

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.2, MUMBAI

PRESENT

M. V. Deshpande
Presiding Officer

Appln.(Ref) No. CGIT-2/11 of 2017

[OLD APPLN. NO. CGIT – 1 OF 2015]

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
MARATHWADA GRAMIN BANK

The Chairman,
Marathwada Gramin Bank,
Head Office at Shivajinagar,
Nanded, Dist. Nanded.

The General Manager,
Marashtra Gramin Bank,
Head Office at Shivajinagar,
Nanded, Dist. Nanded

AND

THEIR WORKMEN.

Shri Chandrakant Tukaram Shinde,
C/o. P.J. Deshpande,
“Jeevan Kamal”, Pragatinagar,
Vasantrao Naik Chowk, Ring Road,
LATUR – 413 531.

APPEARANCES:

FOR THE EMPLOYER : Mr. D. J. Bhanage,
Advocate

FOR THE WORKMEN : Mr. R. D. Bhat,
Advocate

Mumbai, dated the 22nd January, 2020.

AWARD PART – I

1. This is a reference filed under Section 2-A sub section (2) of the Industrial Disputes Act, 1947 in view of the amendment in the Act No. 24 of 2010.

2. The concerned workman has filed statement of claim Ex.1 According to concerned workman, he was employed in Marathwada Gramin Bank and joined as a clerk on 27.4.82. As such he was employed in first party NO.1 for almost 30 years till the date of his dismissal. He has been issued the charge sheet dt. 30.10.10 under Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009]. The said Service Regulation rules have not been registered as well as notified with the mandatory provisions of industrial employment [Standing Orders Act, 1946 and the rules thereunder]. As such this entire charge sheet dt. 30.10.10 lacks the legal sanctity.

3. It is then case of the concerned workman that he was issued the suspension order and the charge sheet. Thus entire action against him was initiated against him under Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009]. But since the first party bank has not followed the procedure laid down under the [Standing Orders Act, 1946] from the beginning till passing of the order

of dismissal against the concerned workman, the entire disciplinary action is vitiated.

4. According to concerned workman he has been victimized by the management. He became the Managing Committee member of Marathwada Regional Rural Bank Employees Union Nanded in 1986. He became the Vice president of the said union in 1988. He became the Working President of the said union and also became Honorary member of Marathwada Regional Rural Bank Officers' Association in 1995. At present he is Organising Secretary of Marathwada Regional Rural Bank Officers' Association from 25.12.14. In various capacities as Committee Member, office bearers of the unions he has interacted with the management on various issues. He has also signed various settlements with the management of first party bank for last about 3 years. He worked as a Defence Representative in around 20 enquiries and also discussed with the management in the disciplinary matters. However, selection of the employees employed in the bank had floated another unions by name MGB Krantikari Employees Union and MGB Krantikari Officers Association. These two unions were patronized by management of the bank. The other union was not having any membership worth in its name and subsequently that union got dissolved and majority of the members of the said union became the members of Marathwada Regional Rural Bank Employees Union and Officers' Association. Since he had opposed the shifting of Head office from Nanded to Aurangabad under the banner of unions and he had

made correspondence on this issue with the State Govt. authorities as also the management of sponsoring bank i.e. bank of Marathwada were having grudge ill-will against him. As such the management of the first party bank in collusion with sponsoring bank fished out imaginary allegations against him and subjected him to disciplinary action which ultimately cultivated his dismissal.

5. It is then case of the concerned workman that the perusal of charge sheet would show that the allegations contained therein are false and the same would never amount to employment misconduct because none of the allegations had any proximate nexus whatsoever with the work of concerned workman as a clerk in the bank. In the enquiry proceedings dt. 30.11.10, EO. had made it clear in the words "regarding points raised by CSE in respect of being Working President of MRRBEU and member of MRRBOU the plea of PO in respect of points is acceptable to EO as charge No.1 is related to Working President.". As such the EO has accepted with the charge No.1, 2 & 3 are acts of Working President of the union but the EO has given report of the enquiry findings as all the charges have been proved.

6. It is then case of the concerned workman that the charge sheet is vague and bad in law. When the management was aware of the fact of unions decision of collecting donations it means to management sanction unless immediately it was countermanded by the banks authority immediately after knowledge of such decision.

7. As regards the second charge the management should have written to the concerned depositors in respect of allegations keeping deposits since 2004 – 09. As regards the third charge which relates to LIC agencies of his brother and other relations the management was aware of all the facts since the said relations opened their respective a/cs. with the bank. The management should have atleast tried to explain what they precisely mean by canvassing LIC policy. In this view the contention of the concerned workman is that he has not committed any act of omission and / or commission detrimental to the interest of the bank and as such the enquiry conducted by the bank by appointing Shri S.G. Kulkarni, Bank Manager of Nanded Branch was not legal, fair & proper.

