the year 1985. According to Petitioner's counsel, in view of the aforesaid shortcomings, the impugned order of his

dismissal from service deserves to be set aside.

5. In the counter affidavit filed by the contesting Respondent No. 2 and 3, they have stated that the Petitioner was Branch Manager at

Respondent's bank at Lashkar in the Gwalior Branch during the period from 1978 to 1980 and he had advanced huge loans aggregated to

Rupees Sixty lacs and out of these advances, loans of about Rupees Thirty lacs was reported to be sticky and doubtful and serious irregularities

were reported regarding advancement of overdraft facility of more than Rupees Eight lacs. According to the Respondents, copy of all the

documents relied upon by the Respondent - Bank was furnished to the Petitioner and copy of the evidence recorded during the inquiry

proceedings have been placed on record as Annexure R-1. It has been made clear by the Respondent that out of eleven documents sought by the

Petitioner, two documents were supplied and regarding the rest of the documents, a declaration (Annexure R-1C) was made before Inquiry

Officer, by the Presenting Officer that these documents are not traceable in the bank records. A grave doubt about the existence of these

documents was also expressed in the Declaration (Annexure R-1C).

6. Regarding non-detection of the alleged irregularities committed by the Petitioner in the monthly returns, the stand of the contesting Respondent is

as under:

The Petitioner is trying to confuse the monthly returns with the ""control returns"" whereas purpose and contents whereof are altogether different. A

control return is a detailed statement regarding identity, constitution, worth, nature of facility, reason for granting the facility and details of securities

obtained for each advance granted which enables the controlling authority to oversee whether the discretionary powers are being judiciously

exercised by the Branch Manager. In monthly return, all these details are not contained and the same is called for only for statistical purposes.

7. It has been pointed out in the counter affidavit by the Respondent that in the Audit Report, there were adverse comments regarding several

accounts including the transactions in question, in the years 1980, 1981 and 1983 and when this was brought to the notice of the higher authorities,

show cause notice was issued to the Petitioner and thereafter, disciplinary proceedings were initiated against the Petitioner and thus, there is no

inordinate delay in taking action against the Petitioner. According to the Respondents, the impugned order removing Petitioner from service does

not suffer from any illegality or infirmity.

8. In the rejoinder filed by the Petitioner, the contents of the writ petition have been reiterated.

9. Learned Senior Counsel for the petitioner has been heard and the material on record as well as decisions reported in 1967 SLR 759 (SC);

Kashinath Dikshita Vs. Union of India (UOI) and Others, State of U.P. Vs. Shatrughan Lal and Another, ; Kailash Nath Gupta Vs. Enquiry

Officer, (R.K. Rai), Allahabad Bank and Others, P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, ; and M.V. Bijlani Vs. Union of India

(UOI) and Others, , have been perused.

10. The twin grounds, on which the impugned order is assailed are; (1) non-supply of documents and (2) delay of five years in initiation of the

disciplinary proceedings against the Petitioner. First of all, I would deal with the aspect of non-supply of documents. The details of the documents

MEx.1 to MEx. 3 and DEx.2 to DEx.14 find mention in the Inquiry Report (Annexure-A) and on these documents, the charges against the

Petitioner are based. Document - Annexure P-3, is the declaration made by the Presenting Officer before the Inquiry Officer giving details of the

documents which have been supplied to the Petitioner and also about the documents, which were not available. Vide Note (Annexure P-4), the

relevancy of documents, which are not supplied to the Petitioner, is sought to be shown.

11. Regarding non-supply of copies of monthly returns, it is evident from the counter affidavit filed by the Respondent that monthly returns are only

in the nature of information while the control returns are in the nature of analytical study of the individual accounts and the limits sanctioned. Thus, it

is abundantly clear that in the monthly returns, the details regarding supporting documents are not contained and the monthly returns are furnished

for statistical purpose only

12. However, it is not reflected in Note, Annexure P-4, or in the appeal (Annexure-C) as to what prejudice the Petitioner has suffered for want of

these documents. It is not in dispute that the charge against the Petitioner was of not obtaining security documents from six borrowers to whom an

overdraft facility was extended and the document sought for by the Petitioner were the security documents, which according to the Petitioner were

furnished by the said borrowers.

