

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on:- 11.04.2025

Pronounced on:- 24.07.2025

WP(C) No. 2887/2022
CM Nos. 7261/2022 & 8281/2024

Naseer Ahmad Sheikh, Aged 61 years,Petitioner(s)
S/o Shiekh Ghulam Ahmad, R/o Shiekh Ul Alam Colony,
Nowgam, District Srinagar.

Through: Mr. Shuja Ul Haq, Advocate.

Vs.

- 1. J&K Bank Limited Th. its** Respondent(s)
Chairman Corporate Headquarters MA Road Srinagar;
- 2. President Supervision and Controlling Division (S&C)**
J&K Bank Corporate Headquarters Srinagar;
- 3. Disciplinary Authority J&K Bank Corporate**
Headquarters, MA Road Srinagar;
- 4. Executive Manager S&C J&K Bank Corporate**
Headquarters Srinagar.

Through: Mr. Aadil Asmi, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The petitioner herein has prayed in the instant petition for the following reliefs:-

- “i. By issuance of writ, order or direction one in the nature of certiorari, the order dated 01.04.2022 read with order dated 09.11.2022 issued by the respondent-Bank, whereby the petitioner has been dismissed from services of the bank w.e.f. 30.06.2021, i.e., the date on which the petitioner retired from the service of the bank on superannuation be quashed;*
- ii. By issuance of writ, order or direction one in the nature of mandamus, the respondents be commanded to release all pensionary benefits and other post retiral benefits in favour of the petitioner;*
- iii. Any other relief, which this Court may deem fit and proper under the circumstances of the case may also be passed in favour of the petitioner and against the respondents.”*

FACTS:-

2. The petitioner herein states that after rendering over 34 years of service in the respondent-Jammu and Kashmir Bank (*for short, the “Bank”*), on 30.06.2021 suffered a dismissal retrospectively vide order dated 01.04.2022 from the Bank with effect from the date of his superannuation and its affirmation by the appellate authority vide order dated 09.11.2022 and the said dismissal originates from a departmental disciplinary proceeding initiated during his service.

3. It is stated by the petitioner that initially, on 08.01.2021, an explanation was sought from the petitioner in connection with the alleged irregular Sanctioning of Temporary Overdrafts (*for short, “TODs”*), some of which had turned into Non-Performing Assets (*for short, “NPAs”*) within a short span of time, to which, the petitioner claims to have submitted a detailed reply, denying any violation of bank rules, asserting that the TOD’s were granted in accordance with the norms and without causing any financial loss to the Bank. The said reply was followed by a charge-sheet dated 21.05.2021 issued against the petitioner, alleging misconduct therein during his tenure as Branch Head at Branch Unit Barzulla and Branch Unit Rangreth. The specific charges pertained to allowing overdrafts without sanction from competent authorities, leading to seven Accounts becoming NPAs and granting twenty-three TODs without verifying creditworthiness and the petitioner was, as such, charge-sheeted for the following alleged acts of omission and commission:-

- (i) ***Breach of rules of business of the bank and instructions for the running of a department.***
- (ii) ***Showing undue favour to any party by grant of concession against the banking practice likely to involve loss to the bank.***
- (iii) ***Doing acts prejudicial to the interest of the bank involving the bank in serious loss.***
- (iv) ***Misuse of official position and powers.***

4. It is further stated that a second charge-sheet dated 28.06.2021 was served upon him, alleging irregularities in sanctioning a housing loan of ₹20.00 lakhs (Rupees Twenty Lacs) to one-Mr. Javaid Ahmad Kralyari and accepting his brother, namely, Mr. Arif Ahmad Kralyari as co-borrower in violation of loan norms, while also alleging that the loan was partly funded through a TOD granted to the borrower and the guarantor was a known defaulter, to which charge-sheet, the petitioner submitted replies to both charge-sheets, asserting that all actions were taken in accordance with established procedures and under instructions from superiors a fact not denied by the Bank, while stating further that the petitioner had already got 05 Accounts regularized and obtained sufficient documents for realizing/recovering the amount from the borrower.

