(2007) 02 MAD CK 0339

In the Madras High Court

Case No : Writ Petition No. 35916 of 2003

D. Jagadeesan APPELLANT

Vs

Bank of Baroda RESPONDENT

Date of Decision : 03-02-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 2 LLJ 562

Hon'ble Judges : M.E.N. Patrudu, J

Bench : Single Bench

Advocate : V. Prakash, SC for G. Raghavendran, for the Appellant; M.S. Krishnan, for P.V. Ramachandran, for the Respondent

Final Decision : Dismissed

Judgement

M.E.N. Patrudu, J.—The petitioner, the former Senior Manager of the first respondent Bank is questioning the legality and correctness of the Order of the Executive Director of the Bank.

2. The Executive Director, the first respondent herein, confirmed the Order of the second respondent the General Manager, who is the Disciplinary Authority and thereby the Order of dismissal of the petitioner is confirmed.

3. The Order of dismissal is based on an allegation of misappropriation of the bank money to the tune of Rs. 50,000/-. There are some more charges.

4. At the outset, this Court would like to clarify the law in relation to the limits of the jurisdiction of High Court in entertaining a plea for writ of certiorari under Article 226 of the Constitution is well settled. In order to justify the writ of certiorari, it must be show that the impugned order suffers from en error apparent on the face of the record. It is clear that the error must be an error of law and not error of fact, because an error of fact though serious, though it may be apparent on the face of the record cannot sustain a claim for writ of certiorari.

It is only an error of law that justify the issue of said writ, provided, ofcourse they are of such a character as would reasonably be treated as erroneous apparent on the face of the record. If a finding of a fact is made by the impugned order and it is shown that it is based on no evidence that would no doubt be a point of law open to be urged under Article 226 of the constitution.

5. In Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, wherein it is held that:

It is settled that the Court should not interfere with the administrators 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 Wednesbury principle 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 decision-making process and not the decision.

6. There is no scope for interference, unless the Order is based on no evidence or error of law and not error of fact and such error is apparent on the face of record. The Court would normally interfere, if the punishment imposed is too harsh, but it may be in exceptional and rare cases and in such cases, the Court can impose punishment by recording cogent reasons.

7. The jurisdiction under Article 226 of the constitution is truly wide but for that very reason it has to be exercised with great circumspection. It is not the High Court to constitute itself into appellate Court over the impugned orders and re-adjudicate upon question of fact decided by the enquiry authorities, the disciplinary authorities or the tribunals.

8. In B.C. Chaturvedi Vs. Union of India and others, , the larger bench of the Supreme Court of India held as follows:

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 enquiry 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 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 coextensive 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 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.

14. ...In State Bank of India v. Samarendra Kishore Endow a Bench of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

9. With this background, I shall now deal with the facts of the case and discuss on merits and demerits of the rival contentions.

10. FACTS

On 16.08.2001, the fateful day, an unpleasant incident occurred in the premises of Bank of Baroda, T.Nagar Branch, Chennai, where the petitioner is working as a Senior Manager.

10.01 Mr.Jagannathan was the Chief Cashier of the Branch. The petitioner as an Officer-in-charge of the verification of the cash, checked the physical cash along with the Chief Cashier. They found eight bundles of Rs. 500/- denominations totalling Rs. 50,000/- After verification of the cash, the petitioner requested the Chief Cashier to bring the Cash Scroll lying on the table of the petitioner and accordingly the Chief Cashier went out and brought the Cash scroll. After verifying the cash scroll, the petitioner signed on the same and entrusted the Chief Cashier to keep the cash in the safe room and the petitioner came out of the room. Within few minutes, the said Chief Cashier returned back to the petitioner and told him that one bundle of Rs. 500/- section was missing. The petitioner went inside and verified and thereafter not satisfied with his counting, the petitioner requested Mr.Dhandapani, another employee of the bank for a check. After verification by him, it was found that one bundle of Rs. 500/- bundle amounting to Rs. 50,000/- is missing.

10.02 According to the management, the petitioner did not take any further steps, however the Chief Cashier Jagannathan made some efforts to trace the cash near the place and thereafter the said Chief Cashier Jagannathan reported the matter to the Chief Manager of the bank orally and thereafter in writing. The letter in writing of Jagannathan is at 7.30. p.m. The missing of the cash is at about 3.15 p.m. Thereafter, the petitioner addressed a letter in writing to the Chief Manager at 8.30 p.m. The timings are very important.

