IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 31st OF AUGUST, 2023

WRIT PETITION No.1235 of 2012

BETWEEN:-

SHIV KUMAR VYAS S/O LATE SHRI V.K. VYAS, AGED ABOUT 52 YEARS, R/O VILLAGE MALHARGARH, BLOCK MUNGOLI, DISTT. ASHOKNAGAR (MADHYA PRADESH)

.....PETITIONER

(BY SMT. SHOBHA MENON - SENIOR ADVOCATE WITH SHRI BHARAT DEEP SINGH BEDI - ADVOCATE)

AND

1. **UNITED COMMERCIAL BANK HEAD OFFICE-1 THROUGH ITS GENERAL MANAGER 10, BTM SARANI KOLKATA (WEST BENGAL)**
2. **GENERAL MANAGER AND APPELLATE AUTHORITY HEAD OFFICE -2, PERSONAL SERVICE DEPARTMENT, DD BLOCK, SECTOR-I, SALT LAKE KOLKATA (WEST BENGAL)**
3. **ASSISTANT GENERAL MANAGER, ZONAL MANAGER AND DISCIPLINARY AUTHORITY HABIBGANJ (283) BOARD OFFICE CAMPUS, BHOPAL . (MADHYA PRADESH)**
4. **SHRI S.R.SAPRE, RETIRED SCALE IV OFFICER 72 BHIMA NAGAR, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENTS NO.1 TO 3 BY SHRI RAJMANI MISHRA - ADVOCATE)

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This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed against orders dated 30/03/2010 and 27/09/2010, by which punishment of compulsory retirement was imposed on the petitioner and appeal was dismissed respectively.

2. It is the case of petitioner that when petitioner was working as Assistant Chief Officer at Zonal Office of respondents at Bhopal. He was issued a charge-sheet on 15/01/2008. Seven articles of charges were alleged against the petitioner said to have been committed by him during the period of July, 2005 to July, 2006 while functioning as Manager at Sehrai and Sheopur Branch. In support of these articles, 11 statements of allegations of charges were also drawn by the respondents. Charge-sheet was issued under Regulation 6(3) of UCO Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (for short 'Regulations, 1976'). The articles of allegations of charges were based on Regulation 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976, which provides that every officer employee shall at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer. The respondents had attributed ulterior motives and malafide intention in the transactions against the petitioner. It is the case of petitioner that charge-sheet was drawn contrary to Regulation 6(3) of Regulations, 1976, in which it is mentioned that the disciplinary authority shall frame definite and distinct charges which shall be communicated in writing to the officer employee. In the present case, there are 7 articles of charges and 11 allegations of charges which in the posture do not make any one

to one correspondence. The Presenting Officer also presented the case allegation wise without any reference to the articles and the enquiry officer also adopted the same procedure in the DOS and in the enquiry report. As per Regulation 6(5) of Regulations, 1976, the disciplinary authority is required to forward to the enquiry authority (i) a copy of the articles of charges and statements of imputations of misconduct or misbehaviour, (ii) a copy of the written statement of defence, (iii) a list of documents by which and list of witnesses by whom the articles of charges are proposed to be substantiated, (iv) a copy of statements of witnesses, if any, (v) evidence proving the delivery of articles of charge under sub-regulation (3), (vi) a copy of the order appointing the Presenting Officer in terms of sub-regulation (6). The Enquiry Officer was not provided with a list of documents as well as witnesses who were to be relied upon and examined to prove the articles of charges, therefore enquiry officer should not have initiated the enquiry but in the instant case, enquiry officer without adhering to the well settled principle of law, initiated the enquiry proceedings.

3. In the first sitting on 07/03/2008, petitioner requested the enquiry officer for list of documents and list of witnesses stating that the management has not provided the copies and list of documents and witnesses along with charge-sheet, therefore the same were requested to be provided to enable him to defend himself. Accordingly, enquiry officer directed the Presenting Officer to provide the list of witnesses as well as copy of documents to the delinquent officer. Thereafter, enquiry officer again expressed his displeasure that list of witnesses and list of documents has not been provided. However, on 21/04/2008, even the enquiry officer excluded the list of witnesses from the ambit of