5. It is also stated that an inquiry, in this regard, was initiated and concluded by the Bank with two reports dated 07.09.2021 and 10.09.2021, following which a show cause notice dated 20.11.2021 was issued to the petitioner, proposing dismissal and recovery of financial loss, to which the petitioner replied, contended that the inquiry was fundamentally flawed and violative of principles of natural justice including denial of opportunity to cross-examine the witnesses and examine documents, whereafter, however, the disciplinary authority issued the dismissal order dated 01.04.2022 with retrospective effect from 30.06.2021 and an appeal against this order as well was rejected by the Chairman of the Bank of 09.11.2022.

6. The petitioner herein alleges that both orders are arbitrary, *mala fide* and based on no evidence, besides pleading that the disciplinary proceedings were conducted in violation of the Office Service Manual, 2000 (for short, “OSM 2000”), particularly, Rules 376 and 380 and that he was denied a

fair opportunity to defend himself, while asserting further that the TODs in question were sanctioned as per verbal instructions from higher authorities and were either within his delegated powers or deemed sanctioned in terms of Rule 337(c) and Para-21 of the Central Vigilance Commission Guidelines (*for short, the “CVC Guidelines”*), which the bank is bound to follow, alleging further that no allegation of personal gain, corruption or fraud has been made against the petitioner and that his unblemished service record has been overlooked and that the retrospective dismissal order is legally unsustainable, especially when passed after his retirement and consequent denial of retiral dues despite no proven financial loss to the Bank, has left him and his dependent family in distress.

7. The petitioner has assailed the orders dated 01.04.2022 and 09.11.2022 passed by the Disciplinary and Appellate Authorities respectively on various grounds pleaded in the petition and raised by the counsel for the petitioner while arguing the matter, which for the sake of brevity and convenience are summarized as under:-

- (i) *That the enquiry proceedings were vitiated by several procedural lapses that go to the root of the matter. The petitioner was not allowed to cross-examine witnesses nor was he given access to the relevant documents relied upon by the Presenting Officer. His requests to inspect records pertaining to the sanction of TODs at the Zonal Office were ignored. No opportunity was provided to lead evidence in defence. The enquiry, according to the petitioner, was a mere formality and lacked adherence to basic principles of natural justice;*
- (ii) *That the petitioner had specifically objected to the appointment and conduct of the Enquiry Officer, alleging bias and lack of impartiality. It is submitted that the officer not only assumed the role of the Presenting Officer at several stages but also failed to maintain neutrality. The fact that objections regarding his conflict of interest were raised during the personal hearing and yet ignored renders the enquiry report legally unsustainable;*
- (iii) *That the impugned dismissal has been made effective from the date the petitioner attained superannuation. The petitioner contends that no dismissal order can take effect from a date when the employer-employee relationship has already come to an end, unless specifically permitted under the service rules. In the absence of any*

such enabling provision, the retrospective operation of the dismissal order is ex-facie without jurisdiction and unsustainable;

- (iv) That the allegations against the petitioner pertain to sanctioning of TODs/ODs during his tenure as Branch Head. It is his case that all such transactions were either within his powers or done under verbal instructions of the Zonal Head. It is further pointed out that in many cases, proposals for post-facto approval were submitted but remained unattended. No case of financial embezzlement, personal gain or fraudulent conduct has been made out. There is also no determination of actual loss suffered by the Bank. The petitioner submits that at best, the allegations reflect an error of judgment, but certainly not misconduct warranting dismissal;*
- (v) That the penalty of dismissal, especially after 34 years of service, is shockingly disproportionate to the nature of the allegations. The petitioner highlights his unblemished record, past contributions to the Bank's growth and the absence of any criminality or dishonesty. He submits that the punishment imposed has had the effect of depriving him of all post-retirement benefits, including pension, which is neither justified nor legally permissible on the facts of the case;*
- (vi) That the Disciplinary Authority and the Appellate Authority failed to consider crucial aspects that ought to have weighed in his favour. These include the length and quality of his service, the absence of any prior disciplinary history, the prevailing business circumstances at the time (notably, the period following the abrogation of Article 370 and the COVID-19 pandemic) and the fact that recovery proceedings had already been initiated by the Bank in several of the accounts in question;*
- (vii) That the alleged TODs were sanctioned under urgent instructions and in many instances, post-facto proposal were submitted but were neither confirmed nor rejected. Relying para-21 of the CVC guideline and Rule 337(c) of the OSM 2000, it is contended that failure of the controlling authority to communicate any decision within a stipulated period results in "deemed sanction". The disciplinary action initiated in disregard of these provisions, it is argued, is arbitrary;*
- (viii) That the enquiry proceedings been conducted in breach of Rule 380 of the OSM 2000. The procedure of listing of witnesses, recording of evidence, and permitting defence evidence was either not following or was circumvented. Even basic requirements such as providing an opportunity to inspect documents or respond to evidence were not complied with. The petitioner alleges that the Enquiry Officer mechanically concluded the proceedings without recording any satisfaction regarding the compliance of procedural safeguards;*
- (ix) That he has been selectively targeted while similarly placed officers, including those who had issued instructions or were part of the approval process, have not been proceeded against. No action has been taken against the Zonal Head or other supervisory authorities, even though the sanctioning of the TODs was allegedly done under their directions. The petitioner submits that such discriminatory treatment amounts to victimization;*