10.03 There was a search in the bank on 16.08.2001 and the missing bundle was not traced. The matter was reported to the superior office on 17.08.2001. A team of officials by name N. Chandrasekaran, Acting Chief Manager, Mylapore Branch and Mr. Kambarajan of the Regional Office came to the T. Nagar branch and investigated into the facts and circumstances which took place on 16.08.2001. They met the Chief Manager and they have verified the two letters given by the Head Cashier as well as the petitioner. The strong room was not opened. The petitioner and the Head Cashier were advised to stay away from their routine work, but available in the bank itself for any deliberations and they conducted a detail investigation in the bank and interacted with the petitioner as well as the Head Cashier and recorded their versions.

10.04 According to the preliminary investigation, the Head Cashier informed the investigating team that he has received six sections of Rs. 500/- from the Receipts Cashier by name Mr.Sambasivarao and he had made two sections from his receipts and loose cash. In all he has made eight sections of Rs. 500/- at the end of the day. After tallying cash, he has requested the cash verifying officer that is the petitioner to verify cash. Accordingly, the petitioner came to the cash cabin for verifying cash and the petitioner verified the cash and the petitioner requested the Chief Cashier to bring the Cash receipts scroll from his table for verifying the final cash balance and after satisfying himself, the petitioner told the head cashier to keep the cash inside safe and went away. As per his usual practice, the Head Cashier verified the sections in the cash box and found one Rs. 500/- section missing and immediately he brought the same fact to the notice of the petitioner, who called Dhandapani, another officer to verify the cash again. After verification, Dhandapani also confirmed shortage of Rs. 50,000/- in cash. It is the Head Cashier, Jagannathan, who reported the matter to the Chief Manager at around 4.30 p.m. and all the staff members searched in and around cash cabin, but could not find the missing cash and thereafter at 7.30.p.m., he gave a written report to the Chief Manager. Till then petitioner has not given any report either orally or in writing.

10.05 While so the preliminary investigation by the investigation team discloses the following facts when they enquire the petitioner. The petitioner admitted that he was called by the Head Cashier to verify the cash and found the same tallying with the final cash balance in the cash balance book. After signing the cash balance book, he requested the Head cashier to bring cash receipts scroll from his seat to verify the cash balance. After verification, the petitioner left the cabin advising the Head cashier to keep the cash in the safe room. Thus the version of the petitioner as well as the Head Cashier is one and the same up to this stage. After five minutes, the Head Cashier returned back to petitioner and informed that one section of Rs. 500/- was missing. Then he requested Mr.Dhandapani to carry out verification of cash and after verifying, he confirmed shortage of Rs. 50,0000/- bundle. Thus there is no inconsistency between the statement of the petitioner as well as Head Cashier. Both of them confirmed that only the petitioner and the Head cashier were in the cash cabin, at the time of verification of the cash and no body else were inside the cash room and after verifying the Head Cashier was sent out to bring Cash receipts scroll and accordingly the Head Cashier went and brought the Cash receipts scroll and there after the petitioner directed the head cashier to keep the cash in safe as it is tallied. It is the Head Cashier again verified and found one section of Rs. 500/- is missing and immediately he made few and cry. At the preliminary investigation stage, the petitioner as well as the head cashier did not accept having taken the missing cash.

10.06 Since the missing cash was not found, a police complaint was lodged and the Pondy Bazaar Police received the report from the Chief Manager on 17.08.2001.

10.07 Surprisingly, the police neither registered nor investigated the case but they started enquiring and made efforts to settle the matter instead of doing the regular police duties as per the mandate of the Criminal Procedure Code. The action of the Pondy Bazaar police is highly objectionable. When the Chief Manager of the bank reported in writing to the police that the cash was missing in the bank and when a cognizable offence of theft is reported to the police, the Pondy Bazaar police did not register the case and did not investigate into the matter. It is a clear lapse on the part of the police. Therefore a copy of the order is marked to the Director General of Police, Tamilnadu, Chennai and Commissioner of Police, Chennai to verify, though late, the reasons for the lapses committed by the then police officers, so that such lapses would not repeat in future. The two officials, that is Director General of Police and the Commissioner of Police have to initiate necessary enquiry against the concerned officials, for not registering the case and not commencing investigation, and started doing some mediation to settle the matter by indulging in a discrete enquiry, which is not permissible under the code when a cognizable offence is reported.

10.08 The Pondy Bazaar police took the petitioner as well as the Head Cashier to the police station interrogated and kept them in the Pondy Bazaar police station till 4.30 p.m. There after, both the petitioner and the Head Cashier were brought back to the bank for further search and they could not trace any amount. Again they were taken back to the police station along with two officials, who came as an inspection team and the Chief Manager of the bank and there were certain discussions and deliberations.

10.09 The case record also discloses that the police suggested the petitioner and Head Cashier to share 50-50 burden and to contribute Rs. 25,000/- each, so that there shall not be any problem. The Chief Cashier refused to give any amount stating that he is not responsible for the missing of the cash and the police can do whatever they like. The Pondy Bazaar police threatened that if they register a case and investigate into the crime the officials will loose their job and it will have a serious consequence. The Head Cashier did not agree and wanted investigation, still the police did not register the case. The reasons is known only to the then Station Officer only. All these facts are noticed by the Court in the record produced by Bank.