discussion and by skipping the list of witnesses and documents, he enquired from petitioner whether he has received the documents or not. It is the case of petitioner that list of documents and list of witnesses were never supplied to petitioner. On 14/05/2008, Presenting Officer informed the Enquiry Officer that the documents in a bunch have been forwarded to the petitioner with a mention in forwarding letter that more documents will be provided at Sehrai Branch during the verification on 5th and 6th of May, 2008. However, Presenting Officer kept mum about the list of witnesses. It is alleged that without communicating list of witnesses, Presenting Officer brought two management witnesses, namely Shri C.N. Mohto and Shri K.S. Tomar on 17/11/2008. In sitting on 29/12/2008, Shri K.S. Tomar, the alleged management witness No.2 was presented into service by Presenting Officer to depose on allegation Nos.7, 8 and 9 through ME 16/1 to 16/19. The said witness had not revealed the genuineness of documents by stating as to whether they are original or copies and who is the custodian of the documents. In sitting on 05/01/2009, Presenting Officer presented allegation No.1 wherein he pressed into service the documents without verified by the management witnesses. The Enquiry Officer allowed large number of documents to be used against petitioner without verifying their authenticity. Again on 06/01/2009, Presenting Officer presented allegation Nos.3 and 4 wherein he pressed into service the documents mentioned therein without there being verified by management witnesses. In sitting on 07/01/2009, Presenting Officer presented allegation Nos.5, 6, 7, 8, 9 and 10 and pressed into service the documents without verified by the management witnesses. Petitioner requisitioned 30 documents to defend his case but Enquiry Officer allowed only 18 demands and rejected his 12 demands which has prejudicially affected his defence. Enquiry

Officer has presented the enquiry report in a most vague, mechanical and with a whimsical approach. Thereafter, by order dated 30/03/2010, punishment order was passed containing the minor penalty of censure as well as major penalty of compulsory retirement. Punishment order is a non-speaking order. The Disciplinary Authority has not addressed to 28 issues raised by petitioner in his reply to the enquiry report. Appellate Authority also did not apply his mind to the merits of the case. It is submitted that mere proof of document is not sufficient to prove the guilt of petitioner. Amalgamation of major and minor penalty in a same order is not permissible.

4. *Per contra,* petition is vehemently opposed by counsel for respondents No.1 to 3. Respondents No.1 to 3 have also produced the photocopy of record of the departmental enquiry.

5. Heard learned counsel for the parties.

6. The first bone of contention of counsel for petitioner is that along with charge-sheet he was not provided with the list of documents as well as list of witnesses and the documents also on which the Department wanted to rely upon. Some of the relevant part of the enquiry proceedings are reproduced as under:-

Enquiry Proceedings

Enquiry in the matter of Charge Sheet dated 15.01.2008 issued to **Mr. S.K. Vyas** (PFM No.28040) conducted on **7th March 2008** at UCO Bank, Zonal Office, Bhopal.

CSO to IA: Sir, the Management has not provided me the copies and list of documents and witnesses along with the charge sheet. As such, I request the same may be provided to enable me to defend myself.

IA to PO: The Management is required to provide the list and copies of documents and list of witnesses to CSO in terms of Regulation 6, Sub Regulation 3 of UCO Bank Officer Employees (Discipline & Appeal) Regulations 1996. Therefore, you are advised that you should provide the same to CSO on the basis of which the charge sheet has been framed. Please note that you are to provide the List and copies of documents and list of witnesses to CSO directly (Please go through the HO Circular No CHO/POS/20/2000 dated 10-11-2000).

PO to IA: Sir, keeping in view the half yearly closing we are not in a position to provide the documents to CSO immediately. Therefore, request you to kindly give us the time upto 5 April 2008 for the same.

IA to CSO: No sooner you receive the documents you will proceed for inspection of documents at the branch and shall complete the inspection within 5 days period from 5th April 2008 onwards.

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Enquiry in the matter of Charge Sheet dated 15.01.2008 issued to **Mr. S.K. Vyas** (PFM No.28040) conducted on **21st April 2008** at UCO Bank, Zonal Office, Bhopal.

IA to PO: During the last proceeding it was decided that documents will be provided to CSO by 5/4/08. Please let me know what is the position of documents relating to the charge sheet.

PO to IA: I have received the papers today only from the erstwhile PO's office and after going through them I will submit the list of documents and witnesses to CSO by 30/4/08.

IA to CSO. You may proceed for inspection of documents on 5th and 6th May 2008 at the branch and submit list of your defence documents during the next hearing.