8. It is then case of the concerned workman that along with charge sheet list of witnesses and list of documents were not furnished to him and thus it has caused prejudiced to him. Besides, the material witnesses were not examined in the enquiry and as such the enquiry is monitored and influenced by the disciplinary authority.

9. According to concerned workman material documents such as report of investigating team was never disclosed or produced. List of membership of rival unions were not furnished in the enquiry inspite of request made during the enquiry on 29.7.11. The order of examination of the witnesses was totally against the principles of natural justice and as such the entire evidence recorded in the enquiry was concocted and it was never trustworthy testimony against the workman. The EO has

never explained the contents of the enquiry proceedings and the depositions to the workman and his defence counsel. The EO was biased person and acted in favour of the management.

10. According to him recording of the enquiry were totally improper. His request that he should be permitted to be defended by D.R. Tuljapurkar was also not considered. The charge sheet was not given to him in Marathi and his request for the same was rejected and the EO relied upon the deposition of the staff member in the absence of documents.

11. According to him the D.R. could not cross examine the material witnesses and as such the findings of the EO vide his report and finding dt. 27.1.12 are perverse and not based on legally admissible evidence.

12. According to concerned workman, findings of the EO has not reached to any definite conclusion about his guilt. Findings are cryptic and showing non-application of mind. Even punishment awarded to him is not legal, fair & proper. His services were terminated by G.M. who was not competent to sign the dismissal order.

13. It is then contention of the concerned workman that he had preferred writ petition bearing WP No. 3576 / 2013 before Hon'ble Bombay H.C., Aurangabad Bench against the Chairman of the bank. The said writ petition was disposed of with certain directions. He then preferred civil application bearing CA No. 10125 / 2015 in WP No. 3576

/ 2013. The Hon'ble Bombay H.C. was pleased to pass the order on 21.8.15 mentioning that in the event appropriate govt. passes order to refer the dispute to the tribunal the said reference would be made pursuant to the order passed by Hon'ble Bombay H.C., the present application is made for adjudication. He is thus asking for quashing & setting aside the dismissal order dt. 30.5.12 and suspension order dt. 12.8.10 of the management of the first party bank and to direct the first party bank to reinstate him with full back wages, continuity of service w.e.f. 30.5.12 and to pay his back wages with 18% compounded interest therein.

14. The first party bank opposed the application by filing written statement Ex. 5 contending therein that no conciliation proceeding was held by the ALC on admission dt. 30.7.15. No failure report was submitted to the appropriate govt. and therefore the appropriate govt. was not at all involved in the process and could not decide on the basis of material record whether the dispute ought to be referred for adjudication or not ? As such the concerned workman was not entitled to invoke provisions of section 2A (2) by discontinuing the conciliation proceedings and further process at the level of a appropriate govt. or decision about making reference. The present reference application u/s. 2A (2) is not maintainable.

15. It is then case of the first party bank that allegations made in the charge sheet are directly related to and affect adversely the employee employer relationship. The concerned workman has indulged into

purportedly for collection of donations from employees of the bank by pressuring them as well as by coercion. He has indulged into coercive collection from clients and borrowers of bank under the pretext of collecting donations in the capacity of Working President of employees union called Marathwada Regional Rural Bank Employees Union and Honorary member of Officers Union called Marathwada Regional Rural Bank Officers' Union. The concerned workman collected huge donations from employees as well as borrowers and customers of the bank under pressure and other means of using his position as an employee of the bank. He had managed to have huge collections more than 55 lakhs in his own private S.B. A/c. and the accounts of his family members. He had actually engaged himself in promoting LIC business in the name of his family member. All these acts of commission on the part of concerned workman were directly in violation and amounts to misconduct under Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009] and hence specified charges were leveled against the concerned workman under Regulation 17, 19, 21, 35 & 38 of the said Regulations. These misconducts have been committed by the concerned workman in the capacity of as an employee and all these misconduct directly affect the employer employee relationship between him and the bank.

16. According to the first party, the concerned workman has been dismissed vide order dt. 30.5.12 passed by the disciplinary authority

and the bank. The said order has been passed on the basis of findings of the EO dt. 27.1.12 in the departmental enquiry held against him. The departmental appeal filed by the concerned workman under the provisions of service regulations of the bank has been dismissed by order dt. 29.9.12 by the appellate authority. He was found guilty of grave and serious misconducts of using the machinery of the bank for manipulation, transmission and private investment of the huge fund of Rs.5562700/- during the period 2005 to 2010. The amount of cash receipt reflected in the private SB A/c. of the concerned workman and his family between the year 2005 to 2010 was thus Rs.55.62 lakhs and the said cash was withdrawn by him. Act of fund raising on his part amounted to misconduct under clause 35 of Regulation 2009 of the bank.