10.10 While so the petitioner had given a letter addressed to the Chief Manager to the Bank to make good the amount of Rs. 50,000/- before 25.08.2001. This is a very important document in favour of the management and against the delinquent charged officer as the petitioner agreed to pay Rs. 50,000/- The forceful argument is why should he agree for the same. There is no convincing reply from petitioner.

10.11 Thereafter on 18.08.2001, disciplinary proceedings were initiated against the petitioner and he was placed under suspension in the public interest.

10.12 In this interesting episode some more scenes have come on to the screen.

10.13 First in the sequence is that the petitioner has issued three cheques in favour of two chit fund company limited and they are received by the petitioner''s bank for clearing on 16.08.2001, the day on which the cash was found missing. The petitioner is having Savings Bank Account No.20048 in the same bank and as on 16.08.2001, the cash balance in the account of the petitioner is less than Rs. 100/- whereas, the three cheques amounting is more than Rs. 80,000/- The details of the cheques are:

Cheque No.187311 in favour of Shri Ram Chits Private Limited for Rs. 50,000/-
Cheque No.187312 in favour of Shri Ram Chits Private Limited for Rs. 20,747/-
Cheque No.187314 in favour of Mayavaram Chit for Rs. 11,750/-

When the cheques were received by the branch of the petitioner and when there was no sufficient funds, the concerned clerk by name G.Ramachandran contacted the petitioner and informed about receiving of three cheques without balance and the petitioner told him that he will provide funds partly for honouring the cheque for Rs. 11,750 and the other two cheques can be returned with the reason as post-dated.

At this stage, it is to note that the cheques are issued on 30.07.2001 while so the date is altered as 30.07.2002. The same date has been written once again in the cheque.

The petitioner requested Mr.G.Ramachandran, the Special Assistant who has received the three cheques to return those two altered cheques, as they are post dated and informed that he will provide funds for honouring the other cheque for Rs. 11,750/- and immediately one Mr.Venkataram, whose wife is having SB account with the branch of the petitioner permitted to transfer Rs. 6,500/- from the Savings Bank Account No.22665 of Mythri the wife of Venkataram to the account of the petitioner and the balance was paid by the petitioner and the cheque for Rs. 11,750/- was honoured and the other two cheques one for Rs. 50,000/- and the other for Rs. 20,747/- are returned with reasons post-dated.

This incident happened on 16.08.2001 before 3.00 p.m. The missing of the cash on the same day after 3.15 p.m.

These circumstance cannot be ignored at all. At the level of preliminary enquiry, at regular enquiry by the Disciplinary Authority and by the Appellate authority and by the Court of law, this undisputed fact is to be taken in to consideration while appreciating the case facts.

10.14 The other important incident is that on 24.08.2001, that is one day before the return of amount of Rs. 50,000/- by the petitioner, there was a strange incident in the bank. One bundle of Rs. 500/- amounting to Rs. 50,000/- was found on the Accountant''s table behind the computer and Mr. Sreedhar who is working as an Accountant on that day. On noticing the said bundle, the same fact was informed to the Chief Manager of the bank and he has taken instructions from the General Manager, South Zone, who personally came to T.Nagar branch and found that Rs. 50,000/- bundle in a cover and instructed them to keep it in the current account Sundry Deposit Account in the safe custody.

Along with that bundle there was a note which reads as follows: /Jagadeesan your name is spoiled, hard working spoiled, future spoiled most happy -money returned./

Jagadeesan is the petitioner, a well directed drama is introduced.

10.15 As promised the petitioner deposited Rs. 50,000 with the bank on 25.08.2001

10.16 After suspension a charge sheet was issued to the petitioner making the following allegations:

1. You have misappropriated/embezzled cash of Rs. 50,000/- (one section of Rs. 500 denomination) from the Cashier''s till while verifying the cash balance on 16.08.2001.

2. To facilitate your above act you have deliberately instructed the Head Cashier to go out of the cash cabin and to bring cash scroll lying in your seat which was supposed to have been verified by you simultaneously along with Cashier''s cash balance book.

3. Consequently when cash shortage was reported by the Head Cashier to you, as a Joint Custodian you have neither taken proper care to report the matter to the Chief Manager of the branch immediately nor taken any remedial step immediately to retrieve the cash. Instead, you asked a Junior Officer to check the cash again without apprising him the seriousness of the matter and giving him proper guidance.

4. Your above act of misappropriation /embezzlement of cash of Rs. 50,000/- was admitted by you on 17.08.2001 by your letter addressed to the Chief manager giving an assurance to make good the loss before 25.08.2001.