- (x) *That the pension and post-retiral benefits are not acts of generosity but earned entitlements, protected under Article 300 A of the Constitution. Their denial, without due process, has caused financial ruin and deprived the petitioner of his right to livelihood guaranteed under Article 21. It is submitted that depriving a retired employee of his pension based on unproven allegations and procedurally flawed enquiry is ex facie unconstitutional;*
- (xi) *Lastly, that the findings of misconduct are not supported by any credible evidence. The Enquiry Officer, according to him, proceeded on conjectures and surmises, and relied upon assumptions rather than concrete proof. The Presenting Officer, it is alleged, failed to prove any of the charges by leading cogent evidence, yet the findings were returned mechanically without due appreciation of the material on record.*

8. **A detailed counter affidavit** to the petition has been filed by the Bank on 28.06.2023, opposing the maintainability as well as the merits of the writ petition on the ground that the petition involves disputed questions of fact, which cannot be adjudicated in the exercise of writ jurisdiction under Article 226 of the Constitution.

9. It has been further stated that, in law, in matters pertaining of departmental proceedings, the scope of judicial review is limited to examining the decision-making process and not the merits of the disciplinary authority's conclusions and that this Court is not to act as an appellate forum or re-evaluate evidence, except where findings are unsupported by any material or where the proceedings stand vitiated by patent illegality or violative of the principles of natural justice.

10. On the factual side, the respondents have stated that the petitioner was placed under suspension on 17.03.2021, following an internal investigation, which revealed serious irregularities committed by him during his tenure as Branch Head, Barzulla, which investigation culminated in the issuance of two separate charge-sheets dated 21.05.2021 and 28.06.2021, in that, the petitioner had allowed TODs and overdrawals without proper sanction in violation of the Bank's internal

guidelines, resulting in substantial financial exposure and eventual classification of several accounts as NPA's.

11. It is also stated that the petitioner submitted replies to both charge-sheets, however, upon consideration, the disciplinary authority found the explanation submitted thereto unsatisfactory and ordered two full-dress enquiries, appointing Mr. Hayat Mohammad Rather and Mr. Gulzar Ahmad as Enquiry Officers in respect of the respective charge-sheets.

12. It is further stated that the petitioner actively participated in both the proceedings, during which, according to the respondents, ample opportunity was afforded to him to defend himself, whereafter the said Enquiry Officers submitted their reports on 07.09.2021 and 20.09.2021, finding most of the imputations proved and on the basis of the said reports, a consolidated show cause notice was issued to the petitioner alongwith copies of the enquiry findings, to which the petitioner responded in writing and also sought a personal hearing, which was duly granted, whereafter, by order dated 01.04.2022, the disciplinary authority imposed the penalty of dismissal from service against the petitioner with retrospective effect from 30.06.2021, which is the date of petitioner's superannuation, whereupon an appeal came to be filed by the petitioner against the said order and same was considered and rejected by the Appellate Authority vide order dated 09.11.2022.

13. The respondents in the reply have strongly denied the allegations of bias, malice or procedural impropriety alleged by the petitioner and it is submitted that the petitioner never raised any objection regarding the appointment of the Enquiry Officer or the conduct of proceedings during the pendency of the enquiry, so much so, no request for recusal or change of enquiry officer was made at any

stage by him and that the allegations of bias or predetermined intent are baseless and an afterthought made only after the findings went against him.

