

## **Moot Trial**

### ***Arvind Kumar v Jayanti Co-operative Bank***

***A proceeding challenging dismissal from employment***

---

Facts are located in India. Laws of India apply.

This brief was made for the Sixth ILS Judgment Writing Competition at the ILS Law College held on 25 January 2014.

This brief is created from the facts of a pending application with similar facts, and has been extensively modified for the Competition by Nilima Bhadbhade, Associate Professor, ILS Law College, Pune, Ms Parvathy Tharamel, and Ms Gayatri Dharmadhikari.

Anyone is free to use it for non-commercial educational purposes, provided authors are acknowledged.

## Contents

No	Particulars	Page	
1.	Assumptions	3	
2.	Application before Labour Court	4	
	Affidavit of Applicant, with cross examination	7	
	List of Documents filed by Applicant in Labour Court	12	
		Page in Brief	
1	Order of dismissal given by bank	15-12-2011	13
2	Resolution of Board of Directors about dismissal	11-12-2011	14
3	Representation by Applicant from dismissal	29-12-2011	15
	Written Statement of Opponent		17
	Cross examination of Mr Jayant Pande, Chief Manager of the Bank		20
	List of Documents filed by Opponent in Labour Court		22
			Page in Brief
1	Promotion Letter of Mr Kumar as Branch Officer	3-1-2004	23
2	Duty List of Mr Kumar	17-1-2004	24
3	8 Leave applications of Bank Employees sanctioned by Mr Kumar (not in this brief)		--
4	Enquiry Report	20-5-2011	25
5	Enquiry Proceedings with documents and notes of proceedings		

-----

### Assumptions,

1. Documents bear relevant stamps and endorsements usually put on such documents by the Court. Proper fees have been paid.
2. The Labour Court was working on the dates on which documents and papers were filed.
3. The Bank has filed an Affidavit of Chief Officer of the Bank Mr Jayant Pande, which has same contents as the Written Statement of the Bank.
4. All letters, notices sent to Mr Arvind Kumar have been received by him.
5. Printing errors in the brief, if any, may be excused.

### Admitted or Undisputed Facts

1. The Bank is a registered Bank under Maharashtra Co-operative Societies Act.
2. The Bank does not have its own Standing Orders.
3. The basic pay of Mr. Kumar in 2010 was Rs. 1650/- per month.
4. The proceeding about nomination as worker-director in the Industrial Court is pending.
5. Documents are Serial numbers 2 and 3 in the List of Documents filed by the Bank on 27-4-2012 have been filed in the Court, and have been proved.
6. Eight leave applications have been filed by the Bank in the Labour Court. These are leave applications made by employees in the Deccan Gymkhana Branch and are sanctioned and signed by the Applicant. These leave applications are not copied in this brief.
7. The entire record of the Departmental Enquiry is before the court, and is relied on by both parties. Hence formal proof is dispensed with.
8. Documents not part of this brief are indicated in lists of documents

----

In the Labour Court at Pune

Application No 4 / 2012

Mr Arvind Kumar  
25 Mahatma Gandhi Colony,  
Sadashiv Peth,  
Pune

Petitioner

v

Jayanti Cooperative Bank  
400, Magarpatta, Pune

Opponents

In the matter of section 78 and section 78 (1)(d)  
of the BIR Act 1946

AND

In the matter of Reinstatement  
with the full back wages and continuity of service

MAY IT PLEASE THE HONOURABLE COURT

1. The Applicant was working with the Opponent Bank. He has put in 25 years of service with the Opponent. At the time of his termination he was holding the post of senior Office / Branch Manager drawing basic wage of Rs 1850+ and other allowances.
2. It is submitted that he was posted at the Deccan Gymkhana Branch as Branch Manager in the hierarchy maintained in the Bank, viz. Clerk, Sub-Accountant, Accountant / Junior Officer, Senior Officer / Branch Manager, Assistant Manager, Manager, General Manager. the Senior Officer is working with the clerks in the Branch. No power is vested with the Senior Officer / Branch Manager. He is not authorised even to sanction any type of leave. He is required to work as a routine work by his own hand though he was designated as a Senior Officer, his work is mainly in collecting loan applications and forward the same to Head Office for sanction. Hence he is an 'employee' within the meaning of section 3(13) of the BIR Act.
3. The entire affairs of the Bank are looked after by the Board of Directors according to the provisions of bye-laws approved by the authority under the Maharashtra Cooperative Societies Act. Unless decision is taken by the Board of Directors by passing a resolution, no one including the General Manager has the power to take any decision. Hence all employees appointed in the Bank are 'employees' within the section 3(13) of the BIR Act. Services of these employees are

governed by Standing Orders . All facilities are extended to employees according to the Settlement entered into between the Bank Karmachari Sangh and the Management of the Bank.

4. While working in the Deccan Gymkhana Bank, the services of the applicant were transferred to the Head Office in the Loan Section in place of Mr Talekar, who is the Junior Officer in the Bank. After receiving that order, the applicant wrote a letter to the Opponent Bank stating the facts that to join at Loan Section and handing charge from Mr Ravindra meant he was reverted to lower post. Even after receiving the letter the Opponent has shown ignorance and has suspended the Applicant from the Deccan Gymkhana Branch. The Applicant submits that after the suspension, the Opponent Bank kept mum for 3 months and thereafter he was issued charge sheet stating that under the common law he has committed a misconduct. He was further informed that he is not an 'employee' within the meaning of Section 3(13) of the BIR Act. After receiving the charge sheet, the applicant submitted a letter stating that the Standing Orders applied to him. To exclude him from the designation of employees, conditions are must, viz. he must draw basic wage more than Rs 6,500 and secondly he may be appointed primarily as Manager Administrator or the Supervisor and vested with the powers. Both the criteria above are not fulfilled in case of the Applicant. Bank's contention that he is not employee are not accepted by the applicant. The Bank ignored his letter and decided to continue the enquiry under common law only.
5. Applicant states that the stand was taken by the Bank only by the reason that the Bank Karmachari Sangh recommended his name as employee-director, and the Bank refused to accept the same, and the Bank Karmachari Sangh filed a complaint of unfair labour practices before the Industrial Court. He was issued charge sheet only because of this and with a view to harass him.
6. Applicant states that one Smt Janaki Sharma was appointed as Enquiry Officer. She has acted against the norms laid down during the course of enquiry. Not only has she failed to give directions to the Bank to produce a document called by the Applicant. She does not state why evidence of the Bank is acceptable to her. She does not say why the evidence or default statement was not acceptable to her. The finding of the Enquiry Officer is perverse.
7. Based on the enquiry report, the Bank decided to terminate the services of the Applicant. Bare perusal of the transfer order issued to Applicant on 10-7-2010 and immediately he was suspended on 11-7-2010, and then for a period of 3 months no action has been taken, and charge sheet was served only on 10-10-10 shows that the management was not keen on taking any action. Thereafter enquiry was conducted. Enquiry Officer submitted her report in May 2009, since that in the period of 75 days no action is taken and thereafter services of the Applicant was terminated under the signature of the Chairman. Applicant states that by virtue of the provisions of Section 78(1)(d), the employer can take action within 6 months from the date of knowledge of misconduct. The order of dismissal does not comply with this provision. Hence the action of termination is illegal and against statute.

8. Applicant states that the Chairman has not legal right to issue termination order, but the same is vested in the Manager under the Standing Order. Hence termination is bad in law.
9. It is obligatory for the employer to consider the length of service, past record of the employee etc before issuing the dismissal. The Opponent has not considered the same. Hence the termination is bad in law.
10. Applicant served notice, and has no alternative except to file this application.

It is therefore prayed that

- a) It may be declared that the order of the Bank terminating services of the Applicant w.e.f. 15-12-2011 is illegal.
- b) the Bank be directed to reinstate the Applicant to his original post with continuity of service and full back wages.
- c) The Bank may be ordered to pay costs to the Applicant.
- d) Any other order in the interest of justice may be passed

Pune

Date

*Arvind*

Applicant

Advocate for Applicant

Verification

I, Mr Arvind Kumar, Applicant, do hereby state that whatever is stated in paragraphs 1 to 10 above is true and correct to the best of my knowledge, information and belief, and I have signed at Pune on \_\_\_\_\_

*Arvind*

Applicant

## In the Labour Court at Pune

Application No 4 / 2012

Mr Arvind Kumar

Petitioner

v

Jayanti Cooperative Bank  
970 / 45, Magarpatta, Pune

Opponents

### **AFFIDAVIT**

I, Arvind Kumar, adult, residing at 25 Mahatma Gandhi Colony, Sadashiv Peth, Pune, do hereby state on solemn affirmation as follows:

I am filing affidavit in lieu of examination in chief.

1. I was appointed as a clerk by written order by the Bank. My service conditions are governed by the standing orders applicable to the employees of the Opponent Bank. I say that thereafter I was promoted to the post of Senior Officer / Branch Manager in the scale Basic scale wage 1200 + allowances
2. The Bank Karmachari Sangh is a representative and approved union for cooperative Banking industry for Pune City Area, Cantonment Area and the Talukas in Pune District and I am its member, and I was also its office-bearer. The service conditions of employees and other facilities are settled by signing the agreement between the Sangh and Opponent Bank.
3. I say I was elected as Employee Director under section 73BB of the MCS Act, and I am signatory to the agreement of settlement between the agreement.
4. After promoting me as Senior Officer / Branch manager, the nature of duties has not changed. No powers like appointment, termination, initiating disciplinary action, sanctioning leave or loan are vested in me. I was not even entitled to take any independent decision as all decisions are required to be taken by the Board of directors by resolution to that effect. Even the General Manager or Executive Officer or Chief Officer of the Bank have no authority to take independent decisions.
5. To exclude a person from the definition of the term 'employee', he must be appointed primarily as a Manager / Administrator / Supervisor and must draw basic wage more than Rs 6500 p.m. Admittedly my basic wage is Rs 1850 and such criteria as defined under the Act, if perused on this condition alone, the plea of the Bank is liable to be rejected.
6. In accordance with provisions of the agreement, the designation of Senior Officer is maintained in the Head Office and the Senior Officer working in the Branch is called the Branch Manager, the work carried out at the Branch level is a routine work, each and every clerk are provided with duty list. I am not entitled even to allot them any duty according to my choice as the work is of a routine nature.

7. I say that the document filed by the Bank if perused it will be seen that the duty list issued to me and I am under obligation to carry out the work as directed by the Ban, and I say in the absence of documentary evidence, and considering the settlement and the true copy of the appointment order filed along with affidavit if perused reveal that the contention of the opponent is unsustainable in the eyes of law.
8. I claim that the Hon'ble court has jurisdiction to decide the matter and that I am an employee under section 3(13) of the BIR Act.
9. I state that the Bank had no authority to commence enquiry against me under common law. I say that appointment of Mrs Janaki Sharma as Enquiry Officer was without authority. I say that the Enquiry Officer did not follow the procedure under the Standing Orders. I say that did not properly construe the documents filed by the Bank.
10. I state with reference to the order of transfer dated 10-7-2010 that I have not refused the transfer. I merely requested the Bank to reconsider the transfer.
11. I state that the Bank asked me to hand over charge to a junior officer Mr Ravindra. I believe that only a person of equal post can accept charge. I believe that I was reduced in rank without giving an opportunity of being heard.
12. I state that the Bank issued transfer orders because the Bank Karmachari Sangh challenged before the Industrial Court the refusal by the Bank to accept me as worker-director. I state that the transfer order was given to harass me and victimise me because I was an active member of the Bank Karmachari Sangh.
13. I state that the news item in Lokdhara of 13-7-10 is based on information given by Bank Karmachari Sangh. I did not give any documents or information to the daily Lokdhara. I say that the Bank asked for explanation from Mr Dighe, and did not take action against him. I state that the Bank did not ask similar explanation from me. I state that Mr Dighe was also Branch Manager at that time. I say that I am entitled to show by protest in different ways.
14. I state that the Enquiry Officer did not properly appreciate the documents filed and the oral evidence given on behalf of the Bank. I state that the finding of the Enquiry Officer is perverse. I also state that the punishment of dismissal is excessive.
15. I state that the order of dismissal is passed without authority. It also violates provisions of Section 78(1)(d), and is given beyond the time prescribed in the provision. It is therefore illegal.

Made this affidavit

Sd/-

Registrar

Industrial Tribunal, Pune

Affiant

-----  
The contents of my affidavit are drafted as per my instructions and those are true and correct. It bears my signature.