* * *

Enquiry in the matter of Charge Sheet dated 15.01.2008 issued to **Mr. S.K. Vyas** (PFM No.28040) conducted on **14 May 2008** at UCO Bank, Zonal Office, Bhopal.

PO to IA: Sir, as per the proceedings dt 21/4/08 I forwarded the documents in a bunch to Shri S.K. Vyas on 26/4/08 with a mention in the forwarding letter that some more documents will be provided at Sehrai branch during the verification on 5th & 6th May 2008 to you/CSO. After this, I received the communication from Shri Vyas that he is not coming to Sehrai for verification because the DR will not be with him as he has not been permitted for inspection and the documents are partial. This communication was addressed to IA and copy to me. I therefore requested him to come Sehrai and verify whatever documents supplied to him. Thereafter on 05/5/08 as per the direction in the proceeding I reached to Sehrai and waited for CSO to complete the business of the verification. But it did not happen. On my return to my office in Gwalior, I sent the CSO the other bunch of the documents on 06/5/08. Both the letters and enclosures to the copies are now submitted before you.

IA to CSO: Have you received the documents?

CSO to IA: Yes, I confirm having received the documents as per the last proceeding. Sir, I further request you the exhibit of documents may kindly be made the presence of my DR during next proceeding.

PO to CSO: Today is the 3rd date in the Enquiry and the DR assistance to CSO is not appeared and the Enquiry is being delayed. I request that the verification part by CSO be completed before the next proceeding date.

As the CSO could not bring the DR for attending today's proceeding and as requested by him, it is

decided that the CSO should bring his DR positively in future proceeding and avoid undesired delay in conducting of the Enquiry. The next date if fixed on 28/5/08. The concerned persons to report for proceeding on the said date at UCO Bank, Zonal Office Bhopal at 11.00 AM No separate notice will be issued to the concerned persons.

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Enquiry in the matter of Charge Sheet dated 15.01.2008 issued to **Mr. S.K. Vyas** (PFM No.28040) conducted on **28 May 2008** at UCO Bank, Zonal Office, Bhopal.

CSO to IA: Yes I have received all the documents marked as above.
IA to CSO: During the last proceeding, it was stated that you will call the Defence Representative (DR) to attend the proceeding of date. Please let me know the development in the matter.

* * *

IA to CSO: During the last proceeding you were asked to conduct the inspection of the document. I am sorry to note that you have not followed the directions and I do not appreciate your approach towards the required task. Since now the PO has delivered you the management documents from ME-1 to ME-22 with enclosures, you are advised to undertake the complete inspection of the documents. You are given two days to complete the inspection of documents at Sehrai branch. You are also advised to proceed for the inspection as early as possible and see it is completed within 5 days from the date today as required in terms of UCO Bank Officer Employees (Discipline & Appeal) Regulations 1976 amendments and report to me, no sooner you complete the inspection of the documents
CSO to IA: I may be allowed to proceed for inspection of documents alongwith DR.

PO to IA: Sir, your earlier directions have not been abided by the CSO and he is determined to proceed only alongwith his DR. Sir, he is well versed with the affairs, documents etc and I have already provided the photocopies of the documents and the processes of verification has to be undertaken just with a purpose that this material is the copy of the official records lying at the official place pertaining to Banks related business at Sehrai branch or any other office of the Bank. The role of DR is only to guide the defence during the proceeding before the Enquiry Officer so as to help in the conduct of the enquiry proceedings in systematic manner with a purpose to arrive at the ends of justice under the enquiry proceeding by the Hon'ble Enquiry Officer. As such, my submission is that CSO should cooperate for the continuance of the proceeding by undertaking the inspection of documents. The attendance of DR with CSO for inspection not desired.

CSO to IA: Since my DR is not present, the proceeding of enquiry may be deferred.

IA to CSO: The matter dealt in the proceeding on date are very much preliminary nature and the presence of DR not required and nothing is to be presented on behalf of defence. The argument of CSO is not acceptable. As such as per the provision of the UCO Bank Officer Employees Discipline & Appeal Regulations 1976 amended Regulation 10, CSO should undertake the inspection of the document as directed.

The CSO who was present during the proceeding upto 12:52 PM left the proceeding by saying that when submission is not being heard by the Enquiry Officer and also CSO himself is not versed with the legal complexities he is walking out and left the proceeding.