17. It is then the case of the first party that the concerned workman is a clerk ranging between 1.30 lakhs to 1.75 lakhs. The entire cash withdrawn by him from the bank from his own accounts fully by the end of year 2010. The period of collection of the donations by the union and the huge cash movement in his own personal account and the accounts of the family coincide.

18. It is then the case of the first party bank that apart from aforesaid clear misconduct committed by the concerned workman directly as an employee of the bank, the concerned workman had led on extensive movement of collection of fund along with instigated members of the union led by him indulge in investing and pressuring

not only the employees of the bank to contribute the said fund but also by coercing borrowers of the bank and disbursing the loans granted to them and in some cases even from the disbursed loan amounts of the concerned borrowers. This matter was returned to CBI in May 2011 and therefore he has been dismissed for grave misconduct on his part as an employee of the bank.

19. It is then the case of the first party bank that the charge sheet was issued by G.M. who was disciplinary authority, competent to issue charge sheet. Shri S.G. Kulkarni was appointed as E.O. to conduct the departmental enquiry in respect of aforesaid charge sheet. Departmental enquiry was conducted with the principles of natural justice. The concerned workman has participated in the said proceedings and defended himself fully and effectively. Various documents and oral evidence was led by both the parties. The concerned workman has availed the opportunity of cross examination of the management witnesses. E.O. vide his findings held that the charges leveled against him are proved. The findings of the E.O. were entirely based on documentary & oral evidence led by both the parties. The concerned workman was given opportunity of hearing on proposed punishment by the disciplinary authority. He also gave written statement in respect of proposed punishment but disciplinary authority ultimately awarded punishment of dismissal vide his order dt. 30.5.12. There is no violation of principles of natural justice at any stage of the enquiry and at no point of time any prejudice is said to have been

caused to the concerned workman in the conduct of enquiry. Punishment of dismissal is based on the findings of the enquiry recorded by the E.O. as such punishment of dismissal awarded is just & proper.

20. It is thus denied by the first party bank that regulations are not registered or notified under the Industrial Employment Standing Orders Act and the Rules thereunder. It is submitted that the regulations of 2001 & 2009 and subsequent Marathwada Gramin Bank [officers' & employees Service Regulation 2010] have been brought into force as per the provisions and in exercise of the powers conferred by section 30 of the Regional Rural Bank Act 1976. The said service regulations are statutory regulations and are binding on the employees of the bank. Provisions of Industrial Employment Standing Orders 1946 and the rules thereunder are applicable to the employees of the bank. Since the Model Standing Orders formed under the act were not applicable to all and hence the question of enumerating any clauses of misconduct under the Standing Orders does not arise. As such the Model Standing Orders were not applicable.

21. It is then denied by the first party bank that there was grudge against the concerned workman on account of union activities. On these premise the first party has sought rejection of the reference.

22. By way of rejoinder Ex.6, the concerned workman reiterated that there is no iota of evidence either documentary or oral in the departmental enquiry conducted against the concerned workman and

as such the written statement submitted by the G.M. is having no legal status because the G.M. is not the Opp. No.2.

23. It is then contended that the concerned workman had followed due procedure in conciliation and ALC has issued a certificate enabling the concerned workman to move this application u/s. 2A (2) of I.D. Act. According to the concerned workman the first party has leveled new charge against the concerned workman on page 6 stating that he has managed to have huge collections more than Rs.55 lakhs in his own private saving bank a/c. and the amounts of his family members and this has link to the collection of donations to the union made by the union members. It has been mentioned that under the pretext of collecting donations in the capacity of Working President of the employees union called Marathwada Regional Rural Bank Employees' Union and Honorary member of officers union called Marathwada Regional Rural Bank Officers' union, the concerned workman has collected huge donations from the employees as well as borrowers and customers of the bank under pressure, coercion and other means by using his position as employee of the bank but this is not an allegation in the charge sheet even otherwise there is no complaint against the concerned workman before issuing him the charge sheet.

24. It is then contended that he has no concerned with LIC business. The charge in that respect is not proved but the EO has not taken any cognizance of deposition of this policy holders. Therefore the finding that the aforesaid acts were done by him in his capacity as

office bearer of the union is without any merit. As such the first party bank cannot level any new charge and the charges leveled against the concerned workman are defamatory.