14. It is being next stated that the petitioner's claim that the TODs were sanctioned under instructions from superior authorities is entirely unsubstantiated, in that, according to the Bank's internal guidelines, any overdraft beyond the delegated authority of a Branch Manager requires prior written approval from the competent authority and that the petitioner neither obtained prior approval nor secured post-facto sanction and that the TODs were extended in a reckless and unauthorized manner and remained outstanding well beyond the permissible period, eventually resulting in substantial financial loss.

15. It is further stated that the disciplinary authority, after perusing the records, quantified the loss caused to the Bank due to the petitioner's actions to the tune of ₹2.26 Crores and ₹1.76 Crores respectively, which fell into the NPA category.

16. As regards the petitioner's retiral dues, it has been stated that the gratuity and provident fund amounts were adjusted towards loans outstanding against the petitioner under various staff loan schemes and the amount of ₹6.37 lakhs, remaining after such adjustment, was credited to his Savings Account and that since the penalty imposed was one of dismissal, the petitioner got disentitled to pension or leave encashment under the applicable service regulations, particularly, Regulation 22 of the J&K Bank Employees' Pension Regulations, 1995 (*hereinafter referred to as the, "Regulations of 1995"*) and Rule 159 of the OSM 2000.

17. It is also stated that the petitioner's reliance on Rule 337(c) of the OSM 2000 and para-21 of the CVC Guidelines to assert deemed sanction is not

applicable to the Bank in the absence of formal adoption by the Board of Directors and that there is no concept of deemed sanction applicable in the facts of the present case, especially when no written proposals of follow-up was shown to have been taken by the petitioner.

18. Denying that the penalty imposed upon the petitioner to be excessive, the respondents have stated that the punishment imposed was proportionate to the gravity of the misconduct established, as the authorities considered all relevant materials including the petitioner's replies, personal hearing, service record and the financial impact of his actions and has relied upon the decision of the Supreme Court passed in case titled as, "**Indian Oil Corporation Vs. Ajit Kumar Singh**" passed in *Civil Appeal No. 3663 of 2023*", while reiterating that the Court's jurisdiction under Article 226 of the Constitution of India is limited to examine whether the procedure adopted was fair and legal and cannot sit in appeal over the conclusions of the disciplinary authority.

19. ***To counter the stand of the respondents taken in the counter affidavit (supra), the petitioner herein filed an application bearing CM No. 6886/2024 on 04.11.2024, seeking leave of this Court to file rejoinder affidavit, which application was allowed by this Court vide order dated 14.11.2024 and the rejoinder was taken on record. Further, this Court while considering the matter on 12.12.2024 observed that the petitioner during the course of arguments, had made a request to place on record the enquiry report vide CM No. 8281/2024, which as per him was not sustainable in law, the said request was acceded to and liberty was given to the petitioner to do the needful and the respondents were given liberty to file a supplementary affidavit in response to the rejoinder affidavit filed by the petitioner.***

20. In the rejoinder affidavit (supra) filed by the petitioner, it is stated that the entire disciplinary action initiated against the petitioner including issuance of charge-sheets, conduct of enquiry and imposition of penalty was admittedly undertaken in terms of the OSM 2000, however, the Bank, while relying upon the said Manual for initiating and conducting proceedings, has taken a contradictory stand by denying the applicability of Rule 337(c) of the same Manual, which provides for “**deemed sanction**” in cases, where no decision is taken within a specified period. The petitioner submits that the respondents cannot selectively apply only those provisions of the Manual, which support their case while disregarding others.

21. It is further stated that the respondents’ assertion that no material was placed on record to show that proposals for post-facto sanction of TODs were submitted, the petitioner has referred to a Communication dated 09.09.2019 issued by Mr. M.A. Mir, the then Senior Executive (Advances), Zonal Office, Kashmir, addressed to all branches and zonal offices, calling for details of TODs/adhoc sanctions granted beyond delegation, but not yet confirmed and in response thereto, the petitioner, on the same day, submitted a list of 20 such cases through e-mail, out of which, subsequently, post-facto sanction was granted in 14 cases, while the remaining six cases were neither sanctioned nor rejected, thereby, according to the petitioner, attracted the application of Rule 337(c) of the OSM 2000. The petitioner has further placed reliance on an email dated 21.11.2020 sent by his successor Branch Head at Branch Unit Barzulla to the Zonal Office and the Cluster Office, wherein it was categorically acknowledged that the earlier Communication dated 09.09.2019 had been responded to by the petitioner on the same day, enclosing the list of TODs/adhocs for necessary sanction. The said

e-mail further recorded that no Communication had been received with regard to certain Accounts and requested the authorities to accord approval to the remaining facilities including those of Blue Pearl and M/S Milk Bar. This, according to the petitioner, lends corroboration to his stand that the necessary proposals were submitted in time and the delay or inaction lay at the respondents' end.

