

(2003) 03 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2119 of 1995

Anil Kumar Dobhal

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 32
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 32(4), 42(2), 49, 51

Citation : (2003) 2 ShimLC 148

Hon'ble Judges : M.R. Verma, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : Rajiv Sharma and Rahul Chopra, for the Appellant; K.D. Sood and Aneesh Garg, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This petition under Articles 226/227 of the Constitution of India has been filed by the Petitioner for quashing the order dated 30.9.1989 passed by the Chief General Manager, (Appointing Authority), removing the Petitioner from service, (Annexure PG to the petition), order dated 1.4.1990 passed by the Appellate Authority, dismissing the service appeal preferred by the Petitioner (Annexure PJ to the petition) and orders dated 5.12.1991 and 11.12.1998(?) passed by Reviewing Committee, dismissing review petitions of the Petitioner (Annexure PL and PN to the petition).

2. Case of the Petitioner, as made out in the amended petition, is that he was appointed as a Clerk in the Respondent bank on and with effect from 3.6.1972 as per Annexure PA. He was served with Office Order dated 17.9.1987 (Annexure PB) by Respondent No. 2, his Disciplinary Authority, placing the Petitioner under suspension for the following acts of grave misconduct:

(i) That he credited the proceeds of collections to his own Savings Bank Account instead of affording credit to the account of lodgers by making alterations in the

relative records of the Branch in a fraudulent manner.

(ii) That cheques/withdrawals were issued by him without maintaining sufficient balance in his account.

(iii) That the terms and conditions regarding repayment of the overdraft facility sanctioned to him against the security of National Savings Certificates was not being adhered as a result of which his overdraft account was running irregular.

(iv) That he had raised substantial amount from outside agencies without obtaining prior permission of his Controlling Authority.

(v) That the amounts deposited by him in his Savings Bank/Current Accounts on various dates are disproportionate to his salary income.

3. The Petitioner was then served with a charge sheet dated 19.8.1988 under four heads as per the aforesaid acts, requiring the Petitioner to submit his written statement to the charge sheet within 15 days. The Petitioner submitted the written statement dated 17.9.1988 (Annexure PD). The Disciplinary Authority found the written statement submitted by the Petitioner unsatisfactory and unacceptable and a departmental inquiry was initiated against the Petitioner vide order dated 13.10.1988 (Annexure PE). On completion of the departmental proceedings, the inquiry officer submitted the report (Annexure PF) whereby charge No. 1 was held proved, charges Nos. 2 and 4 were held partly proved and charge No. 3 was held not proved. The Disciplinary Authority imposed the penalty of removal from bank service on the Petitioner in terms of Rule 49(g) of the State Bank of India (Supervising Staff) Service Rules (hereafter referred to as "the Rules"). The Petitioner preferred an appeal (Annexure PH) against the penalty imposed upon him and also submitted a supplementary appeal (Annexure PI) to the Appellate Authority i.e. Respondent No. 3. The appeal preferred by the Petitioner was rejected by Respondent No. 3 vide order dated 1.9.1990 (Annexure PJ). The Petitioner then preferred a Review Petition under Rule 51 of the Rules supra (Annexure PK) which was rejected by the Reviewing Committee on 5.12.1991 vide (Annexure PL). It is further case of the Petitioner that after his removal from service and rejection of appeals /review petitions, he went in depression, lost his father, his mother fell ill and his wife is also ill and he had no means to approach this Court for redressal of the grievances, therefore, the delay caused in filing the present petition is bona fide and in the meanwhile, no rights of third party have intervened. It is further averred that pursuant to the orders passed by this Court on 15.10.1998, the Petitioner made a detailed representation (Annexure PM) to the concerned authorities and he was legitimately expecting that such a representation would be considered sympathetically by such authorities and the penalty of removal would be reduced to an appropriate punishment. However, such a representation was rejected by the Reviewing Committee on 30.11.1998 as conveyed to the Petitioner vide letter dated 11.12.1998 (Annexure PN).