**Cross examination on behalf of the Bank**

1. I have completed M.Com. I understand English. I am now shown the transfer order dated 3-1-11 appointing me as Branch Manager of Kondhwa Branch. I accepted that transfer. It is at Exh 24. I did not inform the Bank that I will not work as Branch Manager. I had accepted the statement in the letter that my work will be of managerial nature. This is in para 9 of the letter. I was given a duty list. Its contents are correct. Under the list I could sanction leave of employees in the branch. I also had authority to impose punishment on employees who did not follow rules, to plan the work in the branch, house management at the branch. It is the duty of a branch manager to improve business of the branch with the assistance of all employees in the branch. I accept that all duties in the duty letter applied to me. These are not duties of a clerk. I followed orders of the management. I have not produced today any such orders, nor have I asked for them. I am shown the application for leave made by an employee in my branch. I have sanctioned his leave. I have also sanctioned loans. I now see the documents where I have sanctioned the loan. They have my signatures. Only the Branch Manager has the powers to recommend giving of loans. I recommend both whether the applicant for loan has credit, and whether loan must be given. A clerk does not have such powers. A clerk does not work for development of business of a branch.
2. My basic pay is Rs 1850. I was nominated as worker director with the Bank board. I am aware that the Bank has objected to this nomination in the Industrial Court. I do not know whether bye-laws are for internal management of the Bank and not related to employment. It is true that the relations between management and workers are governed by bye-laws and Standing Orders.
3. It is true that a large group of employees of the Bank had given a written representation to the Bank that I and Dighe should not be appointed as worker-directors in the Bank.
4. It is true that before I was dismissed, a Departmental Enquiry was conducted. I now see the entire file of the Departmental Enquiry held against me which is filed in this proceeding. I have copies of all these documents. The enquiry Officer has given me copies of all documents filed with her, and all notings of all proceedings.
5. It is true that I was informed that the enquiry would be conducted according to common law. I say that such law does not exist. I again say that I asked for its copies, but the Bank did not give me.
6. I received suspension allowance. The Bank never informed me that the suspension allowance was according to Standing Orders. It is true that the Bank gave suspension allowance of such amount as it felt fit. It is not true that Provident fund is not paid according to Standing Orders. It is not true that it is only by wrong belief that it was paid according to Standing Orders. It is true that I

wrote confidential reports of the other employees in the Deccan Gymkhana Branch. I gave positive and negative reports.

7. It is true that I have never challenged the order appointing the Enquiry Officer. It is true that I participated fully and without objection before the Enquiry Officer. It is true that I received copies of all documents filed by the Bank. It is true that I got full opportunity to cross examine the witnesses of the Bank. Mr Raj Desai, representative of the Bank Karmachari Sangh represented me at the enquiry. I and Mr Desai attended all proceedings of the enquiry.
8. I did not examine myself as witness at the Enquiry. I did not examine any witness at the enquiry. I took decision of not examining myself or any witness after discussions with Mr Desai.
9. I did not raise objection with the Enquiry Officer that the 6 months mentioned in section 78(1)(d) were over. I never objected to the continuation of the enquiry on the ground that 6 months were over after the alleged misconduct. It is not true that the provision of section 78(1)(d) about 6 months time is not mandatory, but is directory.
10. It is true that the Enquiry Officer was appointed by decision of Board of Directors.
11. It is true that if a Bank employee is not an 'employee' under the BIR Act, he can be dismissed from service for misconduct by holding a Departmental Enquiry, but holding Departmental Enquiry is not mandatory. I cannot say under which law such enquiries are held. I do not know whether such departmental enquiries must be held according to principles. I am not aware of judgments of the High Courts and Supreme Court that have laid down such principles. I know that they have laid down some principles. I am aware that any Departmental Enquiry must follow principles of natural justice. I cannot say just now what these principles are.
12. I have used the words 'swabhavik nyayatattve' in my representations before the disciplinary enquiry. It is true that by Swabhavik Nyaya I mean natural justice, and swabhavik nyayatattve I mean principles of natural justice. I cannot now say what these principles are which I have referred. It is true that I know what the principles are. But I cannot tell just now what they are. It is true that I have used these words deliberately and with full understanding of the words. I cannot say just now whether the enquiry Officer followed all principles of natural justice. I cannot say whether the Enquiry Officer followed proper procedures. It is true that I got full opportunity to defend myself at the enquiry.
13. It is not true that the enquiry was properly held. It is not true that the enquiry officer properly concluded that I had committed insubordination. It is true that I was not willing to move to the Head Office as stated in the transfer order. I again say that I merely requested that my transfer be reconsidered.
14. I am not aware whether an employee must obey orders of transfers. It is true that I did not file any proceedings before any court challenging the transfer order. I have not brought any document to show that the transfer was without authority or was given to harass me. It is true that I am not a workman for the purposes of the Industrial Disputes Act. I again say that I am governed by the BIR Act. I am aware

that an employer can transfer an employee. I cannot say just now whether an employee is legally bound to accept the transfer.

15. It is true that I was told to hand over charge to Mr Ravindra. Mr Ravindra was the junior officer in the Branch. It is true that there was no other Senior officer of officer of my level in the Branch to whom I could have given charge at that time. It is true that Mr Ravindra was the most senior person among other persons working in the branch at that time. It is true that a person who is transferred must hand over charge. It is true that handing over charge is a routine affair when a person is transferred. It is true that it is not necessary to call a employee of equal rank from another branch to take charge. It is true that my pay was not reduced. It is true that my rank was not reduced. It is true that my post was not changed. It is true that the post to which I was transferred was that of Senior Officer. It is true that Senior Officers and Branch Managers are in the same cadre.
16. It is not true that I have committed insubordination. It is not true that I have disobeyed orders of the Bank. I again say that the orders of the Bank were wrong.
17. It is not true that I gave the news about suspension to the Daily Lokdhara correspondent. It is true that I did not state in the enquiry that I did not give the news to Lokdhara. I again say that the Bank Karmachari Sangh gave this news to the daily. It is true that the news mentions that I gave a statement. It is not true that I gave any statement to Lokdhara. It is true that an employee must not commit acts that will affect adverse reputation of the employer. It is true that I did not examine anyone from the Bank Karmachari Sangh to say that the Sangh gave the news. I have not filed any documents before the enquiry or before this court that show that the Sangh gave this news. It is true that I never objected to the news as it appeared in Lokdhara. I have not examined Mr Dighe. It is true that the letter of suspension was issued to me dated 10-7-10. It is not true that a suspension order is confidential and cannot be disclosed to public. I again say that I gave copy of the order of suspension to the Bank Karmachari Sangh.
18. It is not true that I have committed misconduct. I cannot say just now how the enquiry has prejudiced me. I again say that I was terminated because of the order of the enquiry officer that is why I am prejudiced.

No reexamination

R.O.A.C.

Sd/-

Judge, Labour Court, Pune.

(XYZ)

22-6-13

## In the Labour Court at Pune

Appln No 4 / 2012

Mr Arvind Kumar

Applicant

v

Jayanti Cooperative Bank

Opponent

LIST OF DOCUMENTS filed on behalf of the Applicantis

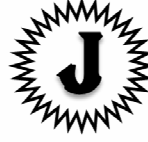
S No	Particulars	Date
1	Order of dismissal given by bank	15-12-2011
2	Resolution of Board of Directors	11-12-2011
3	Representation by Applicant from dismissal	29-12-2011

Pune

Date:

Advocate for Applicant

**JAYANTI CO-OPERATIVE BANK**



**400 Magarpatta,  
Pune  
E-mail: jayantibank@ymail.com**

Date: 15/12/2011

Ref: ADMN/720/2011

To

Mr. Arvind Kumar,  
Branch Manager,  
Deccan Gymkhana Branch,  
Jayanti Co-operative Bank, Pune  
Address: 25 Mahatma Gandhi Colony,  
Sadashiv Peth  
Pune

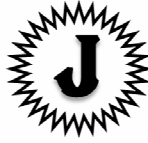
Sub: 1) Charge sheet No: ADMN/364/2010 issued to you by the bank  
2) The enquiry report dated 20/5/11 submitted by the Enquiry Officer after enquiry into these charges  
3) The resolution of the Board of Directors No 5(1) dated 11/12/11 enclosed with this letter.

Sir,

1. As a Branch Manager of the Deccan Gymkhana branch of our bank, you refused transfer, following which a charge sheet was issued to you and an Enquiry Officer completed a Departmental Enquiry following due procedure
2. You have received copies of the proceedings on each date on which the enquiry was held.
3. You had an opportunity to defend yourself at the proceeding. The proceeding was conducted following the principles of natural justice. You did not examine yourself or any witness at that enquiry.
4. The Board of Directors considered the report of the Enquiry officer and was of the opinion that the Enquiry Officer correctly held that the charges are proved. The Board of Directors also resolved your dismissal from service.

You are hereby informed that you are dismissed from service with effect from the date you receive this notice.

*XPOR19/2*  
Chief Officer  
Jayanti Co-operative Bank



True Copy

Resolution No. 5(1) passed in the meeting of Board of Directors held on 11/12/11

**Resolution 5(1):**

Branch Manager Mr. Arvind Kumar was transferred from Deccan Gymkhana Branch to Head Office by the bank's letter dated 10/7/11. By his letter dated 11/7/10, he refused the transfer. Hence he was suspended pending enquiry on 12/7/10. A Departmental Enquiry into his misconduct has been completed according to the principles of natural justice. He had full opportunity to defend himself and all principles of natural justice have been fully followed. The enquiry report submitted by the Enquiry Officer to the bank shows that all charges have been proved and Mr. Kumar is guilty of all charges. After discussion it is hereby resolved that Mr. Arvind Kumar shall be dismissed from the employment of Jayanti Co-operative Bank.

Proposed by Mr.CS Dhore

Seconded by Mr. Yeshwant Sulakhe

Passed unanimously

Arvind Kumar,  
25 Mahatma Gandhi Colony,  
Sadashiv Peth,  
Pune

Date: 29/12/2011

To  
Chairman,  
Jayanti Co-operative Bank,  
400 Magarpatta,  
Pune

Sir,

1. I was working with the Bank, initially I was appointed as a Clerk and thereafter I was promoted to the post of Senior Officer/ Branch Manager. I have put more than 25 years service with the Bank. My past record was clean and without any blame. I say that, the wage scale extended to me in accordance with the provision of settlement entered into between the Bank Karmachari Sangh and Bank. All the facilities extended to me by virtue of the provision as per the settlement entered into between the Bank Karmachari Sangh and Bank.
2. I say that, the entire affairs of the Bank is looked after by the Board of Directors in accordance with the provisions of bye laws approved by the Authority under the M.C.S Act and such all the powers are vested with the Board of Directors, though my designation was Senior Officer/ Branch Manager. I was not vested with any independent power, I was not authorized to appoint /dismiss/ take a disciplinary action/ to make a transfer/ to give a promotion to any of the employees working in the Bank. Further, my basic pay at the time of termination is Rs 1850/- and to exclude the person from the definition of BIR Act, he must have drawing basic pay of Rs 6500/- Further he must have independent powers, (the power order requires to be bound by the Bank,) in my case both the conditions are not fulfilled and such I am included under the designation of Section 3(13) of BIR Act and such Standing Orders also applicable to me and because of this only after suspension, I have paid a subsistence allowance as provided under the Standing Order.
3. I say that I am active member of the Bank Karmachari Sangh, previously also I was holding the post of the employees' Director, thereafter once again my name was referred as a employees' Director by the Bank Karmachari Sangh, Pune reason best known to the Bank why they refused to take my name on the Board of Director and as such Bank Karmachari Sangh filed a case before the court which is still pending. Knowing this fact, only with the reason, to harass me, Bank issued a order transferring me from the Camp Branch to the Head Office. The reason was mentioned that I was transferred on the administrative grounds. Interesting to note that I was posted to the Head Office in Loan Section in place of one Mr. Talekar who is the junior officer in the bank. It means that I was reverted to the lower post and committed a change in my status. The specifically I have refused to accept the transfer order by informing all these facts but Bank kept mum and suspended me, informing me that I have committed a misconduct under the common law, though standing orders are applicable to me, the charge – sheet was not issued as per the Standing Orders, there is no contract of employment that the Bank has right to hold an enquiry against me nor there is any contract of appointment who suspend me and such all the acts committed by the bank amounts to a illegal change.
4. I say that one Smt. Janaki Sharma was appointed as Enquiry Officer. The Enquiry Officer has not directed by the Bank, to produce the documents called by not only that the Enquiry Officer have flouted the basic principle of natural justice. The finding of Enquiry Officer is worse than perverse.
5. I say that I was issued a suspension order on 11/7/2010 meaning by the Bank has got the knowledge that I have committed a so called misconduct. Thereafter on 10/10/2010 I was issued the charge sheet. The Enquiry Officer submitted his finding on 20/5/2011 eventhough the Bank has not taken any action by virtue of the provision u/s. 78(1)(d) of BIR Act which was obligatory on employer to take the decision within

the 6 months from the date of knowledge of so called misconduct. In the instant case practically 7 months, no action have been taken by the Bank or why the delay is caused for is mentioned in the termination Order and as such the action of terminating my services is against the statute is illegal one.

6. I say that it is expected from the Bank to consider the length of service put by me, to consider the past record is necessary but perusal of termination order it will be seen that the Board of Director are not considered this aspect and therefore the termination order is illegal one, terminating my services amounts to a illegal change and as such I request you to withdraw the termination order within 7 days from receipt of this letter and reinstate me in my original post with continuation of service will full back wages, failure to do so, no alternative will be left except to file the case before the appropriate forum which please note.