25. According to the concerned workman he has not given the relevant papers on which the charge sheet was based along with charge sheet and also the list of witnesses along with charge sheet. He has not been given demanded papers which were relevant to defend the case during the course of departmental enquiry and the EO has not even considered the evidence of C.A. Shri Prasad Patil.

26. As regards the charge 2A, 2B, 2C & 2D, the concerned workman in written statement has stated that these charges have not been proved when infact the employer who leveled the charges against the employee is under obligation to prove the said charges. He has thus reiterated that the EO, disciplinary authority & Appellate authority have not considered the facts narrated in the different arguments wherein it is described that the concerned workman was being deprived by getting legitimate right to put his say at a very important stage before beginning his side of defence in the departmental enquiry and therefore there is utter disregard of principles of natural justice in the conduct of domestic enquiry. It is nothing but a victimization of an applicant. As such there is violation of section 33 of I.D. Act.

27. It is also contended that the Marathwada Gramin Bank [officers' & employees Service Regulation 2009] are not applicable to the employees employed in the first party bank including the concerned

workman because the same have never been registered as well as notified under the mandatory provisions of Industrial Employment Standing Orders Act 1946 and rules thereunder. As such the entire action taken by the first party against the concerned workman is entirely erroneous in law.

28. It is then contended that the witness namely S.E. Kerure has submitted 162 documents in the enquiry of which neither he is a maker or the receiver of the documents but the EO accepted the documents and exhibited those documents even though the D.R. raised objection at the very stage and demanded that the piece of paper which was told to be a letter from the Chairman to Mr. Kerure to act in his capacity as a team member of investigation team.

29. Lastly, it is contended that the concerned workman has been victimized.

30. Following issues are framed which are treated as preliminary issues. I reproduce the Issues along with my findings thereon for the reasons to follow:

Sr. No.	Issue	Findings
1	Whether the applicant proves that the allegations leveled against him by the Opponent Bank in the charge sheet dated 30.10.2010 do not amount to employment misconduct ?	No

2.	Whether the provisions of The Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 supersede the Marathwada Gramin Bank (Officers & Employees) Service Regulations, 201, 2009, 2010 ?	No
3.	Whether the enquiry conducted by the Opponent Bank against the Applicant pursuant to Chargesheet dated 30.10.2010 is legal, fair and proper and in conformity of the principles of natural justice ?	Yes
4.	Whether the findings recorded by the Enquiry Officer Shri S.G. Kulkarni are perverse ?	No
5.	Whether the findings recorded by the Enquiry Officer Shri S.G. Kulkarni are based on legally admissible evidence ?	Yes

Reasons

Issue No.1.

31. So far this issue is concerned, it is necessary to see the allegations leveled against the concerned workman by the bank in the charge sheet dt. 30.10.10. The charge sheet contents 3 allegations which in brief are as under:

- [I] You were working as a Clerk at your area office Latur, Osmanabad and at present posted at Regional office Latur, you have also been working as Working President of the employees union viz. MMRBEU and as a Honorary member of officers union viz. MMRBOU for years together.
- [II] Being the Working President of the employees union viz. MMRBEU and as a Honorary member of officers union viz. MMRBOU, you had been collecting donations through totally unauthorized & illegally campaign under the pretext of advertisement for unions publication viz. Mitra Patra also for the bi-annual union conference scheduled at Parbhani.
- [III] Being the Working President of the employees union viz. MMRBEU and as a Honorary member of officers union viz. MMRBOU, you have been monitoring and supervising the said campaign of collections of advertisements and donations. You have instigated and pressurized the employees of the bank / members of the union more particularly from Osmanabad & Latur Dist. for collecting advertisements / donations on large scale. This has resulted in collections of huge amount from these 2 districts.

[IV] You have actually led and associated yourself with raising unauthorized funds in cash from customers / borrowers of the bank that to pay exerting pressure thereby tarnishing / lower downing the overall image of the bank. The said acts on your part were certainly detrimental to the interest of the bank. You have thus violated Regulation 35 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009].

32. Second allegation against the concerned workman is that while working as a clerk at his office Osmanabad on 21.11.08 he had delivered his own cash of Rs.4 lakhs to Shri T.J. Shinde, Officer, area office Osmanabad who was then on deputation at Shiradhon branch for opening 5 CTDR a/cs. at Shiradhon in the names of his family members, 3 of which are in the joint name of him. As such the concerned workman had deposited the large sums of moneys in various branches without reporting the same to the bank and misused the position as Working President of the union. These acts on his part amounts to dishonesty towards the bank and also these acts amounts to unbecoming of bank employee. The concerned workman had thus violated Regulation 19 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009].

