

(2003) 04 MAD CK 0030

In the Madras High Court

Case No : Writ Petition No. 9537 of 1997

Bharat Overseas Bank Ltd.

APPELLANT

Vs

The Appellate Authority under Tamil Nadu Shops and
Establishments Act and I.K. Lodi

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Shops and Establishments Act, 1947 — Section 41, 41(2)

Citation : (2003) 04 MAD CK 0030

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : T.K. Seshadri, for the Appellant; P. Chandrasekaran, Spl. G.P. for 1st respondent and N.G.R. Prasad for Row and Reddy for 2nd respondent, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The order of dismissal dated 19.7.1993, dismissing the second respondent-employee from service, having been set

aside by the first respondent-appellate authority by exercising the powers conferred u/s 41(2) of the Tamil Nadu Shops and Establishments Act

(hereinafter referred to as 'the Act'), by order dated 24.2.1997 in T.S.E.No.36 of 1995, the employer-bank has preferred the above writ petition,

challenging the said order dated 24.2.1997.

2.1. The factual background, filtering out unnecessary details, is as follows:

The second respondent (hereinafter referred to as employee) was working as an Accountant in the writ petitioner-bank (hereinafter referred to as

the employer) Burra Bazar Branch at Calcutta from 23.5.1988 to 3.11.1990, and one Raghunath was the Manager of the said Branch during the

period from 31.7.1989 to 22.10.1990. Alleging that the employee and Raghunath, Manager of the Bank, colluded and conspired with certain private parties and dishonestly misappropriated/defrauded the money of the bank on the pretext of granting advance/credit facilities to the customers and also caused heavy loss to the bank, a disciplinary action was initiated by the employer against the second respondent-employee as well as Raghunath, Manager of the Bank.

2.2. The allegations and charges framed against the employee as well as Raghunath, Manager of the Bank, as per the charge memo dated

8.11.1991, reads as follows.

1. Mr.K. Raghunath while working as Manager of the Burra Bazar Branch granted credit facilities to the following parties far in excess of his

discretionary powers:

S.No Name of the Account Amount Outstanding

as on 12.11.1990

1. Ganpat Oil & Dall Mill Rs. 828371.43
2. Park Mount Timbers Rs. 642872.85
3. Shalimar Fastenings Rs. 745681.45
4. R.K.Enterprises Rs. 520610.77
5. Suresh Mittal Rs. 598625.60
6. Veekay Industries Rs. 490709.70
7. Muli Devi Agarwal Rs. 180845.10
8. Jhunjhunwala Industries Rs. 234369.13

Rs. 4242086.03

No excess report was, however, submitted by him to Head Office for post facto confirmation of the credit facilities granted by him to the said

parties. According to Advances Circular No.68/89 dated 23.5.89 it is the duty of the Accountant to bring to the notice of Head Office the excess

advances granted by the Manager if no excess report is submitted by him for confirmation. Mr.I.K.Lodi who was working as the Accountant of

the Burra Bazar branch during the relevant period failed and neglected to bring to the notice of the Head Office the huge amount of advances

granted by Mr.K.Raghunath in excess of his powers.

2. Quite apart, Mr.I.K.Lodi himself unauthorisedly granted advances to (i) Suresh Mittal, (ii) Veekay Industries and (iii) R.K.Enterprises as per

details shown below:

S. No Name of Party Cheque No. & date Cheque Amount Debit Balance after the
Rs. Withdrawal Amount of Advance

1. Suresh Mittal 456729; 28.6.90 500000 499000.00 499000

2. Veekay Industries 452164; 5.6.90 200000 431425.00 200000

3. Veekay Industries 452171; 2.7.90 675000 940329.90 675000

4. R.K.Enterprises 451902; 3.6.90 450000 441999.00 441999

5. R.K.Enterprises 451910; 14.6.90 300000 727452.57 300000

3. Mr.I.K.Lodi as Accountant of the branch signed the documents execution register in respect of the following accounts:

a.Muli Devi Agarwal

b.Jhunjhunwala Industries

c.Ganpat Oil & Dall Mill

d.Park Mount Timbers

While doing so he failed and neglected to verify whether the securities and the documents specified therein were actually obtained or not. In the

case of Park Mount Timbers, Mr.I.K.Lodi signed the documents execution Register on 23.4.90 as per the date shown therein while as a matter of

fact he was on leave on that day.