Pending the decision in regard to Shri S.D. Samagate, proposed DR, from HO and as CSO

left the proceedings in between today's proceeding, the proceeding of date are adjourned.

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The departmental enquiry in the matter of Charge Sheet dated 15.01.2008 issued to **Mr. S.K. Vyas** (PFM No.28040) conducted on **19.09.08** at Zonal Office, Bhopal.

EO - The C.S.O. has been provided the copies of the documents on the basis of which the charge-sheet and allegations are framed, the C.S.O. should proceed and allowed to conduct the inspect of those documents from original at Sehrai Branch Guna & Sehopurkala in terms of UCO Bank Officer Employees' (Discipline and Appeal) Regulation, 1976 in regulation 6, sub regulation (1)(3)& (ii) (iv). He should conduct the inspection of documents before 25th Oct. 2008. He is permitted to undertake the inspection in 3 days at Seharai, 1 day for Guna and 1 day for Sopurkala. Total not exceeding 5 day this is exclusive of travelling period. In absence of the provision, the D.R. is not permitted to accompany the C.S.O.

On completion of inspection of documents, submit the list of documents and witnesses that he wants for the enquiry.

CSO to EO - sir, my D.R. has not been allowed for the inspection of documents to accompany one, I am not in position to conduct the inspection of the documents and prepared my defence.

EO to CSO - The opportunity of conducting the inspection of documents has been given to you, it is upto you to avail the opportunity.

EO to PO - You are advise to inform the Seharai, Sehopurkala and Guna Branch about the conduct of the inspection as and when the CSO visit the branch, to be allowed.

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> The departmental enquiry in the matter of Charge Sheet dated 15.01.2008 issued to **Mr. S.K. Vyas** (PFM No.28040) conducted on **06.11.08**.
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> EO to CSO - An opportunity was given to you to conduct the inspection of the documents at Guna & Seharai Branch during the last proceeding and were also asked to submit the list of the documents and witness name to defend yourself. Please let me know the development.
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> CS to EO - As I have requested to allow me to conduct the inspection of document at Guna & Seharai Branch along with my DR which was denied, I have not made inspection of the documents, however I am submitted the list of witnesses, providing of copies of statements of the witness if taken any from the management witness, and the list of papers/documents to be supplied to us for the defence.
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> DR to EO - Since the above documents are not inspected and verified, we are not confirming their genuineness. However, we can verify these documents at the time of their proving by the witness from the original of the same.
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> * * *
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> PO to EO - The DR has asked to give the statement of management witness if obtained any. I have say no such statement was obtained. As far as the list of document concern I will require some time to collect the document from Branch which I will submit on next hearing.

7. From the aforesaid proceedings, it is clear that petitioner never demanded for list of witnesses. However, a specific statement was made by Presenting Officer that the statements of witnesses were never recorded, therefore it is clear that petitioner had not suffered any prejudice on account of non-supply of list of witnesses and therefore

also it appears that he did not demand for the same. With regard to procedure for prove of document is concerned, petitioner was given multiple opportunities to carry out inspection and compare the documents. However, at every time, petitioner refused to carry out the inspection in the main branch on the ground that his defence representative should be allowed. When it was refused by the Presenting Officer, then petitioner also refused to inspect the original records.

8. It is well established principle of law that rule of evidence does not apply to the departmental proceedings in its strict sense.

9. The Supreme Court in the case of **Kanwar Amninder Singh Vs. The Hon'ble High court of Uttarakhand at Nainital Through its Registrar General** decided on 17/09/2021 in **Petition(s) for Special Leave to Appeal (c) No(s).2507/2021**, has held as under:-

> "The case diary which the petitioner wants to be exhibited was not permitted by the Enquiry Officer on the ground of lack of proof for the said document as required under the provisions of the Evidence Act. Strict rules of evidence are not applicable to a Departmental Enquiry. There is no prejudice caused to anyone if the case diary is placed on record. The case diary which is shown as exhibit 44 in the application by the petitioner shall be exhibited as a document in the departmental enquiry. The departmental enquiry may be expedited and completed soon.