22. Insofar as the submission of hard copies of the post-facto proposals is concerned, the petitioner asserts in the rejoinder affidavit that the dispatch register of the Barzulla Branch evidences that hard copies of the post-facto proposals were duly forwarded to the Zonal Office, a certified extracts of the said register was also produced during the enquiry, but the Enquiry Officer declined to entertain it and even a specific request made by the petitioner to inspect the receipt register maintained at the Zonal Officer, Kashmir was also denied and further, the petitioner was not permitted to examine Mr. Azad Ahmad-the then Zonal Head to establish receipt of the proposals and, as such, these denials undermined the petitioner's right to a fair and effective defence.

23. It is being next stated in the rejoinder affidavit that on 22.04.2022, the petitioner addressed a Communication to the Disciplinary Authority, seeking copies of (i) the personal hearing recorded on 04.01.2022, (ii) the closure letter pertaining to the housing loan case and (iii) the updated status of the loan accounts cited in the charge-sheet, however, by response dated 25.04.2022, the Bank declined the request, stating that the documents were privileged. The petitioner contends that the refusal to furnish these documents adversely affected his ability to respond effectively to the finding recorded against him.

24. The petitioner in the rejoinder affidavit has also rebutted the respondents' denial regarding applicability of the CVC Guidelines, pointing out

that the Board of Directors of the Bank in its 50th Meeting held on 15.06.2019, passed a Resolution formally adopting the CVC Guidelines to the extent they were not inconsistent with the RBI's Master directions and that this decision followed a Communication from the Finance Secretary, Government of J&K dated March, 2019 and was reiterated in subsequent Board Meetings, as such, the CVC Guidelines are binding on the Bank and relevant to the disciplinary process.

25. The petitioner, on the question of recoveries, asserts in the rejoinder affidavit that during his tenure and even post his transfer from Barzulla Branch, he made significant efforts to ensure liquidation of overdues and as a result of his continued persuasion, recoveries amounting to ₹42.59 lakhs in 13 potential NPA TOD Accounts and ₹29.61 lakhs in 8 NPA Accounts were made, which facts are borne out from an internal Communication dated 01.02.2021 addressed by the then Branch Head of Barzulla to the Recovery Division, Zonal Office Kashmir and that these recoveries were not only ignored by the Enquiry Officer, but were also not considered as mitigating circumstances by the disciplinary authority.

26. **Subsequent to the rejoinder affidavit filed by the petitioner, the respondents have placed on record a supplementary affidavit on 18.03.2025 in compliance to the directions of this Court dated 12.12.2024,** wherein it has been stated that the order of dismissal passed on 01.04.2022, which took effect retrospectively from the date of the petitioner's superannuation, i.e., 30.06.2021, clearly records that the period of suspension preceding dismissal would neither be treated as time spent on duty nor would qualify for any service-related benefits and, however, the subsistence allowance paid during the said period was treated as pay for that duration and that the said order reserves the Bank's right to initiate separate legal or criminal proceedings, if necessary, for breach of trust and

recovery of dues against the petitioner and while refuting the petitioner's claim regarding deemed sanction under Rule 337(c) of the OSM 2000, the Bank reiterates that the petitioner extended TODs and other credit facilities well beyond his delegated authority and without seeking either prior sanction or post-facto approval from the competent authority and that no such directions were issued by any superior authority to justify the petitioner's actions and, therefore, the provision for "**deemed sanction**" is inapplicable in the facts of the case.