33. The allegations against the concerned workman is also to the effect that he is actively engaged in promoting LIC business in the name of his brother and his wife and thus violated Regulation 17, 19, 21 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009].

34. According to the Learned counsel for the concerned workman, these allegations have no nexus whatsoever with the work of the workman who was working as a clerk in the bank. Hence the allegations do not amount to employment misconduct as per well settled law. Submission is to the effect that the union is independent legal entity under the provisions of Trade Union Act, 1926. Even there is no rule or regulation that amounts can be deposited only after informing the bank and as such there is no evidence whatsoever to the effect that he [concerned workman] promoted any business of LIC.

35. At the first blush, I would observe that the concerned workman in his cross examination has admitted that the rules & regulations called Marathwada Gramin Bank [officers' & employees Service Regulation 2001] are applicable in his case. These service rules came to be amended in 2009 and 2010. He even admits that he preferred the appeal before the appellate authority under regulation 49 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009] and the clauses leveled in the charge sheet

were the clauses under these rules i.e. Marathwada Gramin Bank [officers' & employees Service Regulation 2001]. As such these rules are made applicable since 2001. It can be seen that the charge sheet specifically refers to Regulation 17, 19, 21 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009]. The enquiry was conducted under these rules with the specific allegations against the concerned workman that he has violated Regulation 35 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009]. So far as allegations against him are in respect of collecting of donations and large scale by instigating and pressurizing the employees of the bank and members of the union.

36. Admittedly, the Trade union is the separate entity but it is also the settled law that office bearer of the trade union is first employee and then office bearer. He is required to perform his duty and maintain his conduct as per the contract of employment and service regulations. In this respect reliance is placed on the decision in case of Laxmidevi Sugar Mills Ltd. V/s. Nandkishore Singh – AIR – 1957 – SC – 7 to submit that even though employee happened to occupy what he considered to be august position of the Vice President of the union, he does not cease to be an employee of the employer. He was first & foremost an employee of the employer and owned to the duty to him to

answer all G.M. In that case conduct of the employee in the course of correspondence took place between him and G.M. was subject matter of the charges whether amounts to insubordination or breach of discipline or not ?

37. In this case the issue as to whether the collection of funds was for a trade union or for any other party or for any other purpose has no relevance at all. It is alleged that the collection of the funds by the employee from other employees or from the customers of the bank by exerting pressure on them is in itself a misconduct. It cannot be said therefore that the collection of the funds by the concerned workman had no nexus whatsoever with the concerned workman and therefore that allegation does not amount to misconduct.

38. Even Learned counsel for the concerned workman submitted that to constitute the misconduct it must arise from relationship of employment as an employee and the workman and must have co-relative to his duty as an employee or atleast must be incidentally concerned with his duties as an employee and his obligations to the employer. In this respect he seeks to rely on the decision in case of Agnani V/s. Badridas & Ors. – 1963 – I – LLJ – 684. In that case it was finding of the fact that existence of quarrel with provision storekeeper in regard to a private matter between another employee and the shopkeeper was beyond disciplinary jurisdiction of the employer.

39. Reliance is also placed on the decision in case of Indian Express & Chronicle Press V/s. M.C. Kappor – 1974 – II – LLJ – 240.

In that case it was finding of the fact that the charges as regards misappropriation of funds of the society and falsification of the a/cs. of the society by the employee would not be regarded as affecting in any manner the smooth efficient and working of the press where he was employed because the employees cooperative society was all together and independent concerned or organization and company had no financial or other interest in it nor it did have any control over his management functioning or finance and therefore it was considered that the charges which were preferred against the employee did not seem to relate in any manner to the question of discipline.

40. In the decision in case of Ramesh Chavan V/s. Bank of India – 2005 – III – LLJ – 989. The alleged misconduct was in respect of giving false information to his wife about salary and during the period of enquiry it was found that the substantial recovery must have been made and the petitioner was allowed to continue the service without being suspended. In the circumstances it was observed that this is circumstance that he being continued in service was not prejudicing the interest of the bank.

41. Here in the instant case the rules under which the enquiry was conducted specifically define the misconduct whereby it is alleged that the concerned workman had collected huge donations from the customers of the bank as well as employees of the bank by exerting pressure on them. He had concerned the borrowers at the time of sanctioning and disbursing the loans granted to them and even in

some cases even from the disbursed loan amounts of the borrowers of the bank, he collected the funds. Some borrowers made complaint. Matter had been referred to CBI and therefore it can be said that by doing such activities such as collecting the funds by exerting pressure on the employees of the bank and then collected the huge amount of Rs.55 lakhs which he had deposited in his private bank a/c. and a/cs. of his family members, he had committed misconduct connected with employer employee relationship.