Yours faithfully,



Arvind Kumar

Copy to:

1. Labour Court, Pune
2. Registrar under the BIR Act,  
Bomaby Pune Road, Pune
3. Addtl. Labour Commissioner,  
Bungalow No. 5, Shivaji Nagar, Pune  
for information.

## In the Labour Court at Pune

Appln No 4 / 2012

Mr Arvind Kumar

Applicant

v

Jayanti Cooperative Bank

Opponent

WRITTEN STATEMENT on behalf of the Opponent: Most respectfully submitted

1. The present application under the Bombay Industrial Relations Act 1946 is totally false, frivolous, mischievous and without any substance, and hence its contents are totally denied by the Opponent without prejudice to the facts which are expressly admitted by the Opponent hereunder.
2. It is false that the Opponent indulged in any Unfair Labour Practices. It is false and denied that the Applicant was subjected to victimisation and discrimination. It is false that the Applicant was charge sheeted to victimize and to trap the Applicant in frivolous and false charges. The Departmental Enquiry conducted was basis of charge sheet dated 10-10-10 was perfectly according to law and equity.
3. The Application of the Applicant is totally untenable in law, and is not true nor bonafide. The Applicant has no cause on merits, and is liable to be rejected on merits.
4. The true facts about the case are given below:
  - a. With reference to para 1 of the application, it is true that the Applicant worked with the Bank, and that he has put in 25 years of service, and that on the date of termination, the Applicant was holding the post of Branch Manager and was receiving basic wage of Rs 1850 plus allowances.
  - b. The contents of para 2 are false. The hierarchy given by the applicant is not correct. It is false that no power is invested with the branch manager, the post on which the applicant was working n the day he was terminated. It is also false that the branch manager is not authorised to sanction any type of leave, and he has to work routinely by his own hand though he is designated as Branch Manger. The applicant has hidden from the Court the fact that on the date of his termination he was a Branch Manager, and not a Senior Officer. He has made an attempt to show that his work was mainly collecting the loan applications and forwarding them to the Head Office of the Bank for sanction.
  - c. The applicant was working as a Branch Manager on the date of his termination from the Opponent Bank. He was vested with managerial powers and was not an employee within the meaning of Section 3(13) of the Bombay Industrial Relations Act 1946. A separate list of the duties performed by the applicant is attached which will throw light on the fact that the Applicant being a Branch manager was not an employee within the meaning of the BIR Act.

- d. The Opponent prays to the Hon'ble Court to frame a preliminary issue and to decide first :
- “1. Whether the Applicant is an employee within the meaning of section 3(13) of the Bombay Industrial Relations Act 1946?  
2. Whether this Hon'ble Court has jurisdiction to grant any relief to the Applicant?”
- e. Para 3 of the application is misconceived. The Applicant is not aware of the real facts. It is true that the affairs of the Bank are looked after by the Board of Directors in accordance with the provisions of the Standing Orders. According to section 40 of the BIR Act, it is the Standing Orders that are determinative as regards the relations between employer and employee, and it is not the bye-laws which control the same. The bye-laws only control the relationships between shareholders, and not between the employer and employee. The Applicant is terminated from its services by his termination order dated 17-12-2011, and the resolution of the Board of directors of the Opponent Bank is already passed No 5(1) dated 11-12-2011 that though employees who are covered under section 3(13) of the BIR Act are the only eligible to be enjoying facilities which are extended to the employees of the Bank in accordance with the Settlement made between the Bank Karmachari Sangh and the Management. As the applicant is not an employee, the above provisions of the BIR Act or the provisions of Settlement are not applicable to him.
- f. Para 4 of the application is false. The applicant has restated his misconduct for which the Departmental Enquiry was held. The misconduct is spelt out in the charge sheet dated 10-10-2010. As the Applicant is not an employee under section 39(13) of the BIR Act, the Departmental Enquiry was conducted against the Applicant in consonance with the principles of natural justice. It was not conducted under Standing Orders. There is no reversion in post as is stated by the Applicant in his letter. The Applicant was suspended from services of the Bank and the suspension was pending enquiry. All the dues as regards the subsistence allowance which payable to the present applicant is already paid to him. The Applicant has in his ignorance submitted a letter to the Opponent Bank that the provisions of the Standing Orders are applicable to him. The dominant nature of the applicant's duties is managerial, as is decided by the Supreme Court and the Bombay High Court. The managerial nature of duties decides whether the applicant is an employee under the Act or not. All contents of the enquiry report and proceedings should be treated as part of this written statement.
- g. The Bank has conducted enquiry in consonance with the principles of natural justice and the common law. The common law is uncodified. The contention of the applicant that as his name was suggested as one of the worker-directors on the Board of directors of the Bank, action was taken against him, is a false allegation. It is only employees who can be present the other employees and thus be a worker-director. a person who is executing managerial duties, and is

a branch manager cannot be a worker-director. Hence all allegations as regards harassment to the applicant are without any basis.

- h. It is true that an enquiry officer was appointed to probe into the charges levelled against the applicant. The enquiry is conducted by the enquiry office according to the principles of natural justice. Though the applicant is not an employee under the BIR Act, yet the Bank chose to give the Branch Manager an adequate opportunity to put his defence. The report of the enquiry officer is a well-reasoned report and the applicant is prone to make false allegations against him.
  - i. Based on the enquiry report, the Bank decided to terminate services of the applicant. The delay in taking action as regards the serving of charge sheet or of termination of the applicant is simply for the reason that the Board of directors were engaged with elections. The Board of directors however have taken abundant care to see that the applicant is not put to monetary loss, and thus subsistence allowance was paid to him. The truth is that the provisions of section 78(1)(d) of the BIR Act are only directory, and not mandatory.
  - j. The present matter has been filed against the Bank and the termination order either by the Chairman or by the General Manager is a matter of internal administration of the Bank and does not cure the misconduct which has been committed by the present applicant, and for which Departmental Enquiry is held wherein all charges are approved against the present applicant. The applicant is to show some sort of legality and not harp upon mere technicalities. The Chief Executive Officer of the Bank Shri Gokhale was resigned at that time, and hence the Chairman signed the termination order. The termination order is signed by a person with authority.
  - k. The approach notice is illegal.
5. It is therefore prayed that
- a. the application be dismissed in limine
  - b. The issue whether the applicant is an employee under section 3(13) of the Bombay Industrial Relations Act 1946, and whether this Hon'ble Court has jurisdiction to try this matter, be treated as preliminary issues.
  - c. any other orders in the interest of justice may be passed

Pune, 27 April 2012.

For Opponent  
General Manager

#### Verification

I, Mr Samir Bhosale, General Manager of the Opponent Bank, do hereby state that whatever is stated in paragraphs above is true and correct to the best of my knowledge, information and belief, and I have signed at Pune on 27 April 2012.

(Samir Bhosale)

### **Evidence of Mr Jayant Pande – 21-10-12**

#### **Further examination in chief:**

The contents of my affidavit are drafted as per my instructions and those are true and correct. It bears my signature.

#### **Cross examination on behalf of Applicant.**

1. I am presently working as the Chief Officer since September 2011 with the Opponent. Prior to it, I was manager in the head office. I worked as a manager since January 1992. I have worked for 30 years. Presently, the posts in existence are Chief Officer, Deputy Chief Officer, Senior Officer / Branch Manager, Accountant / Junior Officer, Sub Accountant, Clerk and Peon. When a person works in the Head Office he is said as Senior Officer. The one working in the branch is called as Branch Manager.
2. In my Bank there is no Union presently. Previously Bank Employees' Union was existing. From peon to Manager, the salaries are fixed as per the agreement with the Bank Karmachari Sangh. When the applicant was terminated from service, his salary was Rs 1850 p.m. basic. It is fixed as per the agreement with the Sangh. The allowances are paid as per the agreement. it is correct to say that for the difference of arrears of wage rise some amount is paid as donation to the Union. The Senior Officer is working in the Bank is about collecting the information from the branches and to submit it to the concerned authority. The Branch Manager has to collect the deposit, marketing, recovery to find out the good borrower and control over the employees. In every branch there is a branch manager, passing officer and clerk cum cashier. The work of clerk cum cashier is fixed. It is decided by the Head Office. The duty of passing office is to check the work done by the clerk. It is decided by the Branch Officer. the work done by the cashier, passing officer and the junior officer is the routine work. The entire control of the Bank is in the hands of the head office. It is not true to say that the board of directors is required to pass a resolution for taking decision. the Chief Officer of the Bank has not the authority to raise the salary or terminate any person from the job. For taking such decision it is the authority of the Board, and the Board has to pass a resolution. I have the authority to sanction sick leave, take disciplinary action and to sanction privileged leave. For utilizing such powers by me sometimes the Board is required to resolve and some times it is not required to do so. I am appointed as per the provisions of the bye-laws. The Board of Directors have resolved regarding the work that I am required to perform. In the bye-laws it is mentioned as to which rights can be assigned to the Chief Officer.
3. Whenever there is a new Chief Officer, a new resolution is to be passed. The right of sanction of loan is vested with the Board of Directors. Without Board's sanction the Branch Manager is empowered to sanction the same loans. Such powers are not vested with the Chief Officer or General Manager. The powers given to the Branch Manager are to grant the loan against the fixed deposit, against gold, against NSC and against LIC policy. Upto Rs 50000 such loan

can be sanctioned. Such limitation is imposed by General Manager. Other than this, no other loan can be sanctioned by him. To decide if any other loans are to be granted or not, it is for the Board to decide. The Bank is not under obligation to follow the decision of the Branch Manager if the Branch Manager has acted against the powers vested in him. I know Kumar since 25 years. I have personally seen the agreements done between the Union and the Management. Mr Kumar has signed on such agreement as representative of the workmen.

4. As per cooperative Societies Act section 73 (bb), Mr Kumar and Mr Dighe were holding the post of Branch Manager, the Union had recommended their names as Workers' representatives and they were taken on board. To Kumar and other staff the BIR Act is applicable. I have some knowledge of section 35. I have read it.
5. If a manager is given the charge sheet it is given under common law. I do not know what common law is. In the appointment given no rules are mentioned.
6. I am now shown a resolution regarding appointment of Mr Kumar. Since the document is shown in cross examination, it is marked Ex 20. The agreement now shown to me bears the signature. Hence the document is marked Ex 21. As per the agreement basic pay of Mr Kumar is fixed. In the Annexure B there is a clause that if any workman is to be terminated from service then workman / employee terminated from service after taking permission of union. We have not taken the consent of the union from the union before terminating the services of the applicant. It is true that the terms and conditions of the agreement are governed in terms of the appointment order. Witness says that I do not know about the rules and regulations and applicability as I have no knowledge. The rules and regulations for the post of Senior Officer is different. I do not know if rules and regulations were applicable for the post of Senior Officer and the Branch Manager. Under the common law his services were terminated. As per Standing Orders, the employer has right to terminate the services of the employees. I do not know under which law the applicant is suspended. For the suspension allowance was paid 50 % for 3 months and then 75 % for 6 months and thereafter till termination full wages were paid. I do not know under which Rule it was paid. I do not know which rules are applicable to the post of chief Officer.
7. I cannot say whether enquiry officer's findings is perverse. I again say that enquiry officer has not dismissed the applicant. I say that all proper procedure was followed for the enquiry. I have not field any documents to show when elections were held, or that directors were engaged in preparing for elections.

Reexamination nil.

R.O.A.C.  
Sd/-  
Judge, 2<sup>nd</sup> Labour Court, Pune.  
(XYZ) 21-10-12

## In the Labour Court at Pune

Appln No 4 / 2012

Mr Arvind Kumar

Applicant

v

Jayanti Cooperative Bank

Opponent

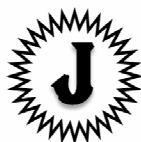
LIST OF DOCUMENTS filed on behalf of the Opponent is

S No	Particulars	Date
1	Promotion Letter of Mr Kumar as Branch Officer	3-1-2004
2	Duty List of Mr Kumar	17-1-2004
3	8 Leave applications of Bank Employees sanctioned by Mr Kumar	

Pune

27-4-2012

Advocate for Opponent



Ref: ADMN/ 242/2004

Date: 3 January 2004

To  
Mr Arvind Kumar,  
Officer/Accountant,  
Jayanti Co-operative Bank

Sub: Promotion on Transfer as a Senior Officer/ Branch Manager

We are pleased to inform you that the Board of Directors have decided to promote you in this Bank as a Sr. Officer/Branch Manager on the following terms and conditions:

1. You are promoted as a Sr. Officer/ Branch Manager in the Bank from 03/1/2004.
  2. You should join your duties on 03/1/2004 as a Branch Manager at our Kondhawa Branch.
  3. You will be on probation for a period of six months from the date of your joining at our Kondhawa Branch.
  4. During the period of probation you will be paid Salary in the grade of Sr. Officer/Branch Manager.
  5. On completion of this probationary period you will be confirmed as a Sr. Officer/ Branch Manager grade subject to your work performance behaviour and efforts taken for the development of the Bank. If this is not upto the satisfactory level you will be reverted as an Officer/Accountant Post.  
However presently, you are as a Sr. Officer/ Branch Manager.
  6. You will be paid salary p.m. in the scale

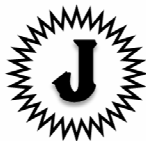
$\frac{2050 - 110}{4}$	$\frac{2490 - 120}{4}$	$\frac{2970 - 130}{3}$	$\frac{3360 - 140}{3}$
$\frac{3780 - 160}{2}$	4100	Your basic pay is fixed Rs, 1200/- w.e.f. 03/1/2002	
  7. You will be required to attend any training organized by the Bank.
  8. You are liable for transfer from any office of the Bank or any section of the Bank to any office or section of the Bank.
  9. Your duties will be chiefly of a managerial nature. A detailed list of duties will be delivered to you shortly.
- If you are agreeable to this you are requested to sign duplicate of this letter in token of acceptance of this promotion on transfer as a Sr. Officer/ Branch Manager governing the appointment.