27. It is being also stated in the supplementary affidavit (supra) that the issues now being selectively raised by the petitioner, had already been examined and dealt with in the course of departmental proceedings and the findings recorded in the speaking order issued by the Disciplinary Authority have been reiterated, in particular, it is pointed out as follows:-

- *The petitioner allowed multiple TODs without verifying their end use.*
- *Several TODs were granted despite the fact that earlier ones remained overdue and approvals from the competent authority were still pending.*
- *In specific cases like M/S Khazin Rafi, M/S Telecine India and M/S Taxperts, overdues were allowed without any proper sanction.*
- *In case of M/S Blue Pearl, a TOD was sanctioned despite the beneficiary being a salaried employee and ineligible for such facility.*
- *The TODs for M/S Milk Bar, M/S Blue Pearl and M/S J&K Electricals were allegedly prepared and dispatched, but the concerned Zonal Officer vide Communication dated 16.07.2021, denied receipt of any such proposals. Yet, the petitioner proceeded to sanction the facilities.*

28. It is being also stated in the supplementary affidavit that the petitioner failed to follow basic diligence, extended facilities without requisite approvals and bypassed necessary internal procedures, thereby breached the trust reposed in him and that the enquiry was conducted in accordance with the principles of natural justice and the petitioner were afforded full opportunity to defend himself.

29. As regards the petitioner's reference to the recovery efforts made in certain Accounts post his transfer by him, the respondents submit that such recoveries, though not disputed, yet the same do not negate or absolve the petitioner's misconduct and that the recoveries effected later cannot cure the irregularities committed at the time of sanction.

30. The supplementary affidavit further highlights that post the petitioner's dismissal, additional serious irregularities came to light, which read as follows:-

- *Sanctioning of an adhoc facility of ₹40 lakhs to a borrower despite poor track record and overdrawn status inherited from another branch;*
- *Unauthorized extensions of overdrafts without formal approvals;*
- *Improper end-use of funds, including diversion of loan proceeds to repay personal accounts;*
- *Lapses in documentation, such as absence of mortgage deeds and registration deficiencies;*
- *In one case, verification of account opening was done without obtaining a registered mortgage deed.*

31. It is being further stated that the aforesaid additional instances reveal a pattern of serious negligence, procedural breaches and unauthorized accommodation of borrowers, reflecting adversely on the petitioner's conduct. The respondents also clarify that the CVC Guidelines, though adopted by the Bank vide Board Resolution, are applicable only to the extent they are consistent with the RBI's Master directions and the Bank's internal policy and, as such, the petitioner's reliance on these guidelines is misplaced.

32. In the conclusion, the Bank submits that the disciplinary proceedings were fair, the punishment imposed was proportionate to the misconduct established and that the petitioner has approached the Court with unclean hands while

concealing material facts and would, as such, pray that the petitioner's rejoinder be discarded and the writ petition be dismissed with costs.

Heard learned counsel for the parties and perused the record.

33. This Court cannot sit in appeal over the enquiries conducted by the Enquiry Officers insofar the merits of the allegations are concerned, however, can delve into the manner, in which the enquiries are conducted in order to ascertain as to whether, as alleged by the petitioner, enquiries have been conducted in an arbitrary manner or not.

34. Before entering into aforesaid issue, it would be appropriate to examine the relevant rules relied upon by the parties.

Rule 337(c) of the OSM 2000 reads as follows:-

“No employee shall, in the performance of his official duties or in the exercise of power, conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior; and shall where he is acting under such direction, obtain the direction in writing wherever practicable and where it is not practicable to obtain the direction in writing he shall obtain written confirmation of the direction as soon thereafter as possible.”

From the reading of the aforesaid Rule, it is clear that an employee is expected to discharge his duties and exercise the powers vested in him by applying his own independent judgment, except in cases where he acts under the directions of his official superior, in which cases, he is required to obtain the directions in writing, wherever practicable, and if not immediately possible, to obtain written confirmation of such directions at the earliest opportunity.

35. In the present case, the petitioner has specifically pleaded that a number of TODs, five in particular, were sanctioned under the verbal instructions of the then Vice President (Central Kashmir), who had previously approved earlier TODs in the same Accounts and he has further claimed that some of the

subsequent TODs remained pending, which were neither sanctioned nor rejected and, thus, attracted para-21 of the CVC Guidelines, which provide for deemed sanction in such situations.