10. The Supreme Court in the case of **State of Rajasthan and Others Vs. Heem Singh** reported in **(2021) 12 SCC 569** has held as under:-

> **"37.** In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial

review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The Judge does not assume the mantle of the disciplinary authority. Nor does the Judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To

> determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the Judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the Judges' craft is in vain.
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> * * *
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> **40.** In the present case, the respondent was acquitted of the charge of murder. The circumstances in which the trial led to an acquittal have been elucidated in detail above. The verdict of the criminal trial did not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of evidence which governed the criminal trial. True, even on the more relaxed standard which governs a disciplinary enquiry, evidence of the involvement of the respondent in a conspiracy involving the death of Bhanwar Singh would be difficult to prove. But there are, as we have seen earlier, circumstances emerging from the record of the disciplinary proceedings which bring legitimacy to the contention of the State that to reinstate such an employee back in service will erode the credibility of and public confidence in the image of the police force."

11. Petitioner was given an opportunity to verify the genuineness of the documents which were relied upon by the department by inspecting the original record. In spite of multiple opportunities, he did not inspect the record on the pretext that he will do only in the presence of his

defence representative. Once petitioner himself had not challenged the genuineness and authenticity of documents on which reliance was placed by the department, then he cannot make a complaint that witnesses were not examined to prove the documents and the documents were proved merely by presentation by Presenting Officer. Once the authenticity is not disputed and in absence of applicability of strict rule of evidence in departmental enquiry, this Court is of the considered opinion that no fault could be pointed out by petitioner in the proceedings undertaken by the enquiry officer.

12. So far as the findings recorded by Enquiry Officer are concerned, it is sufficient to mention that in case if there is some evidence to reasonably support the findings of Enquiry Officer, then the Court in exercise of its writ jurisdiction should not reverse the finding on the ground of insufficiency of evidence. The departmental enquiries are decided on preponderance of probabilities. The Courts while exercising power under Article 226 of Constitution of India cannot re-appreciate the evidence and substitute its own finding if the finding recorded by the Enquiry Officer is reasonably supported by material available on record or in other sense, if the findings are not based on no evidence, the same cannot be disturbed. Even otherwise, this Court in exercise of power under Article 226 of Constitution of India has a limited scope of interference in departmental enquiry.

13. The Supreme Court in the case of **State of Karnataka and another Vs. N. Gangraj** reported in **(2020) 3 SCC 423** has held as under:

> "**8.** We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power

of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

9. In *State of A.P.* v. *S. Sree Rama Rao*, *AIR 1963 SC 1723*, a three-Judge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under : (AIR pp. 1726-27, para 7)

> "7. … The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

10. In *B.C. Chaturvedi* v. *Union of India*, *(1995) 6 SCC 749 : 1996 SCC (L&S) 80],* again a three-Judge Bench of this Court has held that power of judicial review is not an appeal from a decision

but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under : (SCC pp. 759-60, paras 12-13)

> "*12.* Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial

review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India* v. *H.C. Goel*, *(1964) 4 SCR 718 : AIR 1964 SC 364*, this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

11. In *High Court of Bombay* v. *Shashikant S. Patil*, *(2000) 1 SCC 416 : 2000 SCC (L&S) 144*, this Court held that interference with the decision

of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under : (SCC p. 423, para 16)

> "*16*. The Division Bench [*Shashikant S. Patil* v. *High Court of Bombay*, *1998 SCC OnLine Bom 97 : (2000) 1 LLN 160]* of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High

> Court in a writ petition filed under Article 226 of the Constitution."

12. In *State Bank of Bikaner & Jaipur* v. *Nemi Chand Nalwaya*, *(2011) 4 SCC 584:(2011) 1 SCC (L&S) 721,* this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under:(SCC pp. 587-88, paras 7 & 10)

> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on

extraneous considerations. (Vide *B.C. Chaturvedi* v. *Union of India*, *(1995) 6 SCC 749 : 1996 SCC (L&S) 80*, *Union of India* v. *G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806* and *Bank of India* v. *Degala Suryanarayana*, *(1999) 5 SCC 762 : 1999 SCC (L&S) 1036*, *High Court of Bombay* v. *Shashikant S. Patil*, *(2000) 1 SCC 416 : 2000 SCC (L&S) 144]*.)