4. The impugned orders have been challenged on the grounds (i) that the

Petitioner had been removed from service by Chief General Manager and not by the Deputy Managing Director (Personnel and Services) who was the competent authority to remove the Petitioner from service, therefore, the removal of the Petitioner, not being by a competent authority, is null and void, (ii) that the impugned orders are illegal, arbitrary, unconstitutional and violative of Articles 14 and 16 of the Constitution of India, (iii) that the penalty imposed on the Petitioner is harsh and excessive and not commensurate with the alleged misconduct and the fact that the Petitioner was suffering from serious mental depression on 13.10.1987 and the Medical Certificate in this regard, have not been taken into account, (iv) that the Petitioner had not withdrawn any amount out of the amount of Rs. 5,082 credited by him to his own account on 13.7.1987 and no loss thereby had been caused to the bank and he had no intention whatsoever to misappropriate the bank's money and he himself reported about his act of wrongly crediting the amount to his own Saving Bank Account and reversed the entry by debiting his own Saving Bank Account thereby affording credit to the actual beneficiary, and (v) that the Disciplinary Authority and Inquiry Officer had taken into consideration extraneous matters while inflicting the penalty of removal from service upon the Petitioner and have failed to take a sympathetic view of the matter despite requests whereas he deserved to be dealt with leniently.

5. The Respondents contested the claim of the Petitioner. In their reply the Respondents raised the preliminary objections that the petition suffers from delay and laches which have not been explained and that the Petitioner is not entitled to any leniency because of his acts of misappropriation, tampering with the records and fraud. On merits, while admitting placing of the Petitioner under suspension, serving him with a charge sheet, initiation of departmental proceedings, imposition of penalty, dismissal of his appeals and review petition, it has been claimed that all the aforesaid acts of the Respondents are legal and valid and are not arbitrary, illegal or violative of Articles 14 and 16 of the Constitution of India. The penalty has been imposed on the Petitioner by the competent authority and is neither harsh nor excessive nor suffers from any arbitrariness. It has been denied that the Petitioner was or is suffering from any depression etc. It has been claimed that all the material facts were taken into account while imposing penalty on the Petitioner. Thus, according to the Respondents, there is no merit and substance in this writ petition.

6. We have heard the learned Counsel for the parties and have also gone through the records.

7. It may be pointed out at the very outset that one of the grievances of the Petitioner is that the penalty of removal from service had been imposed on him by Chief General Manager whereas as per the Rules in force at the relevant time, the competent authority to impose the penalty was Deputy Managing Director (Personnel and Services). At the time of arguments the learned Counsel for the Respondents pointed out that the Petitioner was admittedly removed from

service with effect from 30.9.1989 and by that time the relevant Rules/ instructions were modified vide Memorandum Co. CIR No. Per/77/87 read with LHO Cir. No. Per 209 of 87 (Annexure R-6) and Central Office Circular No. Per/24/88 read with LHO Cir. No. Per 87 of 1988 (Annexure R-7) whereunder the Chief General Manager is the competent authority to impose the penalty of removal from service being the appointing authority. In view of the modifications vide Annexures R-6 and R-7, the learned Counsel for the Petitioner conceded that the Chief General Manager was competent to impose the penalty of removal from service on the Petitioner. Thus, the grievance of the Petitioner that the Chief General Manager was not competent to impose the penalty of removal from service on the Petitioner, does not survive for adjudication.

8. It was contended by the learned Counsel for the Petitioner that the impugned orders are vitiated on the following grounds:

- (i) The charge framed against the Petitioner is not relatable to any misconduct;
- (ii) The material witnesses, i.e. B.M. and Ram Prakash were not produced despite opportunities;
- (iii) The Disciplinary Authority has not assigned any reason for disagreeing with the findings of the Inquiry Officer;
- (iv) The Petitioner was not afforded any opportunity to point out the flaws in the inquiry report inasmuch as a copy of such report was not supplied to him;
- (v) The Petitioner was not heard on the question of quantum of punishment by the Appellate Authority and its order is not well reasoned; and
- (vi) The Petitioner had not been fairly dealt with as the penalty imposed is disproportionate as no loss was caused to the Respondent Bank by the alleged misconduct of the Petitioner.

Grounds (i) to (v)

9. The learned Counsel while pressing these grounds, contended that the shortcomings, the basis for these grounds, vitiate the impugned orders Annexures PG, PJ, PL and PN. To substantiate his contentions, the learned Counsel has cited a large number of the decisions of the Hon'ble Supreme Court and various High Courts.