5. (a) You have issued cheques No.187311 and 187312 for Rs. 50,000/- and Rs. 20,747/- respectively favouring Shriram Chits Tamilnadu (P) Ltd. In your SB account No.200048 with our T. Nagar branch without providing sufficient funds in your account.

(b) You have altered the dates of these instruments after the same were presented in clearing on 16.08.2001 in order to return the cheques for a reason other than "insufficient funds" so as to escape liability u/s 138 of Negotiable Instruments Act, 1881.

(c) Furthermore, you have also indulged yourself in tampering of above instruments drawn on the branch where you were working on the said day.

6. (a) You have unauthorisedly transferred a sum of Rs. 6,500/- on 16.08.2001 from an account of a client of the branch holding SB account No.22265 to your above account with a view to providing funds for passing a cheque for Rs. 11,750/- issued by you and presented in clearing on 16.08.2001.

(b) You have deposited a cheque No.562055 dt. 24.11.2000 for Rs. 25,000/- drawn by Mrs. Shanthakrishnan, a customer of the bank having SB account No.1242 with M.R.C Nagar branch to the credit of your SB account No.147460 with Mount Road branch on 27.11.2000.

(c) The above acts also placed you under a pecuniary obligation to persons having dealings with the bank which is prohibited under the service regulations.

7. You have not managed your private financial affairs properly and you are incurring debts habitually as is evident from the following transactions in your SB accouts. SB account No.147460 with Mount Road Branch

(a) You have issued -22- cheques in your above account during 15.09.1999 to

14.02.2001 favouring M/s.Mayavaram Financial Chit Corporation Ltd., aggregating Rs. 95,143/- Eg. Cheque No.333621 for Rs. 4,658/- debited on 1.09.1999. Cheque No.379153 for Rs. 7,500/- debited on 14.02.2001.

(b) You have issued -22-cheques during 03.12.1999 to 02.08.2000 favouring Standard Chartered Bank Ltd. aggregating Rs. 84,268/- Eg.Cheque No.337806 for Rs. 2,250/- debited on 03.12.1999. Cheque No.405068 for Rs. 4,145/-

debited on 02.08.2001.

(c) You have issued a cheque No.385103 for Rs. 750/- favour in Shriram Chits Tamilnadu Ltd. debited to the account on 09.05.2001, in addition to the cheques issued by you as mentioned in Serial No.5 (a) above.

(d) You have issued cheque No.344073 for Rs. 36,150/- and cheque No.379158 for Rs. 12,330/- favouring Shri Raghavendra Chit Funds (P) Ltd. Debited to the accounts on 12.02.2000 and 13.03.2001 respectively.

(e) You have routed through the above accounts cheques drawn in US Dollars to the extent of Rs. 69,100/- on -5-occasions during 09.11.2000 to 12.03.2001.

(f) You have deposited a cheque to the credit of your above account for Rs. 64,519.10 issued by Standard Chartered Bank on 28.11.2000. SB Account No.200048 with T.Nagar Branch

(g) You have issued -5- cheques in your above account favouring M/s Mayavaram Financial Chit Corporation Ltd. Aggregating Rs. 34,583/- during 12.06.2001 to 16.08.2001. Eg.Cheque No.753251 for Rs. 7,500/- debited on 12.06.2001. Cheque No.187314 for Rs. 11,750/- debited on 16.08.2001.

(h) You have issued a cheque No.753254 for Rs. 4,500/- favouring Standard Chartered Bank Ltd. debited to the account on 23.06.2001.

(i) You have issued a cheque No.753253 for Rs. 10,000/- favouring Citi Bank Cards debited to the account on 16.06.2001.

(j) You have deposited cheques for Rs. 25,000/- and Rs. 35,000/- on 21.07.2001 and 24.08.2001 respectively drawn by private parties to the credit of your above account.

8. Also your dealings with certain financial institutions like Mayavaram Financial Chit Corporation, Shriram Chits etc. Were not reflected in your annual return of Assets & Liabilities submitted by you as per Service Regulations as is evident from the transactions as mentioned in Serial No. 7(a) to (j).

10.17 The charge sheet is dated 11.09.2001. The petitioner has sent his reply on 24.09.2001. A detailed reply is sent denying all the allegations. This is the first letter from the petitioner on the charges levelled against him. Therefore the court is of the opinion to reproduce the same.

Please refer to your letter RO:TN 1:AUD:37/679 dated September 11/13, 2001 and reply as under. For item number (1) to (4) of your letter, I deny the charge that I had misappropriated Rs. 50,000/- from cashier''s till on 16.08.2001.

For item number (2), I had requested the cashier to bring the cash scroll as no subordinate staff was available nearby.

