(2015) 01 GAU CK 0015

In the Gauhati High Court

Case No : Writ Petition(C) No. 2617 of 2011

Dambarudhar Barman APPELLANT

Vs

Central Bank of India and Others RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Citation : (2015) 1 GLT 307

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : U.K. Nair, B. Sarma, A. Chetry and G.Z. Ahmed, for the Appellant; M.K. Mishra, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—The petitioner is aggrieved by the Annexure-17 order dated 1st February, 2010 by which, pursuant to a departmental proceeding, he has been dismissed from service. He is also aggrieved by the Annexure-19 order dated 28th February, 2011 of the departmental appellate authority, declining to interfere with the order of dismissal passed by the disciplinary authority. The petitioner while was serving in the respondent Bank was placed under suspension vide Annexure-1 order dated 16th March, 2009. As the petitioner him self has stated in the writ petition (paragraphs 5 and 6), there was incident of misappropriation of depositors money. As stated in paragraph 5 of the writ petition, after the transfer of one Shri Karuna Kanta Das, Head Cashier of the respondent Bank, who was working alongwith the petitioner in the particular Branch (Maharipara Branch), the depositors'' could come to know that the money deposited in their Bank accounts for which due receipts were also given, in fact was not deposited. The aforesaid order dated 16th March, 2009, placing the petitioner under suspension was followed by the Annexure-2 memo of charge dated 16th April, 2009, alleging against the petitioner misappropriation of depositors'' money in collusion with the said co-employee, namely, Shri Karuna Kanta Das. In response to the same, the petitioner submitted his explanation dated 27th April, 2009 (Annexure-3). For a ready reference, the charge memo dated 16th April, 2009 and the reply of the petitioner dated 27th April, 2009 are quoted below:--

"1. Mr. Barman had been found to have colluded with Mr. Karuna Kanta Das, formerly Head cashier ''E'' of Maharipara Branch (under suspension) who has receiving the cash from Bank''s customers on various dates, but did not enter into cash scroll and did not deposit such cash into Bank''s Coffer, whereas he used to hand over stamped and initiated counterfoil of pay-in-slip to the tendered of deposit to convince the depositors that their money was properly deposited in their respective accounts. Mr. Barman as such had helped Mr. K.K. Das ''Head Cashier (U/S) for misappropriation of customers Deposit for his/or their mutual personal benefit causing distrustful act and cheating the customers of the Bank. Such acts on the part of Mr. Barman caused huge pecuniary losses to the Bank apart from tarnishing the reputation/image of the Bank in the eyes of the public.

2. Mr. Barman remained instrumental for making personal payment to the customers by receiving cash from Karuna Kanta Das, former Head cashier (under suspension) Maharipara Branch which proved that he had colluded with the Head cashier (u/s)n for his personal gain/benefit."

"To,

Date-27.4.09

The Branch Manager, Central Bank of India, Maharipara Branch.

Reg: Alleged act of pecuniary irregularities to the detriment of Bank''s interest.

Ref: Bank''s Memorandum No. BM/MAHARI/GUWA/09-10/02 Dated: 16.04.2009.

Respected Sir,

I Sri Dambarudhar Barman, CTO, Maharipara Branch (under suspension), do acknowledge receipt of your above referred memorandum and noted the contents therein and doing so do submit my explanations there against as sought by you.

That Sir, as alleged by you vide your MEMO dated 16.04.2009, I never colluded with Mr. Karuna Kanta Das, HC (under suspension) in any of his actions. But as Mr. Das happened to be my colleague, on the strength of such relation I had to assent to his request.

While on 12.03.2009, the proprietor of M/S Jhuma Store and M/s. Jonali Suta Bhandar, came to our branch to withdraw money from their CD accounts, they found that the amounts deposited by mem earlier were not duly credited to their accounts. This was brought to the notice of the Branch Manager immediately whereupon the BM advised the parties to lodge a written complaint stating the matter. The said two clients did comply with Branch Manager''s advice and also contacted the HC Mr. K.K. Das who was in his residence whereupon the HC assured both the parties to repay the money in cash misappropriated by him. Simultaneously, Mr. Karuna Kanta Das requested me over telephone to collect the amount from him at Adabari (Guwahati) bus stand for onward repayment of the amount to the parties.

Sir, I simply agreed to the request of Mr. K.K. Das and collected from him and paid back the same to the parties as advised by the then Branch Manager in presence of other staff members of the branch.

Whereas I did repay the money to the parties keeping in mind bank''s interest, I never indulged myself in action which tantamount to pecuniary loss to the bank or that which may jeopardize bank''s reputation amongst the clientele.

Again, I make it appropriate to emphasize before you that I never colluded with any irregular actions of Mr. K.K. Das and whatever I did was complying to his request as a colleague only and that too as was discussed with the Branch Manager of the Maharipara Branch Sri A.K. Goswami and above all intending to duly compensate the clientele whose deposits were defrauded by former Head Cashier of the branch.

Sir, I hope this clarification from me shall satisfy you and I request your good self not to initiate any disciplinary action against me as hinted by you in your memorandum.