10. On the other hand, the learned Counsel for the Respondents had contended that all these points/grounds have not been pleaded in the petition or before the concerned authorities below, therefore, cannot be permitted to be raised at the time of arguments and it is more so because the Petitioner had filed the petition in this Court after about four years of the passing of the order Annexure PL dismissing his review petition.

11. It is by now well settled that a plea/point not raised in the petition under Article 226 of the Constitution cannot be permitted to be raised for the first time

at the time of arguments. It is also well settled that mixed questions of fact and law or a question of fact cannot be allowed to be raised for the first time in the petition under Article 226. The reason for this position in law obviously is that in case a party is permitted to raise such pleas/grounds at the stage of hearing, it is bound to cause prejudice to the opposite party who had no opportunity to controvert such a plea in its pleading or evidence. There is a large number of judgments reiterating this settled position in law.

12. In *Biswanath Banarjee Vs. State of West Bengal and Others*, the Hon''ble Apex Court held as under:

5. ...Lastly the learned Advocate sought to press in aid a judgment of a Bench of the Calcutta High Court in *Bidyut Kr. Biswas v. West Bengal Board of Secondary Education* (1969) 73 CWN 417, in which the provisions of Section 46(2)(c) of the 1963 Act were dealt with in support of his contention that the persons in the employment of Board of Secondary Education under the 1950 Act could only be discharged if an alternative employment is found for them inasmuch as the words until other provision is made justifies that conclusion. This point has not been raised in the writ petition nor has it been urged either before the Single Bench or before the Division Bench of the High Court and is sought to be raised for the first time before this Court. We cannot permit him to do so, and therefore express no views on this aspect of the case.

13. In *Arun Kumar Sinha Vs. The State of West Bengal*, the Hon''ble Apex Court held as follows:

4. The second ground was that a First Information Report was lodged in respect of incidents set out in the grounds for the purpose of initiating a prosecution against those responsible for them and yet that document did not contain the Petitioner''s name. This ground, however, was not taken by the Petitioner in the petition with the result that the Respondent State had no opportunity or occasion to deal with it. That being so, it is not possible, in the absence of any materials before us, to deal with such a contention urged for the first time in the course of arguments.

14. In *Pfizer Limited Vs. Mazdoor Congress and others*, the Hon''ble Apex Court held as under:

18. There was no justification whatsoever for the High Court to have allowed Respondents 2 and 3, while hearing a petition under Article 227 of the Constitution, to raise a new contention that there had been an unfair labour practice as contemplated by Item 1 (f) and the Appellant had acted with undue haste. No such contention was urged before the Labour Court or in revision before the Labour Tribunal. Even in the writ petition filed in the High Court under Article 227 of the Constitution, challenging the order of the Labour Court and the Industrial Court dismissing the complaint u/s 28 of the said Act, no specific contention had been raised to the effect that there was any undue haste on the part of the Appellant in issuing the termination order and which could be

regarded as an unfair labour practice. Merely because in an affidavit filed before the Labour Court there was a general statement of unfair labour practice covered by Items 1(a) to (f) could be no ground for the High Court to come to the conclusion that a case under Item 1(f) had been made out because Respondents 2 and 3 had not led any evidence in this behalf and nor was this contention specifically raised and argued, as already noticed before the Labour Court and the Industrial Court or even in the writ petition filed before the High Court.

15. To the same effect are the decisions in Arun Kumar Roy Vs. The State of West Bengal, ; Avery India Limited Vs. The Second Industrial Tribunal, West Bengal and Others, and Bachan Singh and Others Vs. Gauri Shankar Agarwal and Others,

16. A perusal of the amended petition in hand reveals that none of these grounds are pleaded in the petition but had been raised at the stage of arguments thereby depriving the Respondents to meet these grounds by making appropriate averments in the reply and thus effectively meeting these grounds at the time of arguments. Therefore, primarily the Petitioner cannot be now allowed to assail the impugned orders on these grounds. Even otherwise, there is no merit and substance in these grounds.