Charge No.1: Mr.I.K.Lodi acted in violation of Advances Circular No.68/89 dated 23.5.1989 by failing to report to the Head Office the huge

amount of advances granted by Mr.K.Raghunath to (i) Ganpat Oil & Dall Mill, (ii) Park Mount Timbers, (iii) Shalimar Fastenings, (iv)

R.K.Enterprises (v) Suresh Mittal (vi) Veekay Industries, (vii) Muli Devi Agarwal and (viii) Jhunjhunwala Industries.

Charge No.2: Mr.I.K.Lodi granted advances to (i) Suresh Mittal, (ii) Veekay Industries and (iii) R.K.Enterprises in the absence of any power or

authority vested in him by the bank.

Charge No.3(a): Mr.I.K.Lodi signed the documents execution register in the case of the accounts of (i) Muli Devi Agarwal, (ii) Jhunjhunwala

Industries, (iii) Ganpat Oil & Dall Mill and (iv) Park Mount Timbers without verifying whether or not the securities and the documents specified

therein were actually obtained.

Charge No.3(b): In the case of Park Mount Timbers, Mr.I.K.Lodi signed the documents execution register as if the relative entry was made on

23.4.1990, while, as a matter of fact, he was on leave on that day.

Charge No.4: Mr.I.K.Lodi has failed to discharge his duties with utmost care, caution, diligence and honesty expected of an officer of the Bank as

a result of which, the bank is facing an actual loss of Rs.42,42,086.02 plus the interest accruals.

2.3. The Advances Circular No.68/89 dated 23.5.1989 of the employer-bank, referred to in Charge No.1, reads as follows:

ADVANCES CIRCULAR NO.68/89 23-05-1989

Advances sanctioned under discretionary powers - Submission of control forms/ excess drawing reports.

We enclose a copy of letter No.DO/67/89/Adv dated 18th May 1989 addressed by the Chairman to the Branch Managers on the above subject,

the contents of which are self-explicit.

2. The implication/risks relating to unauthorised granting of excess drawings as well as omission to report such sanctions in violation of laid down

guidelines have been clearly explained in the above circular letter. Accordingly, we wish to impress upon the branch functionaries that any violation

by the officials in the above matters will be viewed very seriously by Head Office, holding the concerned officials accountable for such lapses.

3. Incidentally, we also wish to add that wherever it is noticed that matters of the above nature are not reported to Head Office for a period of

over say 7 days by the Manager, it will be the responsibility of the branch Accountants to bring such instances to the notice of the Head Office in

writing failing which, branch Accountants will be held personally accountable for not reporting the matter to Head Office. The dealing staff are

therefore required to go through the above instructions carefully for meticulous compliance.

4. An extra copy of this circular is sent herewith which may be kept in a special file with the Accountant to be made available for perusal by the

future Accountants of the Branch.

Sd/- xxxxx

ASST. GENERAL MANAGER

2.4. The enquiry officer, appointed pursuant to the charge memo dated 8.11.1991, held an enquiry into the charges and submitted a report dated

3.7.1993 finding that charge Nos.1, 2 and 3(a) were proved in part and charge Nos.3(b) and 4 were proved in toto.

2.5. Based on the findings of the enquiry officer, the employee was dismissed from service, by an order of the employer dated 19.7.1993. The

employee, aggrieved by the said order of dismissal dated 19.7.1993, preferred an appeal before the first respondent-appellate authority u/s 41(2)

of the Tamil Nadu Shops and Establishments Act.

2.6. The appellate authority, by order dated 24.2.1997 in T.S.E.No.36 of 1995, set aside the order of dismissal dated 19.7.1993. Hence, the

above writ petition.