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10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

13. In another judgment reported as *Union of India* v. *P. Gunasekaran*, *(2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554*, this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings : (SCC p. 617, para 13)

> "*13*. Under Articles 226/227 of the Constitution of India, the High Court shall not:
> (*i*) reappreciate the evidence;
> (*ii*) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
> (*iii*) go into the adequacy of the evidence;
> (*iv*) go into the reliability of the evidence;
> (*v*) interfere, if there be some legal evidence on which findings can be based.
> (*vi*) correct the error of fact however grave it may appear to be;
> (*vii*) go into the proportionality of punishment unless it shocks its conscience."

14. On the other hand the learned counsel for the respondent relies upon the judgment reported as *Allahabad Bank* v. *Krishna Narayan Tewari*, *(2017) 2 SCC 308 : (2017) 1 SCC (L&S) 335*, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the writ court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of

> no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The inquiry officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct.
>
> **15.** The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. We may notice that the said judgment has not noticed the larger Bench judgments in *State of A.P.* v. *S. Sree Rama Rao*, *AIR 1963 SC 1723* and *B.C. Chaturvedi* v. *Union of India*, *(1995) 6 SCC 749 : 1996 SCC (L&S) 80* as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law."

14. The Supreme Court in the case of **State Bank of India and others Vs. Ramesh Dinkar Punde** reported in **(2006) 7 SCC 212** has held a under:

> **"6.** Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an Appellate Authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:
>
> "Its jurisdiction is circumscribed and

> confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority." (See *Govt. of A.P.* v. *Mohd. Nasrullah Khan [(2006) 2 SCC 373 : 2006 SCC (L&S) 316]*, SCC p. 379, para 11.)

9. It is impermissible for the High Court to reappreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.

12. From the facts collected and the report submitted by the inquiry officer, which has been accepted by the disciplinary authority and the Appellate Authority, active connivance of the respondent is eloquent enough to connect the respondent with the issue of TDRs and overdrafts in favour of Bidaye.

15. In *Union of India* v. *Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218]* it is held as under: (SCC p. 623, para 15)

> A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the

> appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts. (SCR p. 219)

16. In *Union of India* v. *Parma Nanda [(1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30]* it is held at SCC p. 189, para 27 as under:

> "*27.* We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere

> with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

17. In *Union Bank of India* v. *Vishwa Mohan [(1998) 4 SCC 310 : 1998 SCC (L&S) 1129]* this Court held at SCC p. 315, para 12 as under:

> "*12.* After hearing the rival contentions, we are of the firm view that all the four charge-sheets which were enquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him."

18. In *Chairman and MD, United Commercial Bank* v. *P.C. Kakkar [(2003) 4 SCC 364 : 2003 SCC (L&S) 468]* this Court held at SCC pp. 376-77, para 14 as under:

> "*14.* A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required

> to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager* v. *Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194]* it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

19. In *Regional Manager, U.P. SRTC* v. *Hoti Lal [(2003) 3 SCC 605 : 2003 SCC (L&S) 363]* it was pointed out as under: (SCC p. 614, para 10)

> "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

> **20.** In *Cholan Roadways Ltd.* v. *G. Thirugnanasambandam [(2005) 3 SCC 241 : 2005 SCC (L&S) 395]* this Court at SCC p. 247, para 15 held:
>
> > "*15*. It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry." "

15. The Supreme Court in the case of **Union of India and Another v. K.G. Soni** reported in **(2006) 6 SCC 794** has held as under:-

> "**14.** The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.
>
> **15.** To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to

> direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.
> **16.** The above position was recently reiterated in *Damoh Panna Sagar Rural Regional Bank* v. *Munna Lal Jain* [(2005) 10 SCC 84 : 2005 SCC (L&S) 567]."

16. The Supreme Court in the case of **Om Kumar and Others Vs. Union of India** reported in **(2001) 2 SCC 386** has held as under:-

> "**70.** In this context, we shall only refer to these cases. In *Ranjit Thakur* v. *Union of India* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In *B.C. Chaturvedi* v. *Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in *Ganayutham* [(1997) 7 SCC 463:1997 SCC (L&S) 1806].
> **71.** Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter

> to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

17. The Supreme Court in the case of **Mithilesh Singh v. Union of India and others** reported in **(2003) 3 SCC 309** has held as under:-

> "**9.** The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same. Reference may be made to a few of them. (See: *B.C. Chaturvedi* v. *Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44], *State of U.P.* v. *Ashok Kumar Singh* [(1996) 1 SCC 302 : 1996 SCC (L&S) 304 : (1996) 32 ATC 239], *Union of India* v. *G. Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806], *Union of India* v. *J.R. Dhiman* [(1999) 6 SCC 403 : 1999 SCC (L&S) 1183] and *Om Kumar* v. *Union of India* [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039].)"