17. The Petitioner has not annexed with the petition a copy of articles of charges framed against him nor of the allegations on which the charges are based. The file of departmental enquiry was, however, made available to the Court by the learned Counsel for the Respondents, a perusal whereof reveals that the charges are precisely framed and the allegations, basis for the charges, are specifically set out in the respective statements of allegations. The charges so framed are relatable to the misconduct. The first charge is about misappropriation of Rs. 5082 fraudulently crediting this amount by the Petitioner to his own Savings Bank Account. II and IV charges are regarding violation of Rules 32(4) and 42(2) of the State Bank of India (Supervisory Staff) Service Rules and the III charge is regarding depositing to his Savings Bank Account/Current Account on various dates such amounts as are disproportionate to his known sources of income. Thus, there is neither any defect in the charge nor these can be said unrelatable to any misconduct.

18. The learned Counsel for the Petitioner has cited a few decisions including Sawai Singh Vs. State of Rajasthan, to the effect that penalty imposed on the basis of defective charge or a charge which is not relatable to any misconduct is illegal and liable to be quashed. In view of the findings herein above, the ratio in such decision is not applicable to the present case and such decisions need not be referred to herein.

19. There is no dispute that the B.M. and Ram Prakash were cited as witnesses of the Bank but were ultimately not produced despite opportunities. However, their non-production has no material bearing on the findings of the Disciplinary Authority. The Inquiry Officer held that Charge No. 1 against the Petitioner was

proved, Charges No. 2 and 4 were partly proved and Charge No. 3 was not proved. The Disciplinary Authority while concurring with the findings of Inquiry Officer on Charges No. 1, 3 and 4, disagreed regarding findings on allegation No. 4 of Charge No.2 and held it as proved. The Disciplinary Authority has recorded reasons for the findings arrived at on the allegations, about which it disagreed with the Inquiry Officer. These findings are findings of fact based on the material on record and appreciation thereof. It may also be pointed out that the Petitioner has not disputed the depositing of the amount of Rs. 5082 creditable to the accounts of Government to his own accounts. His defence that he did so without any fraudulent intention and no loss was thereby caused to the Bank and he himself pointed out this to his superior authority, was found unsustainable. It also appears to be admitted case of the Petitioner that a few cheques were issued by him without keeping sufficient funds in his account. The defence of the Petitioner that deficiency was because of delayed presentation of cheque or was made good, may be incidental to the enquiry but do not disprove the allegations. The material on record thus supports the findings recorded against the Petitioner in this regard. The Petitioner during inquiry did not deny the taking of loan from various societies resulting in deduction of more than 25% of his salary. His defence, however, was that even others were doing so, therefore, he alone could not be held responsible. In view of the admission and untenability of the defence by virtue of its nature, findings on this score cannot be said to have not been substantiated by any material on record.

20. Thus in view of the material on record relied for holding the charges proved as aforesaid, non-production of B.M. and Ram Prakash has no adverse bearing on the findings finally recorded by the Disciplinary Authority nor can it be said that the Disciplinary Authority has not assigned any reason for differing with the Inquiry Officer regarding findings on allegation No. 4 of Charge No. 2. In these circumstances, the decisions cited by the learned Counsel for the Petitioner to support the proposition that inquiry is vitiated if material witnesses are withheld by the department and that findings of the Disciplinary Authority different from the findings of Inquiry Officer will be bad in law if not supported by reasons are not applicable to the facts of the present case and need not be referred to here.

21. There is no basis either in the pleadings or in the form of any other material placed on record to substantiate the contention that copy of enquiry report was not furnished to the Petitioner and he had no opportunity to point out the flaws, if any, in the inquiry report. It is not even a ground in the memos of appeals and review petition preferred by the Petitioner. Being a question of fact, the contention cannot be permitted to be raised for the first time at the stage of arguments in this petition, more so when it is clearly mentioned in Annexure PB that copy of the findings of the Inquiring Authority and note containing recommendations of the Disciplinary Authority were sent to the Petitioner therewith.

22. It was contended by the learned Counsel for the Petitioner that the Petitioner

was not given an opportunity of being heard in person by the Appellate Authority on quantum of punishment nor such authority has passed a reasoned order which vitiates the findings of guilty recorded against the Petitioner. To substantiate his contention, the learned Counsel for the Petitioner has relied on *Baldev Singh v. The Improvement Trust Ludhiana* through its Chairman 1984 (1) SLR 417 and *Shri L.S. Thakur v. Punjab National Bank and Ors.* 1998 (1) Shim. L.C. 216. In *Baldev Singh's* case (*supra*) a temporary employee's services were terminated on the basis of an ex parte fact finding inquiry without assessing his work and conduct. The Punjab and Haryana High Court quashed the order of termination on the ground that on the basis of ex parte findings and without assessment of work and conduct the termination was bad in law. In *Shri L.S. Thakur's* case (*supra*) order of removal from service was passed by the Appellate Authority without opportunity of hearing to the delinquent who was not supplied copy of inquiry report, was set aside and appeal of the delinquent was ordered to be heard afresh. However, these decisions are not applicable in the facts and circumstances of the present case.