3. Mr.T.K. Seshadri, learned counsel appearing for the petitioner-employer contends that

(a) the decision of the appellate authority reversing the findings of the employer (disciplinary authority) is perverse and vitiates with material

irregularities and errors apparent on the face of the records, inasmuch as the first respondent-appellate authority overlooked the very admission of

the employee for having committed the misconduct in question, for which he was charged. In this regard, the decision in Disciplinary Authority-

cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, is relied upon;

(b) since the employer also initiated disciplinary action against Raghunath, the Manager of the Bank, which ultimately culminated into an order of

dismissal dated 31.5.1993 dismissing the said Raghunath from service, the reason that ""non examination of Raghunath to substantiate the charges in

question as a material evidence vitiates the impugned disciplinary action"" is perverse;

(c) the first respondent appellate authority should not have disturbed the findings of the enquiry officer, which is based on the material evidence on

record, merely on the ground of non-examination of Raghunath, the Manager of the Bank, overlooking the admission of the employee that he had

signed the register on 23.4.1990, as if he was present in the office, while as a matter of fact, he was on leave on that day, which, by itself,

apparently and substantially proves charge Nos.3(a) and 3(b) that the employee signed the Document Execution Register, even without verifying

the existence of the sureties on 23.4.1990, and therefore, the decision of the appellate authority ignoring the material evidence on record is ex-facie

illegal and vitiated by errors apparent on the face of the records and hence, liable to be set aside;

(d) placing reliance on the decision in THIRUMANGALAM CO.OPERATIVE URBAN BANK LTD. v. ASSISTANT COMMISSIONER OF

LABOUR, MADURAI & ANOTHER reported in 1992 (2) LLJ 886 it is contended that while re-assessment of the evidence is permissible by

the appellate authority, the re-assessment of evidence must be on proper basis and it cannot be arbitrary or whimsical and therefore, the reason

that weighed the appellate authority in interfering with the findings of the enquiry officer and the decision of the employer, that there was no

monetary loss to the bank, is perverse;

(e) the employee is not prejudiced in any manner, by non furnishing of a copy of the enquiry report; nor the employee complained that he was

deprived of any notice or opportunity to prove his innocence. Reliance in this regard, is placed on the decisions in Managing Director, ECIL,

Hyderabad, Vs. Karunakar, etc. etc., State Bank of Patiala and others Vs. S.K. Sharma, and Ms. ROHINI ANANTHANARAYANAN v.

G.M., BHEL LTD. & ANR. reported in 1997 (2) LLJ 1229; and

(f) since the charges are separate and each of them constitute a serious misconduct of the employee, even if the order of dismissal is based on or

with reference to some of such serious misconducts, the same is valid in law, as per the decision in Haridas Malakar and Others Vs. Jay

Engineering Works, , is relied upon.

4. Mr.N.G.R.Prasad, learned counsel appearing for the employee, contends that

(a) the appellate authority is empowered to re-appreciate the evidence on record and to arrive at a conclusion as to whether there was any

reasonable cause for the employer to dispense with the service of the employee or that the employee had been guilty of misconduct, by exercising

the power of appeal u/s 41(2) of the Act, as held in U.P.S. OF SOUTHERN INDIA V. K.G.SANGAMESWARAN reported in 1997 (2) LLN

73;

(b) the finding and decision of the first respondent-appellate authority, having been taken after due re-appreciation of the evidence on record, it is

impermissible for this Court to interfere with such finding and decision of the appellate authority, as the High Court does not exercise its appellate

jurisdiction under Article 226 of the Constitution of India to re-appreciate the evidence on record as to whether the evidence that weighed the

appellate authority is insufficient or otherwise, as held in *STATE OF ORISSA V. MURALIDHAR* reported in AIR 1963 SC 404 and *Kuldeep*

Singh Vs. The Commissioner of Police and Others,

(c) it would be inappropriate for the High Court to exercise its writ jurisdiction to consider the evidence for itself and reach its own conclusions in

matters which have been left by the legislature to the decisions of specially constituted Tribunals, as held in *T. Prem Sagar Vs. The Standard*

Vacuum Oil Company Madras and Others, To buttress the above contention, Mr.N.G.R.Prasad invited my attention to the Excess Report

(Ex.D10) and Limits Book (Ex.D16), which are relating to the impugned transactions, that weighed the appellate authority and contends that the

employer-bank had not suffered any monetary loss, and therefore, no interference to the order of the appellate authority is warranted;

(d) the possibility of another view while re-appreciating the evidence, cannot be a ground to interfere with the findings of the appellate authority, as

per the decision in *INDIAN OVERSEAS BANK V. I.O.B. STAFF CANTEEN WORKERS' UNION* reported in 2000 (4) SCC 248 and

AGNANI V. BADRI DAS & OTHERS reported in 1963 (1) LLJ 684;