Thanking you,

Yours truly, Sd/-Illegible Dambaru Dhar Barman CTO (U/S) Maharipara Br. 27.4.09."

2. After the aforesaid development, a formal charge sheet was issued to the petitioner vide Annexure-4 dated 2nd May, 2009, which is also quoted below:--

"Chargesheet

Whereas the explanation given by Shri Dambaru Dhar Barman, C.T.O. (u/s) of Maharipara Branch vide his letter dated 27.4.2009 against Bank''s Memo no BR/MAHARI/Guwa/09-10/02 dated 16.04.2009 has been found unsatisfactory an unacceptable, it is decided to hold a departmental enquiry on the following charges which constitute gross misconduct as laid down under clause 5 (d) of memorandum of settlement dated 10th April 2002 on Disciplinary action Procedure for workmen vide central office circular no CO/PRS/2002-2003/19 dated 29.04.2002.

Charge 1- Shri Dambaru Dhar Barman, C.T.O (U/S) of Maharipara Branch had been found to have colluded with Shri Karuna Kanta Das, Head Cashier ''E'' of Maharipara Branch (under suspension) who had been receiving the cash from Bank''s customers on various dates, but in good number of cases Shri Karuna Kanta Das did not record mem into cash scroll and did not bother to deposit such cash into Bank''s Coffer, whereas he used to hand over stamped and initiated counterfoil of pay-in-slip to the tenderer of deposit to convince the depositors that their money was properly deposited in their respective accounts. Shri Barman as such had helped Shri Karuna Kanta Das ''Head Cashier (U/S) for misappropriating customers Deposit for their mutual personal benefit causing distrustful act and cheating the customers of the Bank, and thereby eroded the reputation of the Bank in the eyes of public.

Charge 2-Shri Barman remained instrumental for making personal payment to me customers with a view to nullify the misappropriation and pacify some agitated complainants who earlier tendered cash deposit. Shri Barman received Rs. 225000/- on 13.03.2009 from Shri Karuna Kanta Das, former Head Cashier (under suspension) Maharipara Branch for the purpose of payment to the customers, the names and account numbers of whom are as under:--

The above mentioned acts on the part of Shri Dambaru Dhar Barman constitute criminal offence apart from being acts of misconduct in service. Further Shri Barman has tarnished the image of the Bank besides causing pecuniary loss to the Bank to the extent of Rs. 41.08 lacs as per reports received up to this date. Shri Barman has failed to discharge his duties with diligence and honesty, rather he acted with malafide intention for his personal pecuniary gain.

Shri Barman is informed that the proposed enquiry will be held in respect of the above stated charges if he does not admit or deny the said charges. If any of the charges is admitted by Shri Barman, the same will be treated as ''admitted'' and no enquiry will be held in respect of such admitted charge/charges. Shri Barman should therefore specifically deny or admit each ''charge'' leveled against him in this Chargesheet. In the circumstances Shri Dambaru Dhar Barman is hereby given 15 (fifteen) days time to give/submit his written statement against each charge mentioned in this Chargesheet, the undersigned, being the Disciplinary Authority will proceed with the matter as the deems fit and proper.

Shri Barman is informed that he will be given full opportunity at the proposed enquiry by the management if it is required to be held and he will be given opportunity to lead evidence if he so desires. Shri Barman, if he so desires, may take the assistance of any employee of the Bank of in defending him in the proposed Departmental enquiry if the circumstances warrant holding of such an enquiry."

3. In response to the charge-sheet, the petitioner vide his reply dated 9th June, 2009 denied the charges. However, he also referred to his earlier reply dated 27th April, 2009, quoted above. In addition to the said charge sheet, the petitioner was also furnished with an additional charge sheet dated 30th September, 2009, which is also quoted below:--

"Additional Charge No. 1 While working in the capacity of Computer Terminal Operator (CTO) (u/s) at Maharipara Branch under Regional Office Guwahati during the period from 30.06.1998 to 14.03.2009, the following serious irregularities/lapses were observed in Cash Payment

On 04.10.2008 in 67 (sixty seven) numbers of cash payment through withdrawal slips were made flouting all types of banking norms required for making such payment. In all the cash payment the amount in figure is penned down and written afresh below the original amount and there was no authentication on the withdrawal slip. The amount in figure and words differ in all the withdrawal slips. The details of the accounts where such irregularities exit are indicated below:

The above mentioned acts on the part of Shri Dambaru Dhar Barman constitute criminal offence apart from being acts of misconduct in service. Further Shri Barman has tarnished the image of the Bank besides causing pecuniary loss to the Bank to the loss of Rs. 41.08 lacs (approx). Shri Barman has failed to discharge his duties with diligence and honesty; rather he acted with malafide intention for his personal pecuniary gain.

Additional Charge No. 2

On 27.12.2007 the Bank sanctioned a House Building Loan to the tune of Rs. 7,50,000.00 under Direct Housing Finance Scheme to Shri Dambaru Dhar Barman for construction of his