Sd/-

CHAIRMAN

MANAGER

Copy to: Branch Manager, Magarpatta Branch to relieve him accordingly.



Ref : Admn / 253 / 2004

**Confidential**

17-1-2004

To  
Shri Arvind Kumar,  
Branch Manager,  
Kondhwa Branch

You are appointed as Branch Manager of Kondhwa Branch of our Bank. Given below is your Duty List.

1. To monitor the entire working of the Branch in terms of rules and regulations of the Reserve Bank of India and the Cooperative laws and department.
2. To sanction loans upto Rs 50000 on security of fixed deposits, NSCs, Kisan Vikas Patra, and Gold pledge, Demand Drafts, Bankers' Pay Orders.
3. To forward other loan applications after scrutiny with recommendations to the Head Office.
4. Follow-up recovery of all loans at branch level.
5. Give proposals with opinion about proceedings to be filed in courts for recovery of Bank dues.
6. Take efforts for overall development of Bank business with support of other employees.
7. Keep up-to-date House Keeping at Branch Level
8. Planning of Fund Management of the Branch
9. Take efforts for improving profits of the Bank, and improve reputation of the Bank
10. Sanction casual leave of employees in the Branch
11. Take action or impose fine on employees of the Branch who do not follow rules of discipline.
12. Follow orders and directions of the Head Office issued from time to time, and submit returns and information on time
13. Sign loan registers, Challans, registers, returns of the Branch.

Manager

## Enquiry Report

**Confidential**

*Ms. Janaki Sharma*  
25, Rachana Society,  
Paud road, Pune.  
Ph no. 020 2346572.  
Mob no. 3476589834.

---

Date : 20-5-2011

To

The Manager  
Jayanti Cooperative Bank,  
400, Magarpatta,  
Pune

Sub: Departmental Enquiry Report of Mr Arvind Kumar, Branch  
Manager

Reference: 1. Your letter number \_\_\_\_\_ dated 27-12-2010  
2. Charge sheet No \_\_\_\_\_ dated 10-10-10.

Sir,

The Departmental Enquiry about Mr Arvind Kumar, Branch Manager, was conducted as directed in letters of above reference. The notes, original papers and Enquiry report are enclosed with this letter. You are requested to take appropriate decision.

Sincerely,

Jankai.S  
(Janaki Sharma,  
Enquiry Officer

**Jayanti Cooperative Bank Limited, Magarpatta, Pune**

Reference:

1. Charge-sheeted employee: Mr Aravind Kumar, Branch Manager
2. Charge Sheet No Admin 364/2010 dated 10-10-10
3. Letter No Admin / 381/2010 dated 20-12-2010 appointing Enquiry Officer and Presenting Officer.

**Enquiry Report**

**1. The background**

Mr Aravind Kumar works as a Branch Manager in the Deccan Gymkhana Branch of the Jayanti Cooperative Bank. He is under suspension since 12-07-2010. When the Management transferred him by order dated 10-07-2010 to the Head Office, he did not accept the transfer order. Also, by his letter dated 14-03-2010 he refused to accept responsibility of the work of reporting Asset and Liability Management that he was asked to perform. The Bank issued a charge sheet relating to these acts against Mr Aravind Kumar and ordered Departmental Enquiry into the charges.

**2. Appointment of Enquiry Officer and Presenting Officer**

To conduct the enquiry the Bank appointed

1. Mrs Janaki Sharma as the Enquiry Officer (Ref No 3)
2. Mr Sumant Shankar as the Presenting Officer (Ref No 3)

The employee Mr Aravind Kumar appointed the representative of Bank Karmachari Sangh Mr Raj Desai to represent him in the Enquiry proceedings. The appointment is at Exhibit 4. The list of other documents are given in List 1.

**3. The Employee refuted charges**

The Bank has made the following charges in the charge-sheet

1. Willful insubordination and disobedience of lawful and reasonable orders.
2. Committing acts prejudicial to the interests of the Bank, and
3. You have attempted to defame the Bank.

In his statement, the Employee refuted all charges. Hence after defining the outline of the proceedings, the enquiry commenced on 17-1-2011.

**4. Documents**

Both parties had ample time to produce documents. The Employee also filed documents in defence. Both the parties filed 21 documents. The documents are kept with the proceedings of the day they were filed. All documents and the final defence statement are attached with Schedule I of this Report.

**5. Oral Evidence**

The Bank examined the following witnesses

1. Mr Samir Bhosale, Manager of the Bank
2. Mr Ravindra, Assistant Accountant.

The Employee did not examine any witness.

**6. The Roznama**

The Daily Roznama is attached as Schedule II of this Report.

### **Notes of evidence**

#### **A. Documents:**

**The following documents are relevant for the purposes of this enquiry.**

1. Transfer Order issued for transfer of Mr Aravind Kumar from Deccan Gymkhana Branch to the Head Office: No Admn / 364/2010 dated 10-7-10 (Exh 5)
2. Mr Kumar informed the Bank that he transfer order is illegal, and he refuses to accept the transfer order. Letter of Mr Kumar dated 10-7-2010 (Exh 6)
3. Letter by Bank to Mr Kumar to take responsibility of ALM ADMN/120/05 dated 14-3-2010 (Exh 14)
4. Letter of Mr Kumar refusing the work : letter dated 19-3-10 (Exh 15)
5. Mr Kumar published a defamatory statement in Daily Lokdhara dated 13-7-10 (Exh 13)

#### **The Employee filed the following documents:**

1. His letter dated 9-3-11 requesting revocation of charge sheet (Exh 12)
2. His final defence statement dated 20-4-2011 (Exh 20)

#### **B. Oral evidence of witnesses**

1. Witness No 1 Mr Bhosale, the Manager, stated in oral evidence:

Que No 8: He was transferred from branch to the Head Office which he refused. He refused to do the work relating to Asset Liability Management for which he has received training. When he was under suspension, he got a news published in Daily Lokdhara which he has defamed the Bank. His has interfered and obstructed in the working of the Bank.

Que No 14: As a general manager I had given transfer order to Mr. Kumar transferring him from Deccan Gymkhana branch to head office. As per exhibit 6 he has refused transfer and has disobey orders of the management.

Que No 15: The charge sheet is issued for the misconduct of willful subordination and disobedience of a lawful order of a superior.

Que No 17: The management had given him letter dated 14/3/10 asking him to carry out ALM related work. We have filed it (marked exhibit 14). Mr. Kumar gave letter dates 19/3/10 in which he refused to do ALM related work. This answer we have filed(marked exhibit 15).

Que No 53: The Bank Karmachari Sangh nominated Mr. Kumar and Mr. Dighe for being worker-director under co-operative law section 73(B)(D).

Que No 54: Before Mr. Kumar was suspended his name was sent by Bank Karmachari Sangh for nomination as worker-director.

Que No 55: The Bank did not accept Mr. Kumar or Mr. Dighe as worker-director.

Que No 56: The Bank Karmachari Sangh refer this dispute to the Industrial Court.

Que No 58: Is it not true that Mr. Kumar was suspended because he was an active worker of a trade union and his name was recommended for worker-director.

2. Witness No 2 Mr Raveendra, the Assistant Accountant, stated in oral evidence:

Que No 4: I know that Mr Kumar was transferred.

Que No 6: There was a mention in the transfer order of Mr. Kumar about taking charge.

Que No 7: I assumed charge accordingly.

Que No 10: I reported to the Bank when I assumed charge.

Que No 11: The Report is dated 12-7-2010.

Que No 12: I do not know whether after giving charge to me on 12/7/10, Mr. Kumar joined the head office.

### **C. Defence Statement of Employee**

#### **Contents of final defence statement dated 20-4-2012 (Exh 20) filed by the Employee:**

1. The charge sheet is issued because a proceeding has been filed in the Industrial Court challenging the refusal by the Bank of accepting the Employee as a worker-director on the Board of Directors on recommendation of the Employee Representative Union
2. He sought explanation about objections in his letter of 23-2-2011. The Enquiry Officer continued the proceedings without deciding these objections and giving reasons based on legal provisions.
3. Model Standing Orders apply to the Employee, and the charge sheet not being issued under the provisions of such Model Standing Orders, the Management has no authority to issue the charge sheet.
4. Since the Manager and I are both employees, the Manager cannot issue charge sheet to me.
5. Asking me to hand over charge of my office to Mr Raveendra, who was an Assistant Accountant, amounted to reduction in rank.
6. In the news report in Daily Lokdhara dated 13 July 2010, there is a mention of Mr Dighe also. No action was taken on explanation for the same given by Mr Dighe. Hence the explanation for the news report given by Mr Dighe is acceptable to the Bank.
7. There is mention in Daily Lokdhara of 7-1-2011 that the Bank was fined. This shows that the Bank has violated RBI rules.
8. I am an active member of my Union, and this is seen from the evidence of Mr Raveendra.

#### **Observations of Enquiry Officer about final defence statement:**

1. Bank Manager Mr Bhosale has stated in response to Question 58: Is it not true that Mr. Kumar was suspended because he was an active worker of a trade union and his name was recommended for worker-director.
2. Enquiry Officer stated with reference to letter dated 23.2.2011 that the Enquiry Officer opines that employee has broken service rules and a charge sheet is issued and the enquiry will happen according to principles of natural justice. After hearing both parties the management has stated in the charge sheet that enquiry will happen according to principles of natural justice.
3. The employee does managerial tasks as branch manager. The Manager controls the work of branch managers. Hence, the Manager can issue charge sheet to a branch manager.

4. The employee, being under suspension was asked to hand over charge to Assistant Accountant which was an alternative arrangement of continuing business. This does not amount to reduction in rank.
5. Any action against Mr. Dighe and action against this Employee are different matters. The main question in the news item of 13/7/2010 is the employee's suspension. It cannot be said that the vengeful approach of the management is apparent in the action. The news item of 7/1/2011 that the Bank was fined is not connected at all with the proceeding against the employee.
6. The Bank did not accept the nomination of the Employee and the proceeding in the Industrial court about it is an independent proceeding unconnected with the charges.

### **Findings**

The following charges have been framed against the employee

1. Willful disobedience and insubordination
2. Acting prejudicial to the interests of the Bank
3. Attempts to defame the Bank.

The following issues arise for my consideration:

1. Does the management prove that in refusing orders of transfer the employee has willfully committed willful disobedience and insubordination?
2. Does the management prove that the employee acted prejudicial to the interests of the Bank?
3. Does the management prove that the employee has defamed the Bank?

My answer is 'Yes' for all the three issues

### **Reasons**

- a) Mr. Arvind Kumar was working for six years as Branch Manager/Senior Officer. For administrative reasons, the management transferred him to the loan department in the Head Office. The Presenting Officer has filed this order (Ex.5). Mr Bhosale, the Manager, Witness No. 1 for the Bank states that he has himself signed it. He controls the actions of all branch managers on behalf of the Bank. The employee by his letter dated 10.7.10 refused to accept transfer orders. This shows that Mr. Kumar admits receiving transfer orders. Any administrative has full powers to order transfers. The employee alleges that the Transfer Orders were issued vengefully. This has been denied clearly by Mr. Bhosale (Q.58). This cannot be said that the management holds any ill will because the proceeding is pending before the industrial as a nominating employee's name as Worker - Director in the Board of Directors. Mr. Kumar informed the management his refusal to take transfer orders on 10.7.2010, immediately after receiving transfer orders. Had he approached the management on this, it would have been a proper course of action. However, while refusing to take the order he informed that, 'I've been transferred to the Head Office Loan Dept to do the work presently done by Mr. Talekar who is working as Junior Officer – Accountant. By transferring me to his post you are reducing my rank. Also, I cannot hand over charge to Mr. Raveendran.....' In fact there is no mention in the transfer orders that the rank or pay of Mr. Kumar has been refused. In fact it clearly mentions that he is transferred being a Branch Manager. Hence Mr. Kumar's reply cannot be accepted.