(e) non-furnishing of the report of the Enquiry Officer vitiates the order of dismissal, as held in *J.VICTOR V. RANI MANGAMMAL*

TRANSPORT CORPORATION reported in 1998 (2) LLN 907; and

(f) since the appellate authority, having come to the conclusion that there is no reasonable cause to dispense with the service of the employee as the

guilt of the employee had not been proved by material evidence, for non-examination of Raghunath, the order of dismissal is bad in law, and

therefore, the entire disciplinary action and the consequential order of dismissal are required to be set aside, as held by the appellate authority,

which had become final u/s 41(3) of the Tamil Nadu Shops and Establishments Act. In this regard, reliance is placed on the decision in *Secretary*

Bank of Madura Ltd. Vs. General Secretary, Bank of Madura Employees Union, Coimbatore and Others, .

5. A careful consideration to the submissions of both the employer and the employee has been bestowed.

6. The questions that arise for consideration, from the above contentions of the employer and the employee, are

(i) to what extent, this Court, by exercising the power under Article 226 of the Constitution of India, can interfere with the findings and the decision

of the appellate authority arrived at u/s 41(2) of the Tamil Nadu Shops and Establishment Act, 1947?

(ii) whether the order of the appellate authority dated 24.2.1997, which is impugned in the above writ petition, is liable to be set aside? And

(iii) to what relief the petitioner/employer is entitled to?

7.1. Question No.1: To what extent, this Court, by exercising the power under Article 226 of the Constitution of India, can interfere with the

findings and the decision of the appellate authority arrived at, by exercising the power u/s 41(2) of the Tamil Nadu Shops and Establishment Act,

1947?

7.2. In this regard, a reference to Section 41 of the Act would be relevant. Section 41 of the Act reads as under.

Section 41:

Notice of dismissal.- (1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months,

except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided however, that

such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory

evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was

no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

(3) The decision of the appellate authority shall be final and binding on both the employer and the person employed.

7.3. The Apex Court, in U.P.S. OF SOUTHERN INDIA V. K.G.SANGAMESWARAN

reported in 1997 (2) LLN 73 while interpreting

Section 41 of the Act, held as follows:

19. From a perusal of the provisions quoted above, it will be seen that the jurisdiction of the appellate authority to record evidence and to come

to its own conclusion on the questions involved in the appeal is very wide. Even if the evidence is recorded in the domestic enquiry and the order of

dismissal is passed thereafter, it will still be open to the appellate authority to record, if need be, such evidence as may be produced by the parties.

Conversely, also if the domestic enquiry is ex parte or no evidence was recorded during those proceedings, the appellate authority would still be

justified in taking additional evidence to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer.

20. This Court in *Remington Rand of India, Ltd. V. R.Jambulingam* 1974 (2) L.L.N. 337 has already considered the scope of the provisions of S.

41 of the Act and held that the jurisdiction of the Commissioner (Deputy Labour Commissioner) who is the Appellate Authority under the Act is of

wider scope unlike that of the Tribunal in an application under S. 33 of the Industrial Disputes Act. It was further held that the Commissioner was

competent to rehear the matter completely and come to its own (sic) conclusion after re-appreciation of the evidence or entertaining additional

evidence, if necessary, in the interest of justice.

21. A similar provision was considered by three-Judges Bench of this Court in *The Chairman, Brooke Bond India Private Ltd. and Another Vs.*

Chandranath Choudhary, . In that case, the Court considered the provisions of the Bihar Shops and Commercial Establishments Act and the Rules

framed thereunder. Sub-section (1) of S.26 of the Bihar Act provided that no employer shall dismiss or discharge an employee except on a

reasonable cause and without giving such employee at least one month's notice or one month's wages in lieu thereof. The proviso to Sub-sec.(1)

laid down that the notice shall not be necessary where the services are dispensed with on a charge of misconduct. It was provided by Sub-sec.(2)

that every employee, dismissed or discharged, may file a complaint to the prescribed authority (Labour Court) on three grounds, namely:

(1) that there was no reasonable cause for dispensing with his services; or

(2) that no notice was served on him as required by Sub-sec.(1); or

(3) that he was not guilty of any misconduct as held by the employer.