For item number (3), I had requested an officer who had rich experience in cash department as Head Cashier for verification explaining him that Rs. 50,000/- was found short. By 4.30 p.m. The matter was reported to the Chief Manager and three to four times I have requested him to make a police complaint immediately. However, he was contacting Regional Office and Zonal Office for assistance. Even I contacted both RO and ZO many times, but got only a vague guidance.

For item number (4), the matter was referred to local police and myself and cashier were taken to the police station for enquiry. The police harassment was so much that it had affected me considerably. Owning moral responsibility, I gave a letter that I will make good the amount before 25.08.2001. This I had given purely under pressure.

For item number (5), I deny the charge that I have altered the dates of the instruments with a view to escape the liability u/s 138 of N.I. Act, 1881. I request you to kindly make the instruments verified by some Handwriting Experts, so that the same can be proved.

For item number {6(a)}, Sri Venkataraman, husband of the account holder came to the bank by around 12.45 PM and I requested him for a transfer of funds for Rs. 6,500/- for which he agreed and said that he will get a confirmation cheque after his wife returns from Madurai. I understand that the confirmatory cheque has already been collected by the branch.

For item Number {6(b)} and {6(c)}, Sri. Krishnan is my friend since 1975 and he requested for a hand loan of Rs. 25,000/- for a short period. He gave a cheque for the same which was signed by him only. (I do not know whether it was "Joint-account" with his wife''s name or "single account"). It was towards repayment of hand loan taken by him.

For item number (7), I am a member of The Mayavaram Financial Chit Corporation Limited since 1975 and for your kind information I would like to state here that they are not financiers but only chit promoters of repute for more than 40 years. The chit payments made by me are only savings and not debts.

To help my brother''s son who received full fee waiver and scholarship from Vanderbilt University, Nashville for his post-graduation studies, I took a loan from Standard Chartered Bank and now the same will be cleared shortly out of the prized money from the above mentioned chit savings.

For item number {7(c)}, a cheque for Rs. 750/- was issued towards entrance fee and now I have conveyed them that I am not interested in the membership of the chit, since they have altered the dates, etc., putting me in lot of problems.

For item number {7(d)}, I am regular member in Sri Ragavendra Chit Fund Private Limited. A cheque for Rs. 36,150/- was given when I received my wage revision arrears and other cheque for Rs. 12,330/- out myself and wife''s salary.

For item number {7(e)}, USD 1500 was given by my brother''s son by way of 5 cheques towards repayment of loan given to him, which was encashed on 5 occasions.

For item number {7(f)}, I have deposited a cheque for Rs. 64,519.10 issued by Standard Chartered Bank for meeting by brother''s son''s travel and other incidental expenses in connection with his study in U.S. The same will be repaid shortly out of the chit amount.

For item number {7(g)}, I have issued five cheques as stated for chits in which I am a member in Mayavaram Financial Chit Corporation Ltd.

For item number {7(h)}, I have issued a cheque for Rs. 4,500/- favouring Standard Chartered Bank towards Card payment.

For item No. {7(i)}, I have issued a cheque for Rs. 10,000/- favouring Citi Bank Cards for cash withdrawals made for urgent medical expenses of my parents.

For item No. {7(j)}, a cheque for Rs. 25,000/- deposited, was given b y Sri Krishnan''s friend towards hand loan taken by Sri Krishnan.

Cheques for Rs. 25,000/- and Rs. 10,000/- were deposited were issued by my brother-in-law and co-brother respectively since I have to mobilise funds to honour my commitment to pay Rs. 50,000/- before 25.8.2001.

For item No. (8), since major part of money invested in Mayavaram Financial Chit Corporation Ltd., and Sri Ragavendra Chit Fund Private Ltd, belongs to my wife''s savings, I felt the same need not be shown in the Assets and Liabilities Statement. However, I regret the lapse and include the same from current year''s statements and request you to condone the same.

Trust the above explanation will help to prove that I am not guilty

I therefore request you to revoke the suspension order and permit me to join for duty at the earliest

I express my sincere thanks for giving me an opportunity to explain my position.

10.8 Thereafter a departmental enquiry was initiated. Charges are framed and the statement of allegations are also issued. The details of the documents and the particulars of the witnesses were furnished to the charged officer and enquiry commenced on 15.05.2002 onwards. The charged officer along with his representative attended the enquiry. The Presenting Officer appeared on behalf of the management. The enquiry was held strictly in accordance with the procedure and witnesses were examined on behalf of the management and on behalf of the delinquent. Documents are marked and officially the Enquiring Officer has submitted his report, holding the petitioner guilty.

10.19 Thereafter the enquiry report was communicated to the petitioner by the Disciplinary Authority calling for a show cause and the petitioner gave a detailed reply. After receiving the reply to the second show cause notice the second respondent the disciplinary authority passed a order accepting the enquiry report and proposed the punishment of dismissal from service.