Mr Kumar has refused to hand over charge according to the orders of the Manager. His refusal is in clear words. This amounts to willful disobedience and insubordination.

b.) Mr. Kumar was trained to undertake the work of Asset Liability Management. The Bank had informed him accordingly by his letter dated 14/3/2010 (Ex.14) in his letter of 19/10/2010 (EX.15) Mr. Kumar has admitted that he has taken training, but he avoids taking the work. It is necessary for the Bank to submit their reports to the RBI. Hence the Bank told Mr. Kumar to do the work. The Manager, Mr. Bhosale (Witness 1) states that Mr. Kumar conduct amounts to interference in the Bank's work plan. Hence, the conduct of Mr. Kumar is prejudicial to the interests of the Bank. Since, Mr. Kumar refused to accept transfer orders, the Bank suspended him by its order dated 11.7.2010 (Ex.11). The Presenting Officer has filed a copy of the Daily Lokdhara from which it is clear that Mr. Kumar gave information to the newspaper through the Bank Karmachari Sangh and demanded that the Suspension Order may be recalled. Mr. Kumar told the newspaper through the Bank Karmachari Sangh that the Bank has taken this action of suspension because the Bank's misdeeds were exposed. However, Mr. Kumar did not file any documents to show any misdeeds. HE filed only another news paper cutting dated 7/1/2011 stating that the RBI imposed fine of Rs. 1 lakh on the Bank.

The Manager, Mr. Bhosale (Witness 1) admits this to be correct (Q.45). However, the said news item nowhere indicates that Mr. Kumar exposed these misdeeds nor was such evidence found at that enquiry. In the news of Daily Lokdhara dated 13.1.2010, Mr. Kumar has threatened to go on indefinite fast with his family members. Mr. Kumar is using pressure tactics to bring the Bank into disrepute. It is seen from the above discussion that:

1. The Bank management transferred the employee
2. The Employee refused the transfer.
3. The Bank told the employee to work on Asset Liability Management.
4. Employee refused to do that work.
5. The employee gave a news item in the newspaper through the Bank Karmachari Sangh which has defamed the Bank.

### **Final Order**

On the basis of documents filed, information given, oral evidence given, the charge sheet, actual charges, and on considering all facts without favour I, Janaki Sharma, Enquiry Officer have come to the conclusion in this enquiry that the charge sheeted Employee, MR. Arvind Kumar, Branch Manager is guilty of the following charges which have been completely proved against him:

1. Willful disobedience and insubordination
2. Acting prejudicial to the interests of the Bank
3. Attempts to defame the Bank.

I therefore hold him guilty.

In the enquiry proceedings I received assistance from the employee, Mr. Arvind Kumar, his representative, Raj Desai, Bank's witnesses, Mr Bhosale and Mr. Raveendran, Clerk, Mr Arjun Patni and Bank's Presenting Officer, Mr. Sumant Shankar. The Enquiry Report with all original papers is been forwarded to the management for further action.

Place: Pune

Date: 20.5.2011

***Janaki***

Janaki Sharma  
Enquiry Officer

### **Enquiry Report – Schedule I**

Subject: List of documents filed by the parties

Charge Sheet No Admn/364/10 dated 10-10-10.

Charge sheeted employee: Mr Arvind Kumar, Branch Manager.

No	Proceeding Date	Particulars	Exh No.
1.		Letter of Bank No ADMN/381/2010 dated 20-12-2010 appointing Enquiry Officer and Presenting Officer	
2.	17-01-2011	Letter fixing date, time and location of enquiry	1
3.	17-01-2011	Application by Employee for time for appointing representative	2
4.	31-01-2011	Employee's application requesting conduct of enquiry in Bank premises	3
5.	23-02-2011	Letter pf employee appointing Mr Raj Desai as his representative	4
6.	23-02-2011	Order by Bank No HR/254/10 dated 10-07-2010 transferring Employee	5
7.	23-02-2011	Reply to above by Employee dated 10-07-2010	6
8.	23-02-2011	Order suspending employee issued by the Bank No HR/272/10 dated 11-07-2010	7
9.	23-02-2011	Charge Sheet No ADMN/345/2010-11 dated 10-10-10 issued to Employee	8
10.	23-02-2011	Reply dated 16-10-2010 by Employee to charge sheet	9
11.	23-02-2011	Reply to Employee to above	10
12.	12-03-2011	Instructions about location and time of enquiry (Not in this brief)	11
13.	12-03-2011	Letter dated 09-03-2011 of Employee to recall charge sheet	12
14.	12-03-2011	Newspaper cutting: Dainik Lokdhara dated 13-07-2010	13
15.	12-03-2011	Letter dated 14-03-2010 by Bank to Employee about ALM	14
16.	12-03-2011	Letter dated 19-03-2010 by Employee to the Bank about ALM	15
17.	12-03-2011	BIR Act – Extract (Not in this brief)	16
18.	23-03-2011	Copy of letter written by Mr Dighe to Bank dated 23-07-2010 (Not in this brief)	17
19.	23-03-2011	Newspaper cutting of Daily Lokdhara dated 07-01-2011	18
20.	11-04-2011	Charge Report dated 12-07-2010	19
21.	20-04-2011	Final defence statement of Employee dated 20-04-2011	

### **Enquiry Report Schedule II**

Subject: List of documents filed by the parties

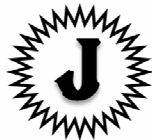
Charge Sheet No Admn/364/10 dated 10-10-10.

Charge sheeted employee: Mr Arvind Kumar, Branch Manager.

Date of Proceedings	Particulars
17-01-2011	Outline of enquiry proceedings, Introduction, Employee refuted charges
31-01-2011	Request by Employee to conduct enquiry in Bank premises and office hours - Rejected
23-02-2011	Employee appointed representative. Representation by Employee's representative. Oral evidence of Bank's witness Manager Mr Bhosale
27-02-2011	Proceedings adjourned at request of the Presenting Officer
12-03-2011	Employee filed his letter dated 09-03-2011. Reply by Bank. Evidence of Mr Bhosale over.
17-03-2011	Cross examination of Mr Bhosale by Employee's representative
23-03-2011	Cross examination of Mr Bhosale by Employee's representative. Complete
04-04-2011	Examination in chief of Bank's witness Mr Raveendra, Assistant Accountant.
11-04-2011	Examination of Bank's witness Mr Raveendra continued. Cross exam by Employee's representative. Completed
20-04-2011	Employee filed final defence statement

## Enquiry Proceedings

**JAYANTI CO-OPERATIVE BANK**



**400 Magarpatta,  
Pune  
E-mail: jayantibank@ymail.com**

Ref: ADMN/381/2010

Date: 20 December 2010

To  
Smt. Janaki Sharma  
Shri Sumant Shankar

Sub: Departmental Enquiry

Sirs,

Mr Arvind Kumar, an Officer in our Bank has been suspended on 12/7/2010 for the purposes of Departmental Enquiry and a charge sheet dated 10/10/2010 has been issued against him. Smt. Janaki Sharma has been appointed as Enquiry Officer and Mr. Sumant Shankar has been appointed as Bank's Presenting Officer by resolution dated 18/12/2010 by the Banks' Board of Directors. You are requested to proceed accordingly.

Yours Sincerely

-/Sd

Manager

Enclosed: Copy of the Resolution

Ms. Janaki Sharma  
25, Rachana Society,  
Paud road, Pune.  
Ph no. 020 2346572.  
Mob no. 3476589834.

Date- 10/1/2011.

To

Mr. Kumar,  
25, Mahatma Gandhi colony,  
Sadashiv peth,  
Pune.

Subject- Departmental Enquiry

Reference-

1-Charge sheet no ADMN/364/210 dated 10/10/10

2-Letter no ADMN/381/210 dated 20/10/12 appointing enquiry officer

I have been appointed as enquiry officer to conduct enquiry with respect to charges framed against you. The enquiry will be held on 17/1/11 at 3 pm at flat no 20, Rainbow Heights, Ravivar peth Pune.

You are hereby called upon to remain present at the enquiry and participate in the proceedings. If you remain absent or refuse to participate in the proceedings the enquiry proceedings will continue ex-parte (without your presence). Please note that any request made at the last moment for seeking postponement cannot be accepted. You will have full opportunity to defend yourself at the enquiry. You will have the following rights.

1. To defend by appointing any Bank employee as your representative. But please remember that the enquiry proceedings cannot be postponed if the representative remains absent on any date.
2. You can give evidence by bringing your own witnesses or by cross examining the witness of the Bank.
3. You can file documents and make your submissions about any documents filed by the Bank.
4. To receive notes of enquiry proceedings if you participate in the proceeding.
5. To give your statement of defence at the end of the enquiry.

*Janaki.S*

Janaki Sharma  
Enquiry officer

Copies to

1. Samir Bhosale General Manager of the Bank
2. Mr. Sumant Shankar, Presenting Officer of the Bank
3. Arjun Patni, clerk, Jayanti Bank.

Date-17/1/2011

To,  
The EO,  
Jayanti Sahakari Bank,  
Magarpatta, Pune

Sub-Departmental Enquiry  
Reference- your letter dated 10/1/11

Sir,

The charge sheet issued against me is illegal and i do not admit it. The Bank has not informed me yet under the provisions of which law the charges have been issued; even after I asked for copies by my letter dated 16/10/10.

It is against the principle of natural justice to insist that I shall be represented only by an employee of Jayanti Bank. I request for 14 days time to appoint a representative of a representative union.

I request you to consider my application under the principles of natural justice.

*Arvind*

Mr. Arvind Kumar.

**Order**

PO to give say

*Jankai. S*

Enquiry Officer

**Say of PO**

No objection. To give 15 days' time. However the enquiry shall be taken and evidence recorder on the date giver.

*S Shankar*

(Presenting Officer)

**Notings of Departmental Enquiry**  
**Mr Arvind Kumar, Branch Manager, Jayanti Co-operative Bank**  
**17/1/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Janaki S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *Sshankar*
4. Mr. Arjun Patni - Writer *Arjun Patni*

I commence Enquiry proceedings according to my appointment made by the Jayanti Co-operative Bank by its Letter NO: 381/10 Dated 20/12/10. I have explained the procedure of the enquiry to the employee and PO.

The PO will examine the witnesses of the Bank and will cross examine witnesses of employee. PO can file documents.

The employee can examine witnesses, and cross-examine witnesses of the Bank. The employees representative can do so. The employee can file documents.

1. The PO will examine Bank's witnesses one after the other. After the examination of each witness is recorded, the employee or his representative will cross examine that witness. After examining all witnesses of the Bank the PO will declare closure of its evidence. Likewise, the employee or the representative will examine their witness one after the other. After the examination of each witness is recorded, the PO or his representative will cross examine that witness. After examining all witnesses of the employee, the employee or his representative will declare closure of its evidence.
2. The notings of the daily enquiry proceedings will be given to the PO and the employee as soon as the proceedings for the day are completed.
3. After witnesses evidence is completed, the employee will give 2 copies of the final statement of defence within 5 days. Thereafter the PO shall give a reply in 2 copies within 5 days.
4. The PO and the employee have admitted that they have properly understood the enquiry procedure and have declared that they will participate in the proceedings.
5. Questions asked by the EO to the employee and his answers are his follow:

Q1. What is your name, designation, place of work?

Ans: Mr. Arvind Kumar, Branch Manager, Deccan Gymkhana Branch under suspension from 12/7/2010 until today.

Q2. When did you join the Bank and on what post?

Ans: 7 Feb 1992 as clerk.

Q3. From when are you working on the presenting post?

Ans: From 3/1/2004

Q4: Have you received the charge sheet issued by the Bank ADMN/364/2010 dated 10/10/10?

Ans: Yes.

Q5. Have you understood the charges in the charge sheet?

Ans: Yes

Q6. Do you admit those charges?

Ans: No

Q7. Will you appear in the enquiry personally or will you appoint a representative?

Ans: I will appoint on my behalf a representative of the Bank Karmachari Sangh.

Q8. You have to give a list and the documents on which you rely?

Ans: I will submit it in the enquiry at the proper time.

Q9. Do you wish to make any statement in writing?

Ans: I am submitting a written statement.

After this statement, the Enquiry Officer noted submissions of the PO and gave the employee 15 days time to submit list of witnesses and documents.

Enquiry next fixed on 31/1/2011 at 3 pm. Proceedings of the day closed. Copies of the proceedings given to PO and employee.

*Arvind*

Employee

*S Shankar*

Presenting Officer

*Arjun Patni*

Writer

*Jankai.R*

Enquiry Officer

Received copies of proceedings

*Arvind*

Employee

*S Shankar*

Presenting Officer

31/1/11

To  
The Enquiry Officer,  
Jayanti Co-operative Bank,  
Magarpatta,  
Pune.

Sub- Departmental Enquiry  
Reference- your letter dated 10/1/11

Sir,

I very respectfully submit, concerning the above reference And Subject that you are conducting the Departmental Enquiry in a private place. This is totally against the principles of natural justice.

I request you to conduct my Departmental Enquiry at Banking premises during Bank timings. At that time I will remain present with my representative of my trade union.

Thanking you

*Arvind*  
Mr. Kumar

Note-  
for reply-  
*Jankai. S*  
(Enquiry Officer)

Reply  
The application is vague. There are no rules or mandatory provisions of location of enquires. This application is not according to rules. It will be rejected.