18. So far as the amalgamation of major and minor penalty in the same order is concerned, counsel for petitioner could not point out as to how the same has caused any prejudice to petitioner. Petitioner was proceeded departmentally on various allegations and if the disciplinary Authority was of the view that for certain allegations, minor penalty is sufficient and for other, major penalty is required then there was no impediment before the Authority to pass such punishment order.

19. Counsel for petitioner has relied upon the judgment passed by Supreme Court in the case of **Union of India and Another Vs. S.C. Parashar** reported in **(2006) 3 SCC 167,** in which it has been held that disciplinary authority acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. However, from the facts of the said case, it is clear that respondent therein was tried for a single charge i.e. "he was given a new Maruti Gypsy for performing official duties. He allegedly drove the said Maruti unauthorisedly and at a very high speed beyond his jurisdiction and met with a serious accident when the said vehicle collided with a stationary truck between Manesar and Delhi on National Highway No.8. The driver of the said Gypsy suffered serious injuries and respondent left the vehicle unattended and also left the said driver in an unconscious state and he also did not inform the headquarters about the said accident". Thus, allegations against respondent were that after the gypsy met with an accident, not only respondent left the place of accident but also left the driver in an unattended condition and also did not inform the department. Therefore the allegations were part of the same transaction. Whereas in the present case, articles of charges were in respect of multiple transactions.

20. Under these circumstances, order of punishment cannot be quashed merely on the ground that by same order, major and minor penalties are imposed.

21. The Supreme Court in the case of **General Manager (P), Punjab & Sind Bank and Others Vs. Daya Singh** reported in **(2010) 11 SCC 233,** has held as under:-

"22. In view of what is stated above, it is very clear that the Bank had taken the necessary steps to establish the misconduct before the enquiry officer. The relevant documents including ledger entries were produced through the witnesses concerned. The respondent fully participated in the enquiry. He had no explanation to offer during the course of the enquiry or any time thereafter. When all the relevant entries were in the handwriting of the respondent, the Bank did not think it necessary to call the borrowers. In fact, as the enquiry officer states, the respondent should have produced the borrowers if he wanted to contend anything against the documentary evidence produced by the Bank. In the circumstances, the conclusions arrived at by the enquiry officer as stated above could not have been held as without any evidence in support. The High Court has clearly erred in holding that the documents produced were neither detailed nor their nature was explained.

23. We are rather amazed at the manner in which the High Court has dealt with the material on record. The enquiry officer is an officer of a Bank. He was considering the material which was placed before him and thereafter, he has come to the conclusion that the misconduct is established. He was concerned with a serious charge of unexplained withdrawals of huge amounts by a Branch Manager in the name of fictitious persons. Once the necessary material was placed on record and when the charge-sheeted officer had no explanation to offer, the enquiry officer could not have taken any other view. The order of a bank officer may not be written in the manner in which a judicial officer would write. Yet what one has to see is whether the order is sufficiently clear and contains the reasons in justification for the conclusion arrived at. The High Court has ignored this aspect.

24. Absence of reasons in a disciplinary order would amount to denial of natural justice to the charge-sheeted employee. But the present case was certainly not one of that category. Once the charges were found to have been established, the High Court had no reason to interfere in the decision. Even though there was sufficient documentary evidence on record, the High Court has chosen to hold that the findings of the enquiry officer were perverse. A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in *Triveni Rubber & Plastics* v. *CCE* [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] . Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in *Arulvelu* v. *State* [(2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288]. The decision of the High Court cannot therefore be sustained.

25. As held in *T.N.C.S. Corpn. Ltd.* v. *K. Meerabai* [(2006) 2 SCC 255 : 2006 SCC (L&S) 265] the scope of judicial review for the High Court in departmental disciplinary matters is limited. The observations of this Court in *Bank of India* v. *Degala Suryanarayana* [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] are quite instructive: (SCC pp. 768-69, para 11)

> "*11*. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the

charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In *Union of India* v. *H.C. Goel* [AIR 1964 SC 364 : (1964) 4 SCR 718] the Constitution Bench has held: (AIR p. 370, para 23)

> '*23*. … the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid

weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.'"