23. It is not obligatory on the part Disciplinary or Appellate Authority in a departmental inquiry to invariably afford an opportunity to the delinquent of being heard in person. Such an opportunity may be afforded if requested for and is found necessary in the interest of justice. It has not been substantiated on the basis of the record that the Petitioner ever requested the Disciplinary or Appellate or Reviewing Authority for a personal hearing which was denied and resulted in any prejudice to the Petitioner whose case throughout is mainly that he ought to have been dealt with leniently and not that all the charges against him are false. Therefore, the contention has no bearing on the findings of facts recorded and accepted by the Appellate Authority. A perusal of the order of the Appellate Authority Annexure PJ shows that it is a reasoned order based on material on record.

24. It may be pointed out that the High Court may interfere with findings of facts in a departmental inquiry only when such findings are based on "no evidence" or are such as could not have been arrived at by a prudent person or are perverse. It follows that in the absence of any of the aforesaid conditions, the High Court will not interfere with the findings of facts arrived at in a departmental inquiry, more so, when such findings have been concurred with by the Appellate and Reviewing Authorities.

25. In *Union of India and Anr. v. B.C. Chaturvedi* (1995) 6 SCC 750, the Hon''ble Apex Court has held as under:

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 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 reappraise 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 reappraise 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 (UOI) Vs. H.C. Goel*, 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.

26. In *Rae Bareilly Kshetriya Gramin Bank Vs. Bhola Nath Singh and others*, the Hon'ble Supreme Court held as under:

6. Under these circumstances, the question arises whether the High Court would be correct in law to appreciate the evidence and the manner in which the evidence was examined and to record a finding in that behalf, judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained.

27. In *Kuldeep Singh Vs. The Commissioner of Police and Others*, the Hon''ble Supreme Court held as follows:

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

28. In *Syed Rahimuddin Vs. Director General, C.S.I.R. and Others*, the Hon''ble Supreme Court held as follows:

5. The further grievance that the findings of the enquiring officer are findings on no evidence is belied by the very report of the enquiring officer. The enquiring officer has dealt with the articles of charge chronologically and the relevant materials on the basis of which the ultimate conclusion is arrived at. It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the Court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable man. Having examined the report of the enquiring officer, we are unable to accept the contention of the learned Counsel for the Appellant that the findings of the enquiring officer cannot be held to be findings based on no evidence.

29. In the case in hand, the findings of the departmental authorities are based on partial admission of the Petitioner and material on record and cannot be termed as perverse or based on "no evidence."

30. In view of the above findings, these grounds raised by the learned Counsel for the Petitioner to assail the impugned orders have no merits and substance.

Ground No. (vi)

31. It was vehemently contended by the learned Counsel for the Petitioner that penalty of removal from service as imposed on the Petitioner is highly disproportionate to the alleged misconduct. Elaborating the contention the learned Counsel submitted that a sum of Rs. 5082 was deposited by the Petitioner in his accounts when he was ill and he himself brought the lapse to the notice of the authorities and did not actually misappropriate the amount. The other charges alleged to be proved against the Petitioner are of trivial nature. Therefore, a lenient view as prayed for by the Petitioner throughout was justified and ought to have been taken particularly in view of the fact that earlier there

had been no such allegations of misconduct by the Petitioner. It was, therefore, urged by the learned Counsel that a minor penalty would have met the ends of justice and penalty of removal from service being highly disproportionate to the alleged misconduct, may be substituted by a minor penalty.

32. The learned Counsel for the Respondents, while repelling the above contention and submissions, had submitted that one of the charges proved against the Petitioner is of misappropriation of the money of the client of the Bank which is a grave misconduct. It was further contended by the learned Counsel that even penalty of dismissal from service would have been justified but taking a lenient view, a lesser penalty was imposed. Therefore, the learned Counsel contended that the penalty imposed on the Petitioner does not call for any interference.