*Sshankar*  
PO  
31/1/11

**Notings of Departmental Enquiry**  
**Mr Arvind Kumar, Branch Manager, Jayanti Co-operative**  
**Bank**

**31/1/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Janaki.S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *Sshankar*
4. Mr. Arjun Patni - Writer *Arjun Patni*

Proceedings have begun today as decided on the earlier date of 17/1/2011. The employee requested in the beginning that the enquiry should not be conducted in private premises; but in Bank premises and during office hours. I took the reply of PO and considering both, I decide that this request cannot be accepted. There is no impediment I holding this enquiry in a private place. It is not mandatory to conduct enquiry in Bank premises or in office hours. I informed the employee that he should attend the enquiry on the next date with his representative.

Further proceedings will happen on 22/3/11 at 4pm at the same location. Today's proceedings are handed over to the PO and employee.

<i>Arvind</i>	<i>Sshankar</i>	<i>Arjun Patni</i>	<i>Janaki.S</i>
Employee	Presenting Officer	Writer	Enquiry Officer

Received copies of proceedings

<i>Arvind</i>	<i>Sshankar</i>
Employee	Presenting Officer

# Bank Karmachari Sangh

---

Outward no 22/2010-11

Date-23/2/11

To  
Enquiry Officer,  
Jayanti Co-operative Bank  
Magarpatta,  
Pune.

Subject- Representative at the enquiry of Mr. Arvind Kumar.

Sir,

Mr. Raj Desai, the Vice-President of our union will represent Mr. Kumar in the domestic enquiry against him.

Sincerely

*XYZABC*

General Secretary.

Note-  
for reply-

*Jankai.S*

(Enquiry Officer)

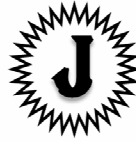
Reply  
no objection to representation by Mr. Raj Desai.

*Sshankar*

PO

31/1/11

**JAYANTI CO-OPERATIVE BANK**



400 Magarpatta,  
Pune  
E-mail: jayantibank@ymail.com

Reference No: HR/254/10

Date: 10 July 2010

To

Mr. Arvind Kumar,  
Branch Manager,  
Deccan Gymkhana Branch,  
Pune

You are hereby informed that for administrative reasons you are transferred to the loan section of the Head Office of our Bank. You shall report in the Head Office on 11 July 2010 and take charge from Mr. Talekar of the Loan Dept of the Head office.

You may familiarize yourself with all the tasks of the loan dept and submit a report to the Manger.

For this purpose you are relieved from the post of the Bank Manager of Deccan Gymkhana Branch. You may submit a report of the affairs of your branch to Mr. Raveendran, the Officer in your Branch.

You will receive your duty list when you join the Head Office

Manager,  
400 Magarpatta,  
Pune.

Letter received without  
prejudice to my legal rights.

*Arvind*

Arvind Kumar  
10/7/2010

Exh. 6

10 July 2010

To

The Manager,  
Jayanti Co-operative Bank,  
400 Magarpatta,  
Pune


Subject: Your Ref no: HR/254/10 dated 10 July 2010

Dear Sir,

I received your letter dated of Ref No: HR/254/10 dated 10 July 2010.  
Regarding the letter I have to inform you as follows:

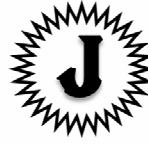
Your above letter (Transfer Order) is against Section 46 of the Bombay Industrial Relations Act, 1946. Hence I'm refusing the transfer order.

I am presently Branch Manager of Deccan Gymkhana Branch. I've been transferred to the Head Office Loan Dept to do the work presently done by Mr. Talekar who is working as Junior Officer – Accountant. By transferring me to his post you are reducing my rank. This is illegal and you have not followed the legal position while transferring me. Also, I cannot hand over charge to Mr. Raveendran. Please note.

  
Arvind Kumar,  
Branch Manager,  
Deccan Gymkhana Branch,  
Pune.

Copy to: Secretary, Bank Karmachari Sangh

**JAYANTI CO-OPERATIVE BANK**



400 Magarpatta,  
Pune  
E-mail: jayantibank@ymail.com

Ref No: HR/272/10

Date: 11 July 2010

To

Mr. Arvind Kumar,  
25 Mahatma Gandhi Colony,  
Sadashiv Peth,  
Pune

Sub: Order of Suspension

Sir,

From 3/1/2004 you worked as a Senior officer/Branch Manager with Jayanti Co-operative Bank. You accepted charge on 10/1/2004. You are not an 'employee' under Section 3(13) of the Bombay Industrial Relations Act, 1946. Today you are a Senior Officer/Branch Manager. By letter Ref No: HR/254/10 dated 10 July 2010 you were transferred w.e.f. 11/7/2010 and told to join the Loan Department in the Head office from 11/7/2010 and to hand over your charge to Mr. Raveendran in your branch.

You gave a written reply dated 11/7/2010, and refused to accept this charge. This is a serious matter, and coming from a Senior Officer like you is serious misconduct.

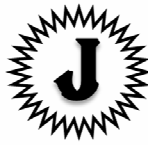
By this letter you are suspended with immediate effect for the purpose of conducting Departmental Enquiry. Although you are an officer, a Departmental Enquiry will be conducted and you will have a right to defend yourself according to principles of natural justice. Please note that you will not be considered as an employee under Section 3(13) of the Bombay Industrial Relations Act, 1946 simply because a Departmental Enquiry has been ordered. You will receive a charge sheet in due course. You will receive subsistence allowance. You will get full opportunity to defend yourself

Immediately on receiving this letter, you shall hand over charge to your junior Mr Raveendran

Received as on 12/7/10 at 12:45 pm.  
Received without prejudice to my  
rights.

*Arvind*

Manager,  
400 Magarpatta,  
Pune.

**JAYANTI CO-OPERATIVE BANK**

**400 Magarpatta,  
Pune**  
E-mail: jayantibank@ymail.com

Ref: ADMN/364/10

**RPAD**

Date: 10 October 2010

## Charge Sheet

To

Mr Arvind Kumar  
25 Mahatma Gandhi Colony,  
Sadashiv Peth,  
Pune

You are appointed in our Bank as Senior Officer/Branch Manager. You are not an 'employee' under 3(13) of Bombay industrial Relations Act, 1946. This charge sheet is issued to you for the reasons given below. You are suspended from duties from 11/7/2010

1. By letter dated 10/7/10 No: HR/254/10, you were transferred to the Head Office w.e.f. 11/7/2010. But you replied in writing and refused to accept the order. This is a serious matter amounting to insubordination and contempt. Moreover, adversely affected working of the Bank and the service we give to our customers.
2. You gave false information to Daily Lokdhara, and the news item dated 13/7/2010 has caused defamation of the Bank.
3. You received training of ALM Capital. The Bank paid for the training. When it came to working on ALM, you refused to accept responsibility. This occurred on 19/7/2010.
4. You have written false information about the management from time to time without reason. In particular, you wrote letter dated 16/6/2010.
5. You interfere in the leave policy of the Bank without authority. You have informed the Bank on one occasion 'You will sanction leave when you think fit'.

It is seen from the above that you are willfully harassing the Bank administration and misleading the Bank. You do not follow orders and committed contempt. Your actions are against the interests of the Bank.

Hence the following charges are framed against you:

1. You have willfully committed insubordination and disobedience of lawful and reasonable orders of a superior.
2. Your committed acts prejudicial to the interests of the Bank, by bringing the Bank into disrepute,
3. You have attempted to defame the Bank.

The enquiry into these charges will happen according to principles of natural justice and Common Law. Since you are not an employee under The Bombay Industrial Relations Act, 1946, Standing Orders are not applicable to you.

You may give your detailed reply to this office within 8 days. Thereafter when the final decision about some enquiry is taken you will be informed the first date, time of the enquiry and information about the enquiry officer and Bank's Representative. In this enquiry you will get every opportunity of defending yourself according to natural justice.

Thanking You,

-/Sd  
Manager,  
400 Magarpatta,  
Pune.

16 October 2010

To

The Manager,  
Jayanti Co-operative Bank,  
400 Magarpatta,  
Pune

Subject: Your Charge Sheet dated 10/10/10 No: ADMN/364/10  
Sir,

I received on 14/10/10 the Charge Sheet dated 10/10/10 No: ADMN/364/10.


In the Charge sheet you have informed that I am not an 'employee' under Bombay Industrial Relations Act, 1946 and therefore the standing orders applicable to Bank employees do not apply to me and the charges against me will be decided according to the principles of natural justice and common law.

Regarding this I place serious objection.

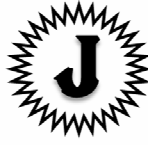
All charges against me are false and misconceived. The charge sheet has been issued against me to harass me because my name was recommended by the Bank Karmachari Sangh for the Worker Director on the Board of Director of the Bank, and I approached the Industrial Court when you refused to accept my name. I deny totally all charges made against you.

Kindly give me a copy of 'the common law' which you have mentioned in the Charge Sheet. After receiving this I will give point by point answer to all charges.

Please note that you do not have any rights to enquire into these charges according to Section. 78(1)(d) of Bombay Industrial Relations Act, 1946.

  
Arvind Kumar,  
25 Mahatma Gandhi Colony,  
Sadashiv Peth,  
Pune

**JAYANTI CO-OPERATIVE BANK**



**400 Magarpatta,  
Pune  
E-mail: jayantibank@ymail.com**

Ref: ADMN/378/2010

Date: 7-11-2010

To

Mr Arvind Kumar,  
25 Mahatma Gandhi Colony,  
Sadashiv Peth,  
Pune.

Sub: Your Letter of 16/10/10

Thank you for your letter. Your contentions are not acceptable to the Bank. You will have full opportunity to defend yourself in the enquiry. "Common Law" is not a codified law; hence asking for its copies is absurd. Its copies cannot be given.

Common Law is not made by any legislature and hence its copies cannot be given.

You are granted four more days to reply to the charge sheet. The enquiry will commence even if your reply is not received. You will be informed of the location of the enquiry, Enquiry Officer and other details about the enquiry.

Manager,  
400 Magarpatta,  
Pune.

**Notings of Departmental Enquiry**  
**Mr Arvind Kumar, Branch Manager, Jayanti Co-operative Bank**  
**23/2/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Janaki S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *Sshankar*
4. Mr Raj Desai, Representative of Mr Kumar: *Raj D*
5. Mr. Arjun Patni – Writer *Arjun Patni*

The enquiry happened earlier on 31.11.10 and it was postponed to this day. In the beginning, Mr. Raj Desai of Bank Karmachari Sangh stated that he will represent the Employee. The PO agreed. Hence the Enquiry Officer permitted Mr. Desai to represent. Mr. Kumar. His appointment is in Ex.4.

The Employee's rep asked whether the charge sheet issued against the employee was legal; and this must be decided first. In its letter of 7/11/10, the Bank has informed that Common Law is not codified and asking for its copies is absurd and its copies cannot be given. It is not statutory law. In these circumstances, when the Law does not exist the charge sheet issued under it is unlawful and the Enquiry Officer must decide this. After this decision, the employee will be in a position to continue in these proceedings. The Enquiry Officer asked the Presiding Officer to reply. The PO replied that the charge sheet is issued to follow the principles of natural justice. These principles are not codified. However, courts apply these principles. The charge sheet is according to service conditions and Law. If any Employee violates service rules, the management has unfettered rights to issue charge sheet. It is also obligatory to do so. It is incorrect to ask – under which statute is charge sheet issued. The Enquiry Officer may take proper decision in this respect. The Enquiry Officer decided that the charge sheet is issued according to service conditions applicable to when an Employee violates rules. The enquiry will happen according to principles of natural justice and after giving full opportunity to parties. The Enquiry Officer asked PO to commence enquiry proceedings'.

The representative Mr. Desai immediately requested that he had urgent work and should be relieved. The enquiry officer told that the PO will file documents today and will examine Bank witnesses. The Employee can attend the proceedings. After discussion, representative, Mr. Dighe consented to participate. The Enquiry Officer asked PO to commence proceedings.

The Enquiry Officer requested to examine the first witness for the Bank, Mr. Sameer Bhosale. Examination of Mr. Bhosale:

Q1: Who are you and what do you do in the Bank?

Ans: I am Sameer Bhosale. I am the Manager of the Bank. I am the General Manager.

Q2. Who is the Employee?

Ans: Mr. Arvind Kumar is the Branch Manager of Deccan Gymkhana branch.

Q3. What is the nature of your work?

Ans: I look after the general administration of the Bank, coordinate between branches, issue appointment orders to employees. As part of the coordination, I also control the work of branch manger of Bank's branches

Q4. Who issues appointment letter to Bank Managers?

Ans: I issue such letters.

Q5. Do you know that a charge sheet is issued against Mr. Kumar?

Ans: Yes.

Q6. Is this the charge sheet? Is it your signature?

Ans: Yes, it is my signature.

Q7. Are its contents correct? Do you know the contents?

Yes

Q8. Please give briefly information about the charges?

Ans: He was transferred from branch to the Head Office which he refused. He refused to do the work relating to Asset Liability Management for which he has received training. When he was under suspension, he got a news published in Daily Lokdhara which he has defamed the Bank. His has interfered and obstructed in the working of the Bank.