7.4. It is a trite law that when the findings in the departmental enquiry is challenged in a writ proceedings under Article 226 of the Constitution of

India, as held by a Constitutional Bench of the Apex Court in *STATE OF ORISSA V. MURALIDHAR* reported in AIR 1963 SC 404 the High

Court cannot sit in appeal over the findings recorded by a competent tribunal in a departmental enquiry so that if the High Court has purported to

re-appreciate the evidence for itself that would be outside its jurisdiction. However, if it is shown that the impugned findings recorded by the

Administrative Tribunal are not supported by any evidence the High Court would be justified in setting aside the said findings.

7.5. The Apex Court in *T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras and Others*, which in fact, arise under the provisions of

the Act, held that even though the order of the appellate authority becomes final, the same could be quashed by a writ, if there is error apparent on

the face of the record; and it is not correct to say that unless an error of jurisdiction is established, or fraud proved, no writ of certiorari can be

issued, even though it would be inappropriate for the High Court to exercise its writ jurisdiction to consider the evidence for itself and reach its own

conclusion in the matter which has been left by the legislature to the decision of the appellate authority.

7.6. It is also held by the Apex Court in *Kuldeep Singh Vs. The Commissioner of Police and Others*, findings of guilt in the departmental enquiry

although would not be normally interfered with in a judicial review, by exercising the power conferred under Article 226 of the Constitution of

India, but, the Court can interfere therewith if the same is based on no evidence or is such as could not be reached by an ordinary prudent man or

is perverse or is made at the dictates of a superior authority.

7.7. Unless the finding of the Tribunal is perverse, it is impermissible for the High Court to exercise the jurisdiction under Article 226 of the

Constitution of India to interfere with such findings of the Tribunal, either for insufficiency of the evidence or on the possibility of another view

different from that of the Tribunal, as held by the Apex Court in *INDIAN OVERSEAS BANK V. I.O.B. STAFF CANTEEN WORKERS*"

UNION reported in 2000 (4) SCC 248.

7.8. Accordingly, the findings and the decision of the appellate authority can be interfered with by exercising the power of judicial review under

Article 226 of the Constitution of India, under the following circumstances:

(i) if the findings and the decision of the tribunal is based on no evidence; (ii) if the findings of the tribunal could not be reached by an ordinary

prudent man, applying the Wednesbury's principles, and (iii) if the findings of the tribunal is perverse and suffers from an error apparent on the face

of the record.

7.9. Question No.1 is answered accordingly.

8.1. Question No.2: Whether the order of the appellate authority dated 24.2.1997, which is impugned in the above writ petition, is liable to be set

aside?

8.2. The view taken by the appellate authority based on the material evidence in interfering with the findings of the Enquiry Officer in the

disciplinary action cannot be interfered by this High Court by exercising the power of judicial review under Article 226 of the Constitution of India,

merely because another view is possible for the High Court to take, as held in AGNANI V. BADRI DAS & OTHERS reported in 1963 (1) LLJ

684. But, if the view taken by the appellate authority is totally without any evidence or ignoring all the material evidence on record, and therefore

becomes perverse, even though this High Court is not expected to re-appreciate the evidence, since the error had resulted in manifest injustice, this

High Court is empowered to interfere with the finding and the decision of the appellate authority.

8.3. As the re-appreciation of material evidence is impermissible under Article 226 of the Constitution of India and the jurisdiction of this Court to

test the validity of the order of the appellate authority in question is very limited, suffice it to test whether the findings and the decision of the

appellate authority is perverse or without any evidence or could not be reached by an ordinary prudent man. It is, therefore, not necessary to refer

the details of the evidence relied upon by the employer, in view of the limited jurisdiction of this court under judicial review.

8.4. The second respondent-employee was working as an accountant in the petitioner-employer bank. He is bound to follow the instructions of the

employer relating to the business transactions, scrupulously. The nature of work

of a bank employee demands not only vigilance, but also an in-built requirement to act carefully. Allowing over-drawals, passing of cheques without funds, or making excess advances either at the directions of the superior authority or making advances on anticipated clearance of loans in the absence of any power or authority vested in him by the bank, signing the documents execution register without verifying whether or not securities were actually obtained or the documents specified therein exist, no doubt, either if admitted or proved in case of denial, are serious misconducts, and the same cannot be treated merely as an "error of judgment".