10.20 Aggrieved by the same, the petitioner preferred an appeal. The first respondent Appellate Authority after verifying the facts and circumstances and considering the plea taken by the petitioner and after verifying the evidence before the Enquiry Officer and the conclusions of the Disciplinary Authority dismissed the appeal and confirmed the dismissal.

10.21 Aggrieved by the same, the petitioner preferred this writ petition.

11. Heard Mr. V. Prakash, learned Senior Counsel appearing for the petitioner and Mr. M.S. Krishnan, learned Counsel appearing for the respondents.

12. POINT

The point for determination is whether the impugned orders of the respondents are legal and justified or liable to be set aside.

12.01 I have minutely perused the impugned order of the first respondent. The Appellate Authority stated the facts in brief and noted the findings of the enquiry and verified the grounds of appeal and made an elaborate discussion on appeal in Page 3 of the order. It is a well reasoned order. In fact the Disciplinary Authority also has passed a very reasoned order. The allegations levelled against the petitioner are stated, the evidence during the enquiry was highlighted and why they are accepting the evidence is also mentioned and the reasons are assigned and how the misconduct is established and finally the orders are passed by both the disciplinary authority as well as the appellate authority.

12.02 Learned Counsel appearing for the petitioner raised the following grounds.

It is stated that the report of the Enquiring Authority is perverse and without any evidence. It is a general ground. The attention of the Court is drawn to the report of the Enquiry Officer. I have minutely gone through the report of the Enquiry Officer. He has mentioned each and every allegation. For example, the first allegation by the enquiry officer is that the petitioner has misappropriated/ embezzled cash of Rs. 50,000/- from the cashier''s till while verifying the cash balance on 16.08.2001. The Enquiry Officer noted the evidence on behalf of the management produced by the presenting officer Ex.P1-(a) is the cash balance book and it is signed by the petitioner as well as the Chief Cashier. The enquiry officer discussed the behaviour of the petitioner as well as the chief cashier at the time of incident.

In the instant case, the Chief Cashier requested the verifying officer that is the petitioner to verify the cash and accordingly the petitioner tallied the cash and at the request of the petitioner, the Chief Cashier went out of the cash cabin to bring the cash scroll and after bringing the cash scroll the petitioner directed the Chief Cashier to keep the cash in the safe and stated that the cash is tallying and he went out. The chief cashier as per his usual practice counted the cash and found one bundle of Rs. 500/- amounting to Rs. 50,000/- is missing and immediately he brought it to the notice of the petitioner. But the petitioner is not serious about the shortage and directed one Dhandapani to verify and petitioner did not do that job. The chief cashier is the first person to report to the Chief Manager about the missing of the cash and not the petitioner and a written report is given by him at the first instance and there after the petitioner has given a written report and there is a delay on the part of the petitioner to report the matter to the Chief Manager. All these facts are discussed in detail.

There after on 17.08.2001, after the police report, what all happened was also discussed by the Enquiry Officer as borne out through the evidence of the witnesses. The Head Cashier is examined as PW2. Chief Manager is examined as PW1. Dhandapani PW4. The evidence PW2 clearly established that the police suggested to share 50-50 to make good the loss, but he refused to do so and he is ready to face any consequences whereas the petitioner has given Ex.P2 letter. That he shall pay back Rs. 25,000/-. This fact has also been discussed by the Enquiry Officer in detail. Thus it is a case where the Chief Cashier refused to pay a single Paise and ready to face any consequence, whereas the petitioner has given a letter offering to pay Rs. 50,000/- before 25.08.2001. He is the scribe of the letter. This letter is given on 17.08.2001.

12.03 Thus I find no merit in the argument that there is no evidence. The report is clear and cogent on the charges, the evidence and the findings.

12.04 The forceful argument across the bar at this stage before this Court is that the letter of petitioner is a tainted letter and it is obtained by force and threat and by false promise that there shall be no action against the petitioner.

I am not accepting this the argument. The petitioner is an educated person working as a Senior Manger in the bank and he is fully aware about the consequence of such act committed by him and the problems by giving such letter. In fact the evidence on record discloses that the petitioner expressed the doubts that if he give such letter the same will be used against him, but still he has given that letter. Therefore it is not as if the petitioner is innocent and he is not aware about the consequences by giving such letter. It is a case that knowing fully well the petitioner himself has given Ex.P5 the letter that he will pay back the money by 25.08.2001. Ex.P5 letter is prepared by the petitioner on a white paper with his own pen. No doubt he did not admit that he had taken away the cash. There is no admission that he has misappropriated the amount. The letter is reproduced as it is:

In connection with the cash shortage on 16.08.2001 of Rs. 50,000/- I will make good the same before 25.08.2001.