The Presenting Officer requested that the examination will be continued on next day.

Proceedings postponed to 23.2.2011

Copies of today's proceedings transferred to Employee and PO.

<i>Arvind</i>	<i>S Shankar</i>	Raj D	<i>Arun Patni</i>	<u><i>Lankai.S</i></u>
Employee	Presenting Officer	Representative of Mr Kumar	Writer	Enquiry Officer

Received copies of proceedings

<i>Arvind</i>	<i>S Shankar</i>
Employee	Presenting Officer

9/3/11

To,  
The Manager,  
Jayanti Bank,  
Magarpatha, Pune,

Sub-to revoke the charge sheet dated 10/10/10

Sir,

1. You have issued to me charge sheet dated 10/10/10 and started Departmental Enquiry against me. The charge sheet does not state any law under which the alleged misconduct has occurred. I gave a letter dated 16/10/10 bringing this to our notice. By your reply dated 7/11/10, you have rejected by contention.

2. On 23/2/11, my representative, Mr. Raj Desai, raised an objection to the enquiry proceeding in the charge sheet and demanded an explanation from the enquiry officer. The management did not give any answer to this objection but merely made a oral cursory submission. The enquiry officer observed very briefly that charge sheet is issued according to service conditions. And the enquiry will proceed after hearing both parties and applying the principles of natural justice. These are not valid reasons given by the enquiry officer. The enquiry officer is proceeding with the enquiry without taking any legal decision on my objection. I wish to bring to your notice that the enquiry officer has not made any legal opinion on this matter

3. it is absolutely necessary that you must once again look into the validity of charge sheet dated 10/10/10 issued against me

4 I have the following objections against charge sheet dated 10/10/10

- a. The charge sheet does not mention under which legal provisions it has been issued.
- b. The charge sheet does not mention the provisions of the law my actions amounts to misconduct.
- c. I am told that the charges against me are based on natural justice and common law. I was never told when i joined service that these laws would apply to me. Basically no such law exists.
- d. There are no service conditions that provide that an employee of my post is not covered by the BRI act of 1946.
- e. Standing Orders under the BRI act 1946 are applicable to Bank employees. Any charge sheet must be issued against standing orders only and not otherwise.
- f. I am under suspension. I have received allowance during suspension according to the provisions of the BRI act 1946. This shows that the act applies to me.

5. Any management has a right to issues a charge sheet under the provisions of law. However the charge sheet issued to me is without authority of law and hence the management has no right to punish me. You are therefore requested to consider my application with sympathy and to revoke the charge sheet dated 10/10/10.

*Arvind*  
Mr. Kumar.

**Reply of management is as follows.**

Mr. Kumar gave this letter to the management on 9/3/11 and filed its copy in the enquiry on 12/3/11. Mr. Kumar is subject to general service rules. Any management has absolute rights to punish any employee who has committed misconduct. It is in the interest of both the management and the employee that the employee should act at the work place in a disciplined manner. This is also his obligation under the general law. This is also the provision about employment rules in Indian constitution.

The management has already given a charge sheet and the enquiry has been commenced. This application does not affect the enquiry proceedings and should be filed.

*Sshankar*  
PO

Filed in the enquiry proceedings.

*Jankai. B*  
EO

13 July 2010 – Newspaper

# Daily Lokdhara

Pune Edition

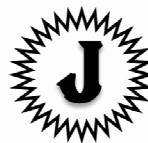
## Demand to revoke suspension order

Pune, 12 July (Our Correspondent): The Bank Karmachari Sangh has threatened indefinite fast demanding that the suspension order passed against Mr. Arvind Kumar in Jayanti Coop Bank of Magarpatta be revoked immediately.

The Bank has suspended Mr. Arvind Kumar by its letter of 11 July 2010. The letter states that this action was taken because he refused to accept his transfer. Mr Arvind Kumar has made a statement that the Bank has taken

such an action because he has exposed irregularities in the Bank's officer. Branch Officer Sampat Dighe of Sadashivpeth branch said that the Bank Management does not provide proper treatment to its employees and that the suspension must be immediately revoked. Kumar has cautioned that if this injustice is not undone he with his family will commence indefinite fast. Mr. Jayant Rao, the Chief Officer of the Bank, was not available when contacted.

**JAYANTI CO-OPERATIVE BANK**



**400 Magarpatta,  
Pune  
E-mail: jayantibank@ymail.com**

Ref: ADMN/120/05

Date: 14 March 2010

To

Mr. Arvind Kumar,  
Branch Manager,  
Deccan Gymkhana Branch,  
Pune

Subject: Submitting reports and information about ALM

Dear Sir,

The Board of Directors have resolved to give you responsibility of Asset Management Liability (ALM) of our Bank and you are appointed as an officer of our ALM Committee. You have also received training for this purpose from RBI Agricultural College.

We have to send information to the RBI. You may collect all information concerning our Bank for the said purpose and submit our report immediately.

Manager,  
400 Magarpatta,  
Pune.

19 March 2010

To  
The Manager,  
Jayanti Co-operative Bank,  
400 Magarpatta,  
Pune

Subject: Your Reference ADMN/120/05 – Sending information about  
ALM

Dear Sir,

I received your letter of 14/3/10 on 15/3/10. I have to state in writing. Your letter does not indicate whether I must work as Branch Manager or from the Head Office.

I received this training in June 2005. A person performing those duties should have been sent for training, but you sent me. After my training, some other officer in the Head office looks after the work. I should have been given work under him. It is already five years after the training.

You are aware that training and actual work on the task are entirely different things. I request you that the task of compiling ALM information may be assigned to someone who has worked in the ALM department so that the task will be better completed.

Yours Sincerely,



Arvind Kumar  
Branch Manager,  
Deccan Gymkhana Branch,  
Pune.

**Notings of Departmental Enquiry**  
**Mr Arvind Kumar, Branch Manager, Jayanti Co-operative Bank**

**12/3/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Janaki.S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *S.Shankar*
4. Mr. Arjun Patni - Writer *Arjun Patni*
5. Mr. Sameer Bhosale-Bank witness *Sameer Bhosale*
6. Mr. Raj Desai- Employee's representative *Raj D*

On the last date-23/2/11, enquiry was postponed to 27/2/11. The presenting officer requested for further postponement. With the consent of all matter is fixed today on 12/3/11. The letter dated 6/3/11 stating today's date was sent to employee (exhibit 11). In the beginning today the employee today has given representation dated 9/3/11. On this, the PO gave a reply (exhibit 12).

The EO informed that since this enquiry is for disobedience and insubordination, the enquiry proceedings cannot be stopped.

The EO asked the PO to continue the proceedings.

Q9: Did Mr. Kumar give his explanation to the management?  
Ans: Mr. Kumar gave his answer (it is exhibit9)

Q10: Did Mr. Kumar gave the letter d 16/10/10 personally to the management  
Ans: Yes, he personally gave it

Q11: To whom did he hand over this reply?  
Ans: He handed it over to me and I signed it.

Q12: What action did the management take after receiving the reply?  
Ans: The management gave a reply dated 7/11/10 (exhibit 10) it has my signature.

Q13: How was the letter dated 7/11/10 sent to him?  
Ans: It was sent RPAD. He has received it.

Q14: According to the charges Mr. Kumar has refused transfer orders. Whose order has he refused to obey?  
Ans: As a general manager I had given transfer order to Mr. Kumar transferring him from Deccan Gymkhana branch to head office. As per exhibit 6 he has refused transfer and has disobey orders of the management.

Q15: why did you give the charge sheet?  
Ans: The charge sheet is issued for the misconduct of willful subordination and disobedience of a lawful order of a superior.

Q16: You have stated in answer to Q8 that Mr. Kumar has defamed the Bank by causing to publish a news item in Daily Lokdhara. Do you have any document to show this?

Ans: Yes. We have filed a copy of Daily Lokdhara dated 13/7/10 (marked exhibit 13)

Q17: you have stated in answer to q8 that Mr. Kumar was given training for ALM but he refused to do that work. Do you have any document to support this?







Ans: Yes. The management had given him letter dated 14/3/10 asking him to carry out ALM related work. We have filed it (marked exhibit 14). Mr. Kumar gave letter dated 19/3/10 in which he refused to do ALM related work. This answer we have filed (marked exhibit 15).

Q18: Do you wish to give any other explanation about the charges against Mr Kumar?



Ans: The charges mentioned in the charge sheet are correct and it is very clear that Mr. Kumar has committed misconduct stated in the charge sheet.

PO closed the evidence. The employee requested to keep cross-examination on next date because his representation was absent.

Enquiry will proceed next on 17/3/11 at 3pm. Copy of notings of today's proceedings handed over to PO and EO

					
Employee	Presenting Officer	Representative of Mr Kumar	Samir Bhosale	Writer	Enquiry Officer

Received copies of proceedings

	
Employee	Presenting Officer

**Notings of Departmental Enquiry**  
**Mr Arvind Kumar, Branch Manager, Jayanti Co-operative Bank**

**17/3/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Janaki S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *S Shankar*
4. Mr. Arjun Patni - Writer *Arjun Patni*
5. Mr. Sameer Bhosale-Bank witness *[Signature]*
6. Mr. Raj Desai- Employee's representative *Raj D*

Proceedings continue today on 17/3/11 as decided earlier on the date of 12/3/11.  
The representative of Mr. Kumar has cross-examined Mr. Bhosale, Bank witness.

Q19: Since when are you working in the Bank and on what post?

Ans: I joined the Bank in December 1980 as a clerk

Q20: Are you aware under which precise provision of the Bank service condition is the charge sheet issued?

Ans: No.

Q21: Under the Bombay Industrial Regulation 96, standing orders are applicable to Banking industries?

Ans: They are applicable to workers.

Q22: are certified standing orders applicable to workers or model standing orders?

Ans: I do not know.

Q23: Can you file the standing order applicable to employers of your Bank?

Ans: I cannot file just now.

Q24: is it not true that the weight settlement about your Bank employees is made with Bank Karmachari Sangh?

Ans: Yes.

Q25: Is it not true that any such weight settlement also provides for wage fixation, transfers, recruitment, promotion, and staffing pattern?

Ans: Yes.

Q26: Are not the conditions in the weight settlement binding on both parties?

Ans: Yes.

Q27: Is it not mandatory to give notice if any conditions are to be changed?

Ans: It is mandatory if it is so mentioned in the settlement.

Q28: can the management unilaterally make changes in the promotion policy, transfer policy, requirement police, and staffing patterns?

Ans: No.

Q29: is your salary calculated on the basis of weight settlement?

Ans: Yes.

Q01: Does the settlement cover all post form general manager to the peons?  
Ans: Yes.



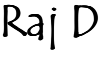



Q31: Are you an employee of the Bank?  
Ans: Yes.

Q32: Do you know who is an 'employee' under the BRI act?  
Ans: A person doing managerial work is not an 'employee' under the BRI act.


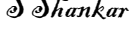
Q33: How much is our basic pay?  
Ans: My basic pay is 2920

Q34: Please refer to this book on the BRI act 1946 and tell whether any person receiving basic wage of 6500 or less is an 'employee'?  
Ans: yes

At the request of Mr. Desai enquiry proceedings postponed to 23/3/11.  
Copies of today's noting handed over to PO and employee.

					
Employee	Presenting Officer	Representative of Mr Kumar	Samir Bhosale	Writer	Enquiry Officer

Received copies of proceedings

	
Employee	Presenting Officer

# Daily Lokdhara

ne Edition

## Jayanti Bank fined 1 Lakh

*Pune, 6 Jan (Our Correspondent):*

RBI has imposed a fine of Rs 1 lakh on Jayanti Co-operative Bank for violating its guidelines about Loan Disbursement.

Disbursing excessive loans, failure to deduct

loan amount from salary and similar irregularities were found. Reserve Bank issued 'Show Cause Notice to the Jayanti Co-operative Bank'. The Bank gave a detailed reply. Yet the RBI decided to impose this fine.

**Notings of Departmental Enquiry**  
**Mr Arvind Kumar, Branch Manager, Jayanti Co-operative Bank**  
**23/3/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Janaki S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *S Shankar*
4. Mr. Arjun Patni - Writer *Arjun Patni*
5. Mr. Sameer Bhosale-Bank witness *Sameer Bhosale*
6. Mr. Raj Desai- Employee's representative *Raj D*

Proceedings have begin today as decided on the earlier date of 17/3/2011.  
Cross-examination of Mr Bhosale by Mr. Desai continues

Q35: Is the basic pay of Mr. Kumar less than your basic pay?

Ans: Yes.

Q36: Is it not true that one employee cannot give charge sheets to another employee?

Ans: Yes.

Q37: Please look at exhibit 13. Is it not true that news item given to Daily Lokdhara for publication by Bank Karmachari Sangh?

Ans: It is not clear from the news item that it has been given by Bank Karmachari Sangh. The news mentions that they made a representation.

Q38: Do you say that Bank Karmachari Sangh has not given this news?