8.5. The employee is, therefore, charged for not complying with the instructions of the employer as per the Advances Circular No.68/89 dated

23.5.1989; for allowing the overdrafts and granting advances in the absence of any power or authority vested in him and signing the documents

execution register without verifying whether or not securities were actually obtained or the documents specified therein exist; and signing the

documents execution register as if the relevant entries were made on 23.4.1990 while, as a matter of fact, he was on leave on that day.

8.6. As per the entries in the Excess Report (Ex.D10) and the Limits Book (Ex.D16), relied upon by the employee himself, he had acted beyond

his authority in allowing the advances and passing the cheques in the absence of any power or authority vested in him, even before the loan was

sanctioned or the funds were available in the respective accounts.

8.7. In this connection, it may be appropriate to refer some of the grounds of appeal raised by the employee before the appellate authority.

Regarding Charge No.1:

(iii) ... When the total limit itself was reported, the Respondent cannot turn around and say that each and every withdrawal was not reported, as

they are already put to notice about the total limit granted and based on that limit only the withdrawals are permitted. The Appellant is put to

hardship because of the failures of the Manager, Mr.K. Raghunath in his duty as a Manager.

Regarding Charge No.2:

(vii) the Enquiry Officer failed to see the truth behind the statement of the appellant that only on the instructions of the Manager that he passed the

cheques. As mentioned by him, there were deposits on the next day to the

amount permitted by the appellant. As the deposits were made by the parties there were actually no loss because of the appellant which is also taken note of by the Enquiry Officer. Hence, the amounts mentioned in the case of Dr.Suresh Mittal, Veekay Industries and R.K.Enterprises are all deposited by the parties the next day and the concerned Registers will go to prove that there is no actual loss because of the appellant.

(viii) the appellant stated in his evidence that in respect of Cheque No.456729 dated 28.6.1990 for Rs.5,00,000/- of Suresh Mittal was passed

under instructions of the Manager. The Manager instructed the appellant and the concerned Current Accounts Officer, Mr.Kanwal Chopra to pass

the cheque against a limit of Rs.7,50,000/-. After passing the cheque, on 28.6.1990 itself, the appellant sent an excess report to the Head Office,

the Excess Report No.145/90. Due to the pre-occupation of the Manager, he released a limit of Rs.7,50,000/- only on 29.6.1990. For the

negligence of the Manager, the appellant cannot be held liable for the said discrepancies. The Enquiry Officer, without taking the Excess Report

No.145/90 dated 28.6.1990, has come to a wrong conclusion that the appellant has sanctioned the excess amount of Rs.4,99,000/-.

(ix) As per the Book of Instructions, Chapter I Para 4 and Chapter II Para 23 to 28 all payments of cheques and debits in excess of Rs.10,000/-

for cash and Rs.25,000/- for transfer should be passed by the Manager only. During his absence, the next Senior Officer may exercise this power.

But cheques and Debits thus passed must be ratified by the Manager when he returns to the Branch. It is therefore the responsibility of the

Manager for passing the cheque for payment above Rs.10,000/-. The cheques mentioned in the Charge No.2 were all passed on the day when the

Manager was present and under the instructions of the Manager. Even though the initials of the appellant is found on these cheques. It will be

deemed ratification by the Manager as per Chapter II of the Book of Instruction because the Manager was present on the day when these

transactions took place. If the appellant had passed the cheques without authority, the Manager would have reported against him immediately

which is not the case here. Hence, the finding of the Enquiry Officer that the appellant passed these cheques in the absence of any power or

authority is not supported by satisfactory evidence.

Regarding Charge No.3(a):

(x)the Enquiry Officer has come to a wrong conclusion that the appellant signed Ex.M6 Documents Execution Register - without obtaining the

securities. M.W.1 himself is not able to clearly assert that the securities were not there. On the other hand, the Enquiry Officer arbitrarily rejected

Ex.D17 marked by the appellant. Ex.D17 is the complaint given by the then Manager Mr.Raghunath that the securities were all taken away the

concerned parties on the pretext of accounting in their book, on maturity and failed to return the same back to the Bank. The same has not been

denied by the Management witness. The Enquiry Officer should have called upon the Management to authenticity of the complaint as it is part of

the Bank's file. This complaint will prove that there were securities.