33. Ordinarily High Court will not interfere with the penalty imposed on the delinquent on a departmental inquiry. Interference in a proved case of misconduct may be justified if the penalty imposed is disproportionately excessive so as to shock the judicial conscience.

34. In V.R. Katarki Vs. State of Karnataka and others, wherein the delinquent was found to have committed irregularities in the discharge of his duties, the Hon"ble Supreme Court held as under:

6. The question for consideration now, therefore, is while the finding that the Appellant was guilty in terms of the charges found should the Appellant have been dismissed from service. Ordinarily, justification of the quantum of punishment imposed in a disciplinary action is not for the Court to decide and there have been occasions when this Court has taken interference by the High Courts on quantum of punishment as an act in excess of jurisdiction. While we are cognizant of that fact, keeping the residue of the charges in view, we are inclined to hold that dismissal of the Appellant from service was out of proportion and compulsory retirement would meet the ends of justice. We accordingly direct that in place of dismissal, the Appellant shall be taken to have been compulsorily retired from service from the date when dismissal became operative. The appeal fails and is dismissed.

35. In Union of India and Anr. v. B.C. Chaturvedi (supra), the Hon"ble Supreme Court, while dealing with the scope of interference with awarded penalty, held as under:

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the

conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

36. In *State of Punjab and others Vs. Bakhshish Singh*, the Hon''ble Apex Court held as under:

5. It is settled legal position that it is for the disciplinary authority to pass appropriate punishment; the Civil Court cannot substitute its own view to that of the disciplinary as well as appellate authority on the nature of the punishment to be imposed upon the delinquent officer. In view of the finding of the appellate Court that it is a grave misconduct, the appellate Court ought not to have interfered with the decree of the trial Court. The High Court dismissed it without application of the mind and ignoring the settled legal principles.

37. In *Union of India (UOI) and Others Vs. Narain Singh*, the Hon''ble Apex Court held as under:

9. As seen above, the Division Bench notes that the charges against the Respondent are proved and that the charges are of serious nature. Once the Court came to the conclusion that the charges were proved and that the charges were of a serious nature, it was not the function of the Court to interfere with the quantum of punishment. The Division Bench was wrong in holding that factors viz. (a) the person is coming from which place (b) his family background, and (c) his service record etc. were to be kept in mind. In our view, the Division Bench was also wrong in holding that if a poor person pleads guilty to the misconduct, then extreme penalty of dismissal is uncalled for. In our view a court must not lightly interfere with sentences passed after a properly conducted enquiry where the guilt is proved. Reduction of sentence, particularly in military, paramilitary or police services can have a demoralising effect and would be a retrograded step so far as discipline of these services is concerned. In this case the charges being of a serious nature the penalty was commensurate with the charges. Further the Division Bench has itself noted that this was the third time the Respondent was punished.

38. As already stated, there were four charges against the accused. The first charge found proved was that of misappropriation of a sum of Rs. 5052 by depositing it in his own account instead of the accounts of the Government by forging entries. His plea that he himself disclosed about the wrong committed at a later stage, is of no help to him because the intention to misappropriate the amount is apparent in his tampering with the records which by itself is not only a grave misconduct but an offence also. The other two partly proved charges are of not serious nature, but the first charge proved against the Petitioner adversely reflects on his integrity and is of grave nature. It was for the grave nature of proved misconduct that the Disciplinary Authority proposed the penalty of removal from service. The Appellate Authority; and Reviewing Authority confirmed

the punishment. During the pendency of this petition, pursuant to order dated 15.10.1998 of this Court the Reviewing Committee considered yet another review petition of the Petitioner and dismissed the same vide order Annexure PN. Thus, the competent Bank Authorities have repeatedly found that the punishment awarded to the Petitioner after taking a lenient view is appropriate.

39. It has already been concluded herein above that one of the proved charges is of grave nature. Therefore, keeping in view the totality of the proved misconduct, the position in law as already set out heretofore and the fact that this petition was filed almost after four years of the passing of the order by the Reviewing Authority, we do not find any reason to interfere with the penalty imposed on the Petitioner.

40. As a result, this petition merits dismissal and is accordingly dismissed. However, there is no order as to costs.