42. Apart from this the allegations made against him were specifically covered by Regulation 17, 19, 21, 35 & 38 of erstwhile Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009] under which the enquiry was conducted.

43. Learned counsel for the first party submitted that regulation 35 specifically covers the collections of funds as misconduct since clause – 35 provides that no officer or employee shall accept without the previous sanction of competent authority ask for or accept contributions or otherwise associate himself with raising any funds or collection in cash or kind from constituencies or customers in pursuance of any object whatsoever.

44. In view of this legal position cited supra I find that the allegations leveled against the concerned workman in the charge sheet dt. 30.10.10 amount to employment misconduct. The applicant had not

proved that the allegations against him do not amount to misconduct. Hence this issue is answered in negative.

Issue No.2.

45. So for this issue is concerned, it is the contention of the concerned workman that the Model Standing Orders framed under the act are applicable to him and the enquiry was not conducted under Model Standing Orders.

46. Learned counsel for the concerned workman submitted that the provisions of Model Standing Orders framed under the Industrial Employment Standing Orders 1946 superseded Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009 & 2010]. Mainly it is submitted that Marathwada Gramin Bank [officers' & employees Service Regulation 2001] have not been notified by the government under the provisions of section 13 (b). The regulations framed by the Marathwada Gramin Bank are not notified by the Government under the provisions of section 13 (b) of Industrial Employment Standing Orders 1946 hence Model Standing Orders are applicable.

47. In the context, reliance is placed on the decision in case of U.P. State Electricity Board & Anr. V/s. Harishankar Jain & Ors. – 1978 – LAB – IC – 1657 wherein it is held that Industrial Employment Standing Orders 1946 is a special law in regard to the manners enumerated in

the schedule and regulations made by the Electricity Board under the electricity supply act with respect to any of those matters are of no effect unless such regulations are either notified by the Government u/s. 13 (b) or certified by the certifying officer u/s. 5 of Industrial Employment Standing Orders 1946. In regard to matters in respect of which regulations made by the board have not been notified by the Governor or in respect of which no regulations have been made by the board, Industrial Employment Standing Orders 1946 continues to apply.

48. In this respect, it can be seen that Marathwada Gramin Bank [officers' & employees Service Regulation 2001] have been brought into force as per the provisions of and in exercise of powers conferred by the Board of Directors of the bank u/s. 30 of Regional Rural Bank Act 1976 and published in the gazette of India.

49. On going through section 30 (b) of Industrial Employment Standing Orders 1946 reads as under.

“Nothing in this act that Industrial Employment Standing Orders 1946 shall apply to the industrial estt. in so far as workmen employed therein are persons to whom fundamental and supplementary rules, civil service rules, civil service [temporary services] rules, revised new rules, civil regulations, civilian in defence service rules or Indian Railway estt. code or any other rules or regulations that may

be notified in this behalf by the appropriate government in the official gazette apply.”

So if the rules and regulations called Marathwada Gramin Bank [officers' & employees Service Regulation 2001] and now Marathwada Gramin Bank [officers' & employees Service Regulation 2009 & 2010] have been brought into force as per the provisions and in exercise of the powers conferred u/s. 30 of Regional Rural Bank Act 1976 shall apply.

50. Learned counsel for the first party in this respect has relied on the observations in para – 14 of the decision in case of U.P. State Electricity Board & Anr. cited supra to submit that the words 'rules & regulations' have come to acquire a special meaning when used in statutes. They are used to describe subordinate legislation made by the authority to whom statute delegation and hence the regulations framed and notified under RRB Act are covered u/s. 13 (b), hence Model Standing Orders are not applicable in the present case. Submission is also to the effect that RRB Act, 1946 is also a special law which is subsequent in time and therefore subsequent special law prevails over the special law since RRB Act, 1946 is providing for separate and independent set of service conditions to be framed by the bank with approval from the Central Govt. and to be brought in with parliament's approval.

51. In this respect, the submission is also to the effect that Marathwada Gramin Bank [officers' & employees Service Regulation 2001] were made by the Board of Directors u/s. 30 of Regional Rural Bank Act 1976 after consultation with sponsored bank i.e. bank of Maharashtra & National bank i.e. National Agriculture Rural Development and previous sanction of Central Govt. Said regulations were published in gazette of India on 2.5.01. Section 30 specifically contemplated a special set of service conditions for RRB employees and the rules framed by RRB is to be placed before the houses of Parliament and passed before they are brought into force. These regulations are therefore statutory regulations and they cannot be further certified under the Industrial Employment Standing Orders 1946. No such certification is therefore required under Industrial Employment Standing Orders 1946 to said regulations.