While the Bank has sought to argue that para-21 of the CVC Guidelines (supra) does not apply to it, however, it has placed no material on record to substantiate the said assertion, so much so, no Board Resolution excluding the applicability of para-21 has also been filed, whereas, on the contrary, the petitioner has placed on record a copy of the Bank's own vigilance manual, which records that the Board of Directors in its Meeting dated 15.05.2019, reiterated adoption of the CVC Guidelines in the interest of transparency and improved vigilance, which also records that while preparing the manual, inconsistencies between the RBI's directions for Private Sector Banks and the CVC Guidelines for Public Sector Banks were harmonized and necessary changes incorporated. Thus, in the absence of any cogent material to the contrary, this Court is inclined to accept the petitioner's plea that the CVC Guidelines to the extent not inconsistent with the RBI directions were applicable to the Bank. More significantly, the Enquiry Officer, while rejecting the petitioner's plea that TODs were sanctioned on superior instructions, did not summon or examine the said superior officer/Vice President before drawing adverse inferences. Once the petitioner had made a clear and specific allegation that the facilities were extended on verbal instructions of the superior officer, the burden was on the Enquiry Officer to summon such officer and offer the petitioner an opportunity to cross-examine him, which, however, was not done. Further, the record does not tend to show any effort made to verify whether the earlier TODs in the same Accounts had, indeed, been sanctioned under the same superior officer's direction

or not. This failure on the part of the Enquiry Officer amounts to denial of reasonable opportunity to the petitioner and offends the principle of *Audi Alteram Partem*.

36. As regards another set of TODs, the petitioner claimed that the proposals for post-facto sanction were sent to the Zonal Office (ZOK Central) on 11.09.2019, but no response was received in this regard. The Enquiry Officer, to ascertain this plea, addressed an e-mail to the said Zonal Office and received a reply from one-Azad Ahmad Banday (Senior Executive, Advances Department), denying receipt of such proposals. The petitioner thereafter requested to cross-examine Mr. Banday, but the request was rejected on the ground that the Communication had been made in an official capacity and not in personal capacity. This reasoning, in the considered view of this Court, is wholly unsustainable, as the right to cross-examine a person, who provides adverse material against the charged official, is a foundational element of principles of natural justice. Whether a statement is made official or personally is immaterial, what matters is its evidentiary impact. By denying the petitioner any opportunity to test Mr. Banday's version, the Enquiry Officer has failed to comply with basic procedural fairness, rendering the enquiry faulty.

37. Furthermore, the petitioner has placed on record a contemporaneous e-mail dated 11.09.2019, issued by the Senior Executive (Advances), directing all branches to furnish a list of TODs sanctioned beyond delegated authority, which had not been confirmed. The e-mail specifically sought this information **“latest by 5.00 PM today”** and indicated that the matter was urgent. It has not been denied by the respondents in their supplementary affidavit that the petitioner, on the same date, responded to this e-mail with details of 20 TODs, out of which 14

were later sanctioned, while 6 remained pending. This contradicts the respondents' stand that no proposal was received and even the enquiry report does not record any discussion on these sanctioned 14 TODs, thus, suggesting material irregularity in the holding of the enquiry by the Enquiry Officer.

38. Perusal of the record also reveals that the Presenting Officer during the hearing before the Enquiry Officer held on 07.08.2021, submitted that the e-mail sent on 11.09.2019 was merely for information-gathering and not for approval of the facilities. However, the wording of the e-mail and the pattern of approvals issued thereafter suggest otherwise. The very fact that 14 of the TODs were subsequently approved indicates that such Communications formed part of the informal post-facto sanction mechanism. Moreover, the request to furnish details of TODs beyond delegated powers clearly implies that such practices were common and not unique to the petitioner. Significantly, the Bank has failed to place on record any instance, where other similarly placed officers, who followed the same practice of submitting such TODs for approval, were subjected to a disciplinary action. No evidence has been led to show that such conduct, in comparable circumstances, was treated as misconduct. Thus, under these circumstances, it is manifest that the petitioner appears to have been singled out, without any rational basis, for what appears to have been an institutional practice.

39. It is pertinent to mention here that in order to show his *bona fide*, the petitioner had volunteered to assist in recovery of the outstanding TODs/ODs and his efforts had led to partial recoveries and he during his tenure and even post his transfer from Barzulla Branch, on the question of recoveries, made significant efforts to ensure liquidation of overdues and as a result of his continued persuasion, recoveries amounting to ₹42.59 lakhs in 13 potential NPA TOD

Accounts and ₹29.61 lakhs in 8 NPA Accounts were made. The said facts are borne out from an internal Communication dated 01.02.2021 addressed by the then Branch Head of Barzulla to the Recovery Division, Zonal Office Kashmir. The said recoveries were not only ignored by the Enquiry Officer, but were also not considered as mitigating circumstances by the disciplinary authority. The said recoveries made in several Accounts post transfer of the petitioner lend weight to the petitioner's contention that the facilities were not fraudulent or *mala fide*.