Why should he give this letter, if he is not involved in the incident? There are no convincing answers. Though Ex.P5 do not amount to admission of guilt but the various circumstances relied by the Enquiry Officer, accepted by Disciplinary Authority and the Appellate Authority clearly establish the guilt of the petitioner. Why the petitioner has submitted that letter Ex.P5 is for him to explain and one need not draw any conclusion when there is no acceptable explanation it is held that Ex.P5 is given with consent and there is no force.

Therefore it is not correct to state that there is no evidence and the report of the Enquiry Officer is perverse.

12.05 The various circumstances relied by the Enquiry Officer that the petitioner has issued two cheques in favour of Shriram Chits Tamilnadu Limited and they were presented for clearing on 16.08.2001 and there are no sufficient funds in the account of the petitioner. Hence they are ought to be returned and infact they are returned unpaid. However with a note that the cheques are post dated and they are returned at the instance of the petitioner. The evidence of G.Ramachandran PW3 clearly discloses that the petitioner instructed PW3 to return the cheques as they are post dated and on verification of the cheques they are tampered. The year is changed from 2001 to 2002 and on the cheque the date is written as 30.07.2002 and how the petitioner is able to know about the change of date is another big question and who has committed this forgery is another offence to be investigated by the concerned. However there is no such investigation but admittedly the cheque is tampered. The statement of Shriram Chits officials discloses when they presented the cheques the date on cheques are 30.07.2001 only. Whereas these dates were tampered enroute. That is from the stage of Reserve Bank of India to the stage of petitioner''s bank and why should there be a tampering during the transit of the banks when the Shriram Chits has presented the cheque with the date bearing 30.07.2001. When there is no tampering of the date when the cheque was presented to their banker. Surprisingly the date is tampered and admittedly the petitioner is not having sufficient funds in his account by the time cheque is received by his bank for clearance and on the same day an amount of Rs. 50,000/- was missing from the bank and the petitioner participated as one of the verifying officer and his conduct prior to soon after the incident of missing of the cash is very relevant.

12.06 The counsel for the petitioner vehemently contended that an amount of Rs. 50,000/- was found in the bank premises on 24.08.2001 and it is the missed cash and the bank officials have suppressed the same and even did not reflect the said fact in their charge memos and did not produce this amount before the Enquiry and did not permit the charged officer to summon the said cover during the enquiry and it is nothing but suppressal of the material fact by the bank officials and by the Enquiry Officer. Therefore the entire proceedings are vitiated.

12.07 At request of both, the said cover containing Rs. 50,000/- as mentioned above is received by this Court and this Court has opened the sealed cover in the open Court in presence of both parties and found that all the notes are loose Rs. 500 notes amounting to Rs. 50,000/- At this stage, it is to be noted that the currency note numbers of the missing bundle are not noted because it is stated that it is not possible to note the currency numbers of the old currency notes and only when they are received from the Reserve Bank, the numbers can be noted and there is no such procedure. This fact is conceded by the counsel for the writ petitioner.

The fact remains that the numbers of the currency notes of the bundle which was missed on 16.08.2001 is not known to anyone. In such circumstances, it is impossible to verify whether the bundle which was traced on the accountant table on 24.08.2001 is the same bundle which was lost or it is a different bundle.

12.08 The evidence on record discloses that there was a thorough search with regard to the missing bundle on 16.08.2001 evening and on the whole of 17.08.2001. The petitioner also participated in the search. They were not able to trace the missing bundle either near the cash cabin, or on the table of the petitioner or in the almirah of the petitioner or on the table of the Chief Cashier or on the almirah or near the accountant table or by the side of the computer where the bundle had actually found from 16.08.2001 till 24.08.2001 the bundle was not seen in the bank premises. No one knows about the availability of the said bundle till 24.08.2001. All of a sudden, this bundle appeared on the table of the accountant.

12.09 Mr.Sridhar the Accountant is not connected with the missing of cash bundle on 16.08.2001, because he has not participated in the verification of the cash. The two persons who are involved in the entire episode is the petitioner and the Head Cashier. The Head cashier has offered for any sort of investigation or enquiry and infact invited the police investigation. Whereas the petitioner did not resort for that and he has given a letter Ex.P5 offering to pay bak the amount.

12.10 On the next day the petitioner was suspended and the petitioner was facing disciplinary action. In such circumstances, even if the amount of Rs. 50,000/- is taken away by some third party including the Chief Cashier. there is no necessity for those persons to bring back the Rs. 50,000/- and keep it on the table of the Accountant by the side of computer as if the bundle was found in the bank. The reason is that the petitioner is already facing trouble and he was placed under suspension and his entry to the bank is prohibited and all fingers are pointing at the petitioner only. In such case there is no necessity for a third party, even if he has committed the theft to bring back the cash into the bank premises as if the missing bundle was found in the bank.