52. Learned counsel for the first party refers to section 31 of RRB Act 1976 which reads as under:

“Act to override the provisions of other laws. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, express or implied, or in any instrument having effect by virtue of any law other than this Act, and notwithstanding any custom or usage to the contrary.”

53. With this the submission is that section 31 of RRB Act 1976 shall prevail over all other enactments and even agreements and contracts. The RRB Act 1976 therefore supersedes and prevails over Industrial Employment Standing Orders 1946 prescribed thereunder.

54. It is in these circumstances even it appears that the concerned workman in his cross examination has admitted that the rules & regulations called Marathwada Gramin Bank [officers' & employees Service Regulation 2001] are applicable to his case. He even admits that when he acted as D.R. in some other enquiries, those enquiries were conducted under these rules i.e. Marathwada Gramin Bank [officers' & employees Service Regulation 2001]. These regulations contained leave, retirement and other benefits. These rules are made applicable since 2001. Even from these admissions given by the concerned workman in his cross examination, it can be seen that regulations framed under RRB Act 1976 have been accepted by the employees of the bank ever since 2001 and benefits thereunder have been taken by the employees since 2001. As such it is not possible to accept the contentions of the concerned workman that entire enquiry is vitiated since the enquiry against the concerned workman was not conducted under the provisions of Model Standing Orders. This issue is therefore answered accordingly in negative.

Issue No. 3, 4 & 5.

55. So far as these issues are concerned, at the first blush I would observe that the concerned workman in his cross examination has admitted that he received copy of findings of the EO and also filed say on that. He even admits that he received the charge sheet on 30.10.10. The enquiry was commenced on 21.11.10 and concluded on 11.11.11. Admittedly Mr. S.G. Kulkarni was the E.O. He even preferred appeal against the findings of EO that came to be rejected on 31.12.12.

56. As per his own admission, EO asked him to appoint the D.R. and as such Mr. Kulkarni was appointed as his D.R. Admittedly along with charge sheet he received the list of witnesses and list of documents. After receiving the documents he sought time for perusing the documents and the EO granted time in that respect. Admittedly, even original documents were produced for verification. As per his glaring admission when MW-1 Mr. Kerure started giving evidence in Marathi, he told him to give evidence in English. So as regards the first objection of the concerned workman that the enquiry was not fair because it was conducted in English language is not acceptable since he himself wanted that the witnesses should give evidence in English and his D.R. also cross examined them. Admittedly, the management has examined MW-2 to MW-23 during the enquiry proceedings and they were cross examined by D.R. Then concerned workman examined himself and his witnesses. He examined 26 witnesses. At this stage it was tried to point out that the concerned workman wanted to examine 78 witnesses but EO has not permitted to examine other

witnesses and in respect of that EO has given explanation in his proceedings dt. 18.11.11 and then the enquiry was concluded.

57. The fact remains therefore that in his statement itself concerned workman has admitted that the opportunity was given to him to defend himself during the course of enquiry and he has not stated anywhere during the course of enquiry that he was not given opportunity to defend himself. In view of these admissions of the concerned workman in his cross examination it can be said that sufficient opportunity was given to him to defend himself during the course of enquiry.

58. Even then Learned counsel for the concerned workman submitted that the charge sheet which was given to the concerned workman is entirely vague since the names of the employees of the bank have not been mentioned in detail and no details has been given as to what was the rate actually charged and what was the normal rate.

59. In this respect the enquiry cannot be said to be against the principles of natural justice especially when throughout the enquiry proceedings by cross examining the management witness and by examining the D.R. the concerned workman did understand the charges leveled against him and defended himself effectively. Therefore the allegations of the concerned workman do not affect the validity of the enquiry.

60. Learned counsel for the concerned workman reiterated that even during the enquiry proceedings it is necessary to prove the

documents, but then the EO has not considered the documents in proper perspective. Submission is to the effect that the production of CTDR is not sufficient to prove the genuineness of the transaction. It is because Mr. M.T. Mule, MW-5, Shri S.V. Daithankar, MW-6 have stated that the amount was given to concerned workman but he has not taken the signature of the concerned workman on the voucher. Similarly, in respect of transactions, concerned workman has explained the source of income, source of each deposits inflow of the amount in cash, some deposits of the concerned workman in cash and details in respect of these transactions which has not been taken into consideration by the EO. It is then submission of the concerned workman that he has submitted the declaration of assets & liability in the year 1988 – 89 and he handled and used the funds of family members in the capacity of Karta for the benefits of his family and therefore utilization of the amount was for the benefit of joint Hindu family. This aspect was also not taken into consideration by the EO when infact the concerned workman in his written statement has categorically stated that to relate his assets with anything is perversity.