Regarding Charge No.3(b):

(xi)The Enquiry Officer did not consider the evidence of the appellant that the securities were always in the custody of the Manager. It was only on

the instruction of the Manager, the appellant signed the document execution register on 23.4.1990. He stated that only after verifying the security

that he signed the Register. The Enquiry Officer also did not consider the evidence that due to the heavy work load in the Bank the staff used to

sign the register, subsequently after verifying the same. That apart, he had acted only under the instructions of his Superior, the Manager, and he

cannot be blamed on that account.

(xii)The Enquiry Officer is in total error to conclude that the charged officer is responsible for the advance granted by the charged officer to the

extent of Rs.9,99,000/- because the amount granted under the instructions of the Manager was subsequently deposited by the parties concerned.

Hence there is no loss factually. For the losses incurred due to the attitude of the then Manager, Mr.Raghunath, the appellant cannot be held liable.

8.8. From the above grounds raised by the employee, it is clear that he acted on the directions of Raghunath, the Manager of the bank in clearing

the advances, even prior to the sanction of loan or in clearing overdrafts even before the funds were credited in the respective accounts; that he

had failed to inform to the Head Office with respect to the excess payment, as required in the Advances Circular No.68/89; that the securities and

documents furnished, which were subsequently taken away by the respective

account holders, were not properly scrutinised; and that he had signed the documents execution register on 23.4.1990 as if he was present in the office, while as a matter of fact he was on leave on that day.

These admissions of the employee were overlooked by the appellate authority by giving weightage to the unsustainable reasons, viz. the enquiry officer failed to examine Raghunath, the Manager of the Bank, and there was no monetary loss to the bank, in view of the subsequent credit of funds in the respective accounts, for setting aside the findings of the enquiry officer and the decision of the employer. Both the above reasons which weighed the appellate authority for reversing the findings of the enquiry officer and the decision of the employer, in my considered opinion, are perverse and capricious, as the employee, admittedly, committed a serious misconduct for having acted beyond his authority. Since the employee had not denied the misconduct, but had only chosen to give excuse for the same, the non examination of Raghunath, would not, in any way, be considered as a serious procedural lapse in the impugned decision making process, inasmuch as the said Raghunath was also charged for the same and ultimately dismissed from service by order dated 31.5.1993.

8.9. The material evidence relied on by the Management to substantiate the allegations are satisfied by the enquiry officer even to his naked eyes.

Therefore, the explanation offered by the employee, either that such an act of the employee in question was done at the directions of the superior authority or in anticipation of sanction of loan or credit of the funds in the respective accounts, no further proof is really necessary. Acting beyond ones authority is, by itself a breach of discipline. As a matter of fact, in the instant case, there are entries even as found in Excess Report (Ex.D10) and Limits Book (Ex.D16) to substantiate the allegations. There were advances and overdrafts allowed by the employee-Accountant beyond his authority, which are found to be true to the naked eyes of the very employee himself. In such case, the explanations offered by the employee that he acted on the directions of Raghunath, Manager of the Bank, or that the bank had not sustained any loss, as the said advances and overdrafts got credited to the bank on the very next day, are not good and sufficient reasons to justify the glaring grave misconduct of the employee, more particularly, in the context that the said Raghunath, Manager of the bank, was

also dismissed from service by an order of the Bank dated 31.5.1993.

8.10. The employee working in the bank deals with the public money. The nature of his work demands vigilance with inbuilt requirement to act carefully. Any carelessness therefore invites action, as he is required to exercise the higher standards of honesty and integrity. He deals with the money of the depositors and customers and therefore, he is required to take all possible steps to protect the interest of the bank, which is the custodian of the public money and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank employee. Good conduct and discipline are inseparable from the functioning of every officer/ employee of the Bank. 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 organization 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 of fabricating, manipulating records against the employee were not casual in nature and were serious, vide *LALIT POPLI v. CANARA BANK* reported in AIR 2003 SCW 1238, and *CMD, UNITED COMMERCIAL BANK v. P.C. KAKKAR* reported in AIR 2003 SCW 944.

8.11. The decision of the appellate authority dated 24.2.1997 setting at naught the findings of the enquiry officer and the decision of the employer dismissing the employee from service, which are based on material evidence, has resulted in manifest injustice, as the order dated 24.2.1997 is supported with no reason or unsustainable reasons and is therefore, perverse and capricious.