Ans: I cannot say that

Q39: I state that the news was given not by Mr. Kumar but by Bank Karmachari Sangh.

Ans: I cannot say.

Q40: Exhibit 13 also the name of Mr. Dighe?

Ans: Yes.

Q41: Is it not true that on the Banks demand, Mr. Dighe has given an explanation?

Ans: Yes.

The employee has filed a document dated 23/7/10 being the explanation given by Mr. Dighe. This is at exhibit 17.

Q42: in this letter there is a mention of another letter dated 26/6/08. Is this correct?

Ans: Yes.

Q43: Is it not true that similar explanation was not sought from Mr. Kumar?

Ans: It is true that we did not ask explanation from Mr. Kumar.

Q44: Is it true that the charge is framed without asking for explanation?

Ans: Yes.

The representative has filed a news item about the Bank in newspaper dated 7/1/11.  
(Marked exhibit 18)

Q45: is it not true that the Bank was fined Rs. 1 lakh as mentioned in exhibit 18?

Ans: Yes.

Q46: Where was Mr. Kumar working before joining Deccan Gymkhana branch?

Ans: He was working as branch manager in Kondhwa branch.

Q47: Is it not true that when Mr. Kumar was Bank manager was branch manager it receiver the "best branch" award from the head office?

Ans: Yes.

Q48: Is it not true that it is not mention in exhibit 14 that you have relieved Mr. Kumar?

Ans: Yes.

Q49: State that it is false that by para no. 3 of exhibit 8, Mr. Kumar refused to accept charge.

Ans: Mr. Kumar has mentioned this in letter dated 19/3/10 (exhibit 15).

Q50: Is it not true that in exhibit 15 letter Mr. Kumar has merely requested you, but he has not refused?

Ans: I believe that he has indirectly refused.

Q51: Is it not true that Mr. Kumar has made a request in the letter

Ans: Yes.

Q52: Was the Bank Karmachari Sangh involved when you changed the duties in exhibit 14?

Ans: It was not necessary.

Q53: Is it not true that the Bank Karmachari Sangh nominated Mr. Kumar and Mr. Dighe for being worker-director under co-operative law section 73(B)(D)?

Ans: Yes.

Q54: Is it not true that before Mr. Kumar was suspended his name was sent by Bank Karmachari Sangh for nomination as worker-director?

Ans: Yes.

Q55: Is it not true that the Bank did not accept Mr. Kumar or Mr. Dighe as worker-director?

Ans: Yes.

Q56: Has the Bank Karmachari Sangh refer this dispute to the Industrial Court?

Ans: Yes.







Q57: Is it not true that the charge sheet has not been issued to Mr. Kumar under the Standing Order?

Ans: Yes.



Q58: Is it not true that Mr. Kumar was suspended because he was an active worker of a trade union and his name was recommended for worker-director?

Ans: It is false.

The representative closed the evidence. The presenting officer stated that the Bank will examine Mr. Ravindra on the next date. Enquiry proceedings postponed to 4/4/11 at 3pm. Notings of today's proceedings handed over to employee and representative.

					
Employee	Presenting Officer	Representative of Mr Kumar	Samir Bhosale	Writer	Enquiry Officer

Received copies of proceedings

	
Employee	Presenting Officer

Exh. 19

12 July 2010

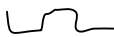
To  
The Manager,  
Jayanti Cooperative Bank,  
400 Magarpatta,  
Pune.

Sub: Accepting charge of the Deccan Gymkhana Branch of  
Jayanti Bank

Sir,

I have today on 12/7/2010 accepted charge of the Deccan Gymkhana  
Branch from its Manager, Mr Arvind Kumar in terms of your order. I  
have in particular received the keys of all lockers, the gold custody  
documents, all files and all registers.

Yours faithfully,  
-/Sd

*R Raveendran*   
Raveendran

Copy to:  
Mr. Arvind Kumar

Charged handed over  
-/Sd

*Arvind*

Arvind Kumar (12:45 pm) 12/7/10

Charge accepted Mr Raveendran  
Received and noted  
-/Sd

*R Raveendran*

12/7/10

  
Manager

Jayanti Co-operative Bank

**Notings of Departmental Enquiry**  
**Mr Arvind Kumar, Branch Manager, Jayanti Co-operative Bank**

**4/4/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Janaki.S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *S.Shankar*
4. Mr. Arjun Patni - Writer *Arjun Patni*
5. Mr. Raveendra - Bank witness *Raveendra*
6. Mr. Raj Desai - Employee's representative *Raj D*

Proceedings have begun today as decided on the earlier date of 23/3/2011.  
The presenting officer submitted to take evidence of Mr. Ravindra and has stated examination.

Q1: What is your name, age, designation, place of work?

Ans: My name is Ravindra. I am 42 years old. I am assistant account at the Deccan Gymkhana branch of Jayanti Bank.

Q2: Do you know Mr Arvind Kumar?

Ans: Yes.

Q3: Did he work with you in same branch?

Ans: Yes

Q4: Do you know that Mr. Kumar was transferred?

Ans: Yes

Q5: Did you know about the transfer from Bank sources?

Ans: No

Q6: When he was transferred, did you receive any directions from the Bank about taking charge?

Ans: There was a mention in the transfer order of Mr. Kumar about taking charge.

Q7: Did you assume charge accordingly?

Ans: Yes

Q8: When did you assume charge?

Ans: I cannot state the date.

The PO requested that it was necessary to produce some documents before the examination could be continued and requested for postponement. The employer consented.

<i>Arvind</i>	<i>S.Shankar</i>	<i>Raj D</i>	<i>Raveendra</i>	<i>Arjun Patni</i>	<i>Janaki.S</i>
Employee	Presenting Officer	Representative of Mr Kumar	Raveendra	Writer	Enquiry Officer

Received copies of proceedings

<i>Arvind</i>	<i>S.Shankar</i>
Employee	Presenting Officer

**Notings of Departmental Enquiry**  
**Mr Arvind Kumar, Branch Manager, Jayanti Co-operative Bank**  
**11/4/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Janaki S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *S Shankar*
4. Mr. Arjun Patni - Writer *Arjun Patni*
5. Mr. Raveendra - Bank witness *Raveendra*
6. Mr. Raj Desai- Employee's representative *Raj D*

Proceedings have begun today as decided on the earlier date of 4/4/2011.  
The PO continued with the examination of Mr. Ravindra.

Q9: Did you assume charge as stated in letter dated 11/7/10? (exhibit 7)

Ans: Yes.

Q10: Did you report to the Bank after assuming charge?

Ans: Yes.

Q11: Can you file in the enquiry proceedings the copy of the report?

Ans: Yes, I am filing report dated 12/7/10(exhibit 19).

Q12: Is it your signature on exhibit 19?

Ans: Yes, it is my signature.

Q13: After giving charge to you on 12/7/10, did Mr. Kumar joined the head office?

Ans: I do not know.

Q14: Please look at exhibit 5 and tell whether the post or the salary has changed after Mr. Kumar was transferred to head office?

Ans: I cannot say.

PO has closed evidence. Representative Mr. Desai conducts cross-examination.

Q15: Did you know from Mr. Kumar's letter that you have to assume charge?

Ans: Yes.

Q16: Were you promoted as Bank manager when you assumed charge?

Ans: No.

Q17: Is it not true that Deccan Gymkhana branch has no branch manager today?

Ans: Yes.

Q18: Are you a member of Bank Karmachari Sangh?

Ans: Yes.

Q19: Who is the worker director in the worker-directors?

Ans: No one.

Q20: Who were the worker-directors earlier?

Ans. Mr. Dighe and Mr. Kumar

Q21: Does Mr. Kumar take initiative and work for the interest of workers?  
Ans: Yes

Mr. Desai closed the cross examination.

The presenting officer informed that the evidence of the Bank is closed.

The enquiry officer asked the employee whether he wished to give evidence. The employee said that he did not wish to examine any witness or give evidence.

The EO asked the employee whether he wished to state anything more at the enquiry. The employee said that he wished to give one final defense statement.

After discussing with the employee it was decided that the employee shall give two copies of his final defense statement on 20/4/11 at 5pm.

<i>Arvind</i>	<i>S Shankar</i>	Raj D	<i>Raveendra</i>	<i>Ajrun</i> <i>Patni</i>	<i><u>Jankai.B</u></i>
Employee	Presenting Officer	Representative of Mr Kumar	Raveendra	Writer	Enquiry Officer

Received copies of proceedings

<i>Arvind</i>	<i>S Shankar</i>
Employee	Presenting Officer

Date: 24/4/11

To  
The Enquiry Officer,  
Jayanti Co-operative Bank,  
400 Magarpatta,  
Pune

Sub: Final Defence Statement in the proceeding of enquiry on charge sheet dated 10/10/10 issued against me.

1. The Bank management issued a charge sheet dated 10/10/100 against me and a Departmental Enquiry has been conducted. I objected in writing to the charge sheet by my letter dated 16/10/10 in Ex. 9. I state that the charge sheet has been issued against me to harass and victimize me because the Bank Karmachari Sangh has filed a proceeding in the Industrial Court, Pune challenging the Bank's decision to refuse my nomination as worker director after it was so recommended by the Bank Karmachari Sangh; and also because I am an active member of the Sangh. On 23/2/11, my defence representative challenged the legality of the charge sheet and requested for an explanation. To this, the presenting officer gave a very cursory reply. The Enquiry Officer also did not give a satisfying and reasoned answer to the objection, but continued the proceeding further.
2. Thereafter, on 9/3/2011, I gave a letter to the Bank Management requesting that the charge sheet be revoked. The Management did not give any answer. I therefore filed this answer before the Enquiry Officer. The Enquiry Officer also did not take any decision.
3. I was informed that the charges against me were issued according to principles of 'natural justice' and 'Common law'. I was never informed at the time of appointment that these laws were applicable to me. Truly speaking, no such laws exist.
4. The Enquiry Officer has not considered this aspect. The stand of the Enquiry Officer has deprived me of an opportunity to answer the charges with reference to the principles that apply to it.
5. I am an employee under the Bombay Industrial Relations Act, 1946. The Model Standing orders apply to me. Any charge sheet issued against me must comply with the Model Standing Order. The charge sheet nor the enquiry proceedings comply with the Model Standing Order. **Hence the charge sheet is invalid. Bank's witness and Manager, Mr Sameer Bhosale is an employee of the Bank. One employee cannot give charge sheet to another employee. Hence the charge sheet is invalid.**
6. The Bank asked me to work in place of Mr. Talekar who was working as Assistant accountant in the Head Office. Mr. Talekar is junior to me in rank. Hence this order amounts to reduction in rank and was unlawful.
7. The Bank's manager gave me a letter Ex.14 dated 14/3/2010 to put on responsibility of Asset Liability Management (ALM) of the Bank. But he did not inform me as to who should I transfer charge. He has also stated that during his examination. I made a request in my letter Exhibit. 15 dated 19/3/10 explaining my stand. I had no intention of showing disrespect to anyone. This is clear from the letter.
8. In the news item appearing in Daily Lokdhara dated 20 July 2010, the name of Mr. Dighe appeared along with mine. The Bank management asked for explanation from Mr. Dighe, but did not give me an opportunity to explain. This shows the vengeful attitude of the management towards me. I have filed the explanation of Mr. Dighe in Ex. 17. No action was taken against Mr. Dighe after he gave his explanation. This means that explanation of Mr. Dighe was acceptable to the Bank. Hence, the charge that I caused defamation to the Bank is false. In the Daily Lokdhara of 7/1/2011 in Ex. 18 it is mentioned that the Bank had to pay fine. This shows that the Bank violated the rules of Reserve Bank.
9. When I worked at the Kondhwa branch, it had received the Best Branch award of the Bank. This aspect is important and shows that there is no truth in the charge that I caused defamation of the Bank. It is obvious from the evidence of Mr. Talekar that I am an active member of the Sangh.

*Arvind*  
Arvind Kumar,

**Notings of Departmental Enquiry  
Mr Arvind Kumar, Branch Manager, Jayanti Co-operative Bank**

**20/4/2011**

Present:

1. Smt. Janaki Sharma - Enquiry Officer (EO) *Jankai.S*
2. Mr. Arvind Kumar - Charge Sheeted Employee (Employee) *Arvind*
3. Mr. Sumant Shankar - Presenting Officer (PO) *S.Shankar*
4. Mr. Arjun Patni - Writer *Arjun Patni*
5. Mr. Raj Desai- Employee's representative

Proceedings have begun today as decided on the earlier date of 11/4/2011. The employee handed over his 3 page final defence statement (exhibit 20). Its copy given to PO. EO declared that the enquiry proceedings have been completed.

After discussing with the employee it was decided that the employee shall give two copies of his final defense statement on 20/4/11 at 5pm.

<i>Arvind</i>	<i>S.Shankar</i>	<i>Raj D</i>	<i>Arjun Patni</i>	<i>Jankai.S</i>
Employee	Presenting Officer	Representative of Mr Kumar	Writer	Enquiry Officer

Received copies of proceedings

<i>Arvind</i>	<i>S.Shankar</i>
Employee	Presenting Officer