61. On going through the enquiry report, EO has considered that provisions of Indian Evidence Act does not apply to domestic enquiries and hence the enquiry was conducted according to the rules of natural justice. It was impartial, fair, just & proper. EO also considered the evidence of Shri Kerure, MW-1, Shri V.V. Digikar, MW-3, Shri S.T. Lakade, MW-18, Shri S.M. Jori, MW-19 along with documentary

evidence marked as Exm.2 to Exm.18 and Exm.153 to Exm.155, Exm.160 to Exm.162 to come to the conclusion that unions namely MRRBEU & MRRBOU have implemented their own campaign of collection of donation and the concerned workman holding the post of Working President of MRRBEU and also he was Honorary member of MRRBOU. Concerned workman had monitored and supervised the entire campaign the collection of funds for union conference, advertisement in 'Mitra Patra' were made by the members of the union and the resolution and call for such type of collection was taken under the leadership of concerned workman who was Working President. As such he has violated service regulations 35 & 38. It cannot be said therefore that EO has not considered the documents in proper perspective.

62. Regarding charge No.2 (a) (b) (c), he has considered documents Ex.19 to Ex.39 and the evidence of MW-1, MW-5, MW-6, MW-7, MW-10, MW-11, MW-15 & MW-21 to come to the conclusion that the concerned workman has deposited his personal cash amount by taking full care that his name or names of the family members should not appear as cash deposit. No separate a/cs. were opened in the name of HUF. No agricultural land or properties and no such types of evidence was brought by him before EO.

63. On going through the enquiry report, EO while considering the charge No.3 i.e. act of actively engaging and promoting LIC business in the name of Mr. Ganesh Tukaram Shinde & Mrs. Kavita Kundle

Shinghare. Documents Ex.121 to Ex.152, Ex.157 to Ex.160, Ex.168 to Ex.199 along with evidence of Mr. Kerure, Mr. Dixit, Mr. Kulkarni, Mr. Shivande, Ms. Prabhavati, Mr. SV Kulkarni, Mr. M.K. Shiden, Mr. Kbragade and Mr. Shashtri are being considered by the EO to come to conclusion that concerned workman had misused his position of being Working President of the union in soliciting business of LIC.

64. As such on going through the enquiry report, it appears that findings of the EO are based on evidence.

65. Even then the Learned counsel for concerned workman submitted that the names of employees of the bank / members of the union from Osmanabad or Latur Dist. have not been stated during the course of enquiry who were allegedly pressurized by workman and no particulars are given as to the manner in which the workman led and associated himself with raising of funds or names of the customers / borrowers of the bank who were pressurized, have been given. Submission is to the effect that the allegations are vague and enquiry as such was vague.

66. However, on going through the enquiry report I am of the considered view that the EO has considered documentary & oral evidence and has come to the conclusion that the charges leveled against the concerned workman are proved. Even it appears that during enquiry sufficient opportunity was given to the concerned workman and the concerned workman at no point of time has taken any objection or asked for furnishing with the particulars of the names

of the workmen to whom he allegedly instigated for collecting the donations and advertisement on large scale. Similarly saying that the charges leveled against the concerned workman were vague is not acceptable especially when on going through the enquiry report it clearly appears that enquiry was conducted fairly and full opportunity was given to the concerned workman. In the judgment cited by Learned counsel for concerned workman in case of Anil Gilurkar Vs. Bilaspur Raipur Kshetria Gramin Bank & Anr. – 2000 – (II) – LLJ – 20, it was finding of the fact that disciplinary authority was in disagreement with finding of the enquiry report. Here in the instant case even the disciplinary authority has rejected the appeal filed by the concerned workman holding that the findings are based on evidence.

67. Considering all these facts I find that the enquiry conducted against the concerned workman is legal, fair & proper and in conformity with the principles of natural justice. As such the findings of the EO are not perverse. The findings of the EO are based on evidence. Issue No. 3 to 5 are therefore answered accordingly as indicated against each of them in terms of above observations.

68. In the result, I pass the following order.

ORDER

- 1. Enquiry conducted against the concerned workman is fair & proper.**
- 2. Findings of the Enquiry Officer are not perverse.**

- 3. Parties are directed to argue and lead evidence on the point of quantum of punishment.**

Date: 22.01.2020

Sd/-
(M.V. Deshpande)
Presiding Officer
CGIT -2, Mumbai