9.1. A supplementary question that arises to be considered is whether the appellate authority is right in setting aside the order of dismissal on the ground that the employer had not furnished the report of the enquiry officer dated 3.7.1993?

9.2. The right to make a representation before the disciplinary authority as a defence recorded in the enquiry report is an integral part of the opportunity against the charges. Even though the petitioner had ample opportunity before the Enquiry Officer, the duty was cast on the employer to

furnish a copy of the report to the employee before passing the order of dismissal dated 19.7.1993. If the same is denied, it would amount to a

breach of the principles of natural justice, as held in J. VICTOR v. RANI MANGAMMAL TRANSPORT CORPORATION reported in 1998

(2) LLN 906, following the case of UNION OF INDIA v. MOHAMED RAMZAN KHAN reported in 1991 (1) LLN 380.

9.3. It is a settled proposition in service jurisprudence vide Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., wherein the Apex

Court, reviewing the entire law on the point including the effect of MOHAMED RAMZAN KHAN case, held that non furnishing of the enquiry

report before the order of punishment is passed and without giving an opportunity to the delinquent employee to submit his explanation to the

enquiry report would vitiate the order of punishment. However, the Apex Court deprecated unnatural expansion of natural justice, which in itself is

antithetical to justice.

9.4. The Apex Court in State Bank of Patiala and others Vs. S.K. Sharma, held that mere non compliance of the furnishing of enquiry report by

itself would not vitiate the disciplinary action, unless the employee is prejudiced by such non compliance and if no prejudice is caused, no

interference be called for. In this regard a reference to the relevant passage in the above decision would be more appropriate, which reads as

under.

It would not be correct to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is

also void and ought to be set aside without further enquiry. The approach and test adopted in B. Karunkar should govern all cases where the

complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e. adequate or a

full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of

prejudice. The test is all things taken to whether the delinquent officer/employee had or did not have a fair hearing.

... The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of

justice are not allowed to defeat the ends of justice. Principles of natural justice

are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise. These principles cannot be put in a strait jacket. Their applicability depends upon the context and the facts and circumstances of each case.

9.5. It is not the grievance of the employee either before the appellate authority or before this Court that the findings of the enquiry officer suffer

from no notice, no opportunity or no hearing. On the other hand, the findings are based on the entries in the material evidence on record. Hence,

the employee, in my considered opinion, is not prejudiced by non furnishing of the enquiry report before passing the order of dismissal dated

19.7.1993 passed by the employer.

10.1. Yet another remaining supplementary issue to be decided is whether the order of dismissal dated 19.7.1993 is liable to be quashed in its

entirety for want of proof of some of the charges?

10.2. In BANK OF MADURA v. B.M. EMPLOYEES' UNION reported in 1965 (2) LLJ 44 a Division Bench of this Court, held that where an

order is based on more grounds than one which are not alternative, and one or more of them are found to be bad and there is no evidence or

indication that the order would have been made on the basis of the surviving ground or grounds, it will have to be quashed in its entirety.

10.3. Even though, there could be no dispute that when an order of dismissal is based on more charges than one which are not alternative and one

or some of them are found to be perverse or based on no evidence, the dismissal should be set aside in its entirety, where the charges are separate

and each of them constitute a misdemeanour, the delinquent servant can be dismissed even though some of the charges are found to be baseless,

as held in H. MALAKAR & OTHERS. v. JAY ENGINEERING WORKS reported in 1975 (2) LLJ 26. In the instant case, the charges are

based on separate allegations and each of them constitute an independent grave misconduct. Hence, I do not find any justification to interfere with

the decision of the employer imposing the punishment, on the ground that some of the charges are not proved in its entirety. In any event, such an

exercise by this Court is outside the scope of Article 226 of the Constitution of India, wherein this Court is not obliged to interfere with the decision

taken, except to test the validity of decision making process by judicial review.

11. Question No.2 is answered accordingly.

12.1. Question No.3: To what relief the petitioner/ employer is entitled to?

12.2. The order of the appellate authority is set aside and consequently, the order of dismissal of the employer dated 19.7.1993 is confirmed.

12.3. In the result, the writ petition is allowed. No costs. Consequently, W.P.M.P.Nos.15215 of 1997 and 60848 of 2002 are closed.