40. It is significant to note here that the petitioner has spent close to three decades in service of the Bank and during this long tenure, there is nothing on record to suggest that his conduct was ever found wanting or that his professional integrity had been doubted. In fact, as specifically pleaded by the petitioner and notably not denied by the respondents, he was instrumental in bringing significant business to the Bank and though it is, of course, open to the Bank to ensure that its officers act within their delegated authority and comply with internal processes, but discipline must be tempered with fairness and an isolated departure from procedure, especially in an environment, where certain practices were informally accepted ought not to result in the severest punishment available. What is also manifest from the record is that the petitioner's conduct was neither dishonest nor motivated by any personal gain and on the contrary, the petitioner's requests for post-facto approvals, recoveries made in the Accounts and the absence of any allegation of pecuniary benefit point to a case of administrative misjudgment rather than a serious misconduct or least a misconduct.

41. This Court is mindful of the fact, as also the position of law that punishment in disciplinary matters must be proportionate to the gravity of the charge and the surrounding circumstances, however, in the petitioner's case, given

the background of service, the nature of lapses and the manner in which the enquiry was conducted, the extreme penalty of dismissal from service, particularly, after retirement, seemingly, is excessive and disproportionate, more so, qua the forfeiture of pension, which in law, is a right earned by an employee for past services rendered and cannot be withheld or forfeited except in accordance with law and under valid rules. However, in the present case, the denial of such benefits flowed from the penalty of dismissal owing its origin to an unfair and flawed enquiry, which has been found to be bad in law. The Bank appears to have prejudged the matter and the enquiry seems to have been conducted more in the nature of a ritualistic compliance than a genuine fact-finding exercise, thus, rendering the enquiry proceedings vulnerable to judicial interference.

42. What further tilts the balance in favour of the petitioner is the way the post-enquiry proceedings unfolded, as after receiving the dismissal order, the petitioner made a request for certain basic information, such as the current status of the TODs in question and copies of documents relevant to his defence for the purpose of filing an appeal, which, however, came to be denied to him by the Bank on the ground that the documents were “*privileged*”. Such denial, in the context of a retired officer, seeking to challenge his dismissal was neither fair nor justified and only compounded the procedural unfairness already evident in the enquiry proceedings. Thus, this Court finds it difficult to accept that the petitioner deserved to be visited with the harshest possible consequence for what appears to be an error in administrative judgment rather than a willful or reckless act. All of this assumes even greater significance when seen in light of the petitioner’s long-standing service, the recoveries he facilitated in the disputed Accounts and the absence of any allegation or *mala fide* intent or dishonest gain.

43. Taking a holistic view of the matter, this Court is of the opinion that the punishment imposed upon the petitioner is not commensurate with the nature of the alleged lapses and the decision to dismiss the petitioner, particularly, with retrospective effect after his retirement appears not only excessive, but also inequitable, especially in the absence of a fair opportunity to present a full and effective defence. Given that the penalty of dismissal is found to be legally unsustainable and the proceedings vitiated by procedural lapses, the forfeiture of pension and other retiral benefits cannot be justified.

44. For what has been observed, considered and analyzed hereinabove, the instant petition succeeds, as a consequence whereof, the impugned order dated 01.04.2022 passed by the respondent-Bank is quashed and the respondents are commanded to release all the pensionary benefits in favour of the petitioner, preferably within a period of eight weeks from the date a certified copy of this order is produced by him before the respondents. In the event of failure, the respondents shall be liable to pay interest @ 8% to the petitioner on the said pensionary/retiral benefits from the date the same became due to the petitioner till the date of actual payment.

45. ***Disposed of*** alongwith connected application(s).

46. No order to as costs.

(Javed Iqbal Wani)
Judge

Jammu
24.07.2025
Ram Krishan

<i>Whether the judgment is speaking?</i>	<i>Yes</i>
<i>Whether the judgment is reportable?</i>	<i>Yes</i>