12.11 Therefore it is nothing but a new scene introduced at the instance of the petitioner or by the well wishers of the petitioner to create suspicion that the missing bundle was found in the bank itself. In this drama this scene is created at the instance of the petitioner and this has been rightly rejected by the Enquiry Officer as nothing to do with the missing of the cash on 16.08.2001. If this bundle was found either on 16.08.2001 or 17.08.2001 during the thorough search of the bank by various people, then petitioner could get some benefit out of it. But it was planted nearly after a week.

12.12 Therefore the tracing of bundle of Rs. 50,000/- in the bank premises has nothing to do with the misconduct on 16.08.2001 alleged against the petitioner. There is no access between the alleged misconduct and the subsequent noticing of Rs. 50,000/- bundle in the bank. Therefore the argument of the learned

Counsel for the petitioner is rejected on this ground also.

The Registry is directed to return back the said bundle of Rs. 50,000/- with note to the Bank.

12.13 All these aspects have been taken note by the Enquiry Officer and these facts have been established through detailed documentary evidence and cogent evidence that both oral and documentary evidence. After considering evidence of witnesses, who are subjected for cross examination by the Charged Officer, the Enquiry Officer gave a specific finding. There is no violation of principles of natural justice in this case.

12.14 When an enquiry is conducted on charges of mis-conduct by a public servant and when the enquiry was held by the Competent Officer by following the rules of natural justice and the findings and the conclusions of the Enquiry Officer are based on evidence and the Enquiry Officer has jurisdiction to conduct the Enquiry and he has every power and charge to have a finding of a fact, basing on the evidence and the Disciplinary Authority has accepted the said evidence and the Disciplinary Authority is entitled to hold that the delinquent is guilty of the charges.

12.15 In such circumstances, the Court in its power of judicial review does not act as a Appellate Authority to re-appreciate the evidence and to arrive at its own findings on the evidence. The Court can interfere with the conclusion and can mould the relief so as to make it proper, if there is inconsistency with rules of natural justice or any violation of statutory rules prescribing the code of enquiry or where the conclusions by the Disciplinary Authority is based on no evidence.

12.16 In this case, there is no such irregularity or illegality calling for interference by this Court. The Disciplinary Authority is the sole judge of the facts, where appeal is presented, the appellate authority has to reappreciate the evidence.

12.17 Therefore this Court is of the opinion that there are no merits in the arguments of the counsel for the petitioner to interfere with the findings of the Disciplinary Authority or the Appellate Authority. The impugned order is legal.

13. PUNISHMENT

With regard to the quantum of punishment, this Court is of the opinion that it can examine the same.

13.01 The term dismissal or termination of service under the service law is used always to refer a punitive action. But dismissal from service is a capital punishment because it is an economic death of a workman the employee. Getting a new opening elsewhere and start his career is very difficult for a dismissed employee particularly in the present days. Infact the real victims are the dependants of the dismissed employee, whose bread winner is rendered jobless not only in the present establishment but throughout his career. The future of the family is bleak and in turn cause great hardship to the society.

13.02 But at the same time discipline is very much essential in every walks of human life may be in the family or in the society or in the bank. Corruption, committing criminal offences are very serious.

13.03 In the instant case, the various facts and circumstances discloses that the petitioner has put in 30 years of meritorious service. It appears there are no charges against him. However that cannot be a ground to exonerate him. But in this case the petitioner gave three cheques and three cheques reached the bank for clearance on 16.08.2001 and he was able to secure funds to clear one check amount to Rs. 11,750/- and two other cheques he was not able to clear. Thereafter there was a missing of cash amounting to Rs. 50,000/- and during the preliminary enquiry and preliminary investigation on 16.08.2001 and 18.08.2001, the petitioner has offered to pay Rs. 50,000/- by 25.08.2001. This letter is neither confessional letter nor admitting the act of misappropriation. But he offered to pay the amount. In the evidence it was elicited on his behalf that he offered to pay this amount being a senior officer entrusted with the job. The evidence of Senior Manager of T.Nagar who is the member of the investigating team along with Chandrasekaran discloses that the petitioner is willing to give a letter to make good the amount of Rs. 50,000/-. The amount of Rs. 50,000/- has been returned to the bank and there is no monetary loss to the bank. However act of the petitioner amounts to a grave misconduct and he is not entitled to continue in the bank service. But however considering all the above facts, the Court is of the opinion that punishment of compulsory retirement would meet the ends of justice because the petitioner and his family can lead some respectable life in the society with the punishment of compulsory retirement rather than the punishment of dismissal.

14. RESULT

In the result, the writ petition is dismissed however with the punishment of compulsory retirement and the punishment of dismissal is set aside. No Costs.