13. It is a matter of record that the power of the Petitioner to grant clean overdraft facility was up to Rupees Seven thousand five hundred only till

August, 1979, which was subsequently enhanced to Rupees Fifteen thousand only and as per charge sheet (Annexure-I), which is based upon

document MEx. 1, Petitioner has exceeded his powers to grant overdraft facilities on various occasions. It is not the case of the Petitioner that the

Petitioner had not been confronted with the audit objections, or that the audit objections were motivated. In the typical facts of this case, without

any hesitation, it can be said that non supply of the documents, referred to in Annexure P-4, did not vitiate the Inquiry proceedings as the Petitioner

has failed to show as to what serious prejudice has been suffered by him.

14. The decisions reported in ""Tirlok Nath v. Union of India and Ors.", 1967 SLR 759 (SC) Kashinath Dikshita Vs. Union of India (UOI)and

Others, and State of U.P. Vs. Shatrughan Lal and Another, , relied upon by the Petitioner are distinguishable on facts and do not advance the case

of the Petitioner as it has been found in the instant case that the documents sought were not available and so, the present case is not of deliberate

non-supply of documents. However, the Inquiry held against the Petitioner does not stand vitiated in the absence of any prejudice suffered by him

on account of non-supply of documents sought.

15. In considering the aspect as to whether the delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its

complexity and on what account, the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face

of it, as the delinquent employee has a legitimate expectation that the disciplinary proceedings against him are concluded expeditiously. Delay

causes prejudice to the delinquent employee unless it can be shown that he is to be blamed for delay or, when there is a proper explanation for the

delay in conducting the disciplinary proceedings.

16. In the above background, the factual matrix of this case has to be seen. The stand of the Respondents is that during the Audit Inspection, it

was detected that several accounts in Petitioner's Branch office, were highly irregular and in irregular advances made by the petitioner, the security

documents were not on record for inspection at the time of Audit. Such lapses were examined and analyzed in the light of the Departmental

Instructions and a report regarding these lapses was received by the Competent Authority in February, 1985.

17. In view of the aforesaid, the delay occasioned in taking action against the Petitioner stands by and large explained. Inquiry Officer in his report

(Annexure-A) has concluded that no adverse inference can be drawn merely because the charge sheet was issued in the year 1985 for the

acts/omissions committed by the Petitioner in the year 1980. In the appeal (Annexure-C) filed by the Petitioner, it has not been stated that as to

how the delay has adversely affected the case of the Petitioner or that the delay was deliberate and motivated. The decision relied upon by the

Petitioner are not of any help as in the case of ""P.V. Mahadevan v. Md. T.N. Housing Board"" (2005) 6 SCC 636, the inordinate delay in initiation

of the disciplinary proceedings was of ten years and there was no convincing explanation for it. It is not so, in the present case.

18. In the case of "" M.V. Bijlani Vs. Union of India (UOI) and Others, , the delay in initiation of disciplinary proceedings was of six years and

since the inquiry proceedings were found to be misdirected, the delay aspect was one of the consideration for quashing the disciplinary

proceedings. However, in the instant case, the delay occasioned stands explained and therefore, delay per se in holding of the Departmental

Inquiry is not fatal.

19. The Inquiry Report (Annexure-A) does not disclose any non-application of mind. Rather, I find it to be a well reasoned report which contains

the assessment of evidence and the conclusion arrived thereupon. In the case of S.N. Mukherjee Vs. Union of India, it has been ruled by the Apex

Court that when the Appellate Authority confirms the decision of the Disciplinary Authority, then it need not to give separate reasons.

20. The order of the Appellate Authority (Annexure R-15) is not a non-speaking order and infact it does disclose full application of mind and it

concurs with the findings of the inquiry officer. When the Appellate Authority confirms the order of the Disciplinary Authority, then detailed reasons

need not be given. Thus, no fault can be found in the order of the Appellate Authority.

21. The penalty of removal from service inflicted upon the Petitioner is said to be highly excessive as it has been asserted on behalf of the Petitioner

that the bank has also effected the recovery of the alleged loss. Reliance has been placed upon a decision of the Apex Court in Kailash Nath

Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, wherein it has been said that in appropriate cases, court can direct the

Authorities concerned to re-consider the nature of punishment awarded to the Delinquent Officer. Indeed it can be done, but not in the instant

case. Because it is neither evident from the Inquiry Report, impugned order nor the Appellate order that the financial loss caused due to the

misconduct of the Petitioner, has been made good. The penalty imposed upon the Petitioner cannot be said to be disproportionate. No fault can be

found with the impugned order.

22. This petition merits dismissal. Accordingly, this petition is dismissed.

23. No costs.