26. In a number of cases including *SBI* v. *Bela Bagchi* [(2005) 7 SCC 435 : 2005 SCC (L&S) 940] this Court has held that a bank employee has to exercise a higher degree of honesty and integrity. He is concerned with the deposits of the customers of the bank and he cannot permit the deposits to be tinkered with in any manner.

27. In *Damoh Panna Sagar Rural Regional Bank case* [(2005) 10 SCC 84 : 2005 SCC (L&S) 567] the manager of a bank who had indulged in unauthorised withdrawals, subsequently returned the amount with interest. Yet this Court has held that this conduct of unauthorised withdrawals amounted to a serious misconduct. Same is the case in the present matter. There was a clear documentary evidence on record in the handwriting of the respondent which established his role in the withdrawal of huge amounts for fictitious persons. The ledger entries clearly showed that whereas the FDRs were in one name, the withdrawals were shown in the name of altogether different persons and they were far in excess over the amounts of FDRs. The respondent had no explanation and, therefore, it had to be held that the respondent had misappropriated the amount. In spite of a well-reasoned order by the enquiry officer, the High Court has interfered therein by calling the same as sketchy. The High Court has completely overlooked the role of the bank manager as expected by this Court in the aforesaid judgments."

22. No other arguments are advanced by counsel for petitioner.

23. Since this Court has limited scope of jurisdiction and can interfere only if there are some procedural lapses or violation of natural justice and petitioner has failed to point out any procedural lapse which may have caused any prejudice to petitioner, this Court is of the considered opinion that the charges were duly proved by the Department.

24. So far as the question of punishment of compulsory retirement is concerned, allegations in the present case are that petitioner had misused his Authority in granting loans to under noted borrowers falling beyond the command area of the branches and all the accounts are also running highly irregular and bank's funds were exposed to risk of financial loss. In many cases, namely Shyam Bai, Than Singh, Harprasad, Nathu Singh, Gopal Giri, Khalak Singh etc, agricultural lands were already mortgaged with other Banks/ branch of the Bank. In PMRY loan cases, petitioner failed to adhere to the norms of lending of scheme with regard to margin and also financed beyond service area and he also failed to claim subsidy in certain accounts. Petitioner also made advances to the borrowers under *Deen Dayal Rojgar Yojna* whereas these cases were not sponsored by the Authority and UCO Shelter cases, petitioner has financed beyond the eligibility of the borrowers. Similarly, petitioner had purchased 13 hectare of agricultural land at Ashoknagar for which source of income was not declared. The OD accounts of petitioner staff had been irregular and remained mostly overdrawn. He also remained on prolonged leave without submitting any proper sick certificate and petitioner is also in habit of defying bank's instruction, misleading the bank and suppressing the facts and also doing acts prejudicial to the interest of bank and in as much as the petitioner was proceeded against

for such acts and was punished too, however petitioner did not show any improvement which is unbecoming of a Bank officer.

25. The Supreme Court in the case of **State Bank of India and another Vs. Bela Bagchi and others** reported in **(2005) 7 SCC 435** has held as under:-

> **"15.** A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager* v. *Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194]*, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

26. The Supreme Court in the case of **Disciplinary Authority-Cum-Regional Manager and others Vs. Nikunja Bihari Patnaik** reported in **(1996) 9 SCC 69** has held as under:-

> **"7.** It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said

to have been violated by the respondent. Regulation 3 requires every officer/employee of the bank to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. It requires the officer/employee to maintain good conduct and *discipline* and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is 'misconduct' within the meaning of Regulation 24. The findings of the Inquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a bank — for that matter, in the case of any other organisation — every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline

cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority — that too a course of conduct spread over a sufficiently long period and involving innumerable instances — is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organisation and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdrawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit — huge profit, as the High Court characterises it — they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class I Officer was not aware of the limits of his authority or of his powers. Indeed, Charge 9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Inquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of

> lawful orders. Similarly, Charge 8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24."

27. Under these circumstances, this Court is of the considered opinion that the punishment of compulsory retirement is on lower side and the respondents have already taken a very lenient view in favour of petitioner.

28. For the reasons mentioned above, no case is made out warranting interference.

29. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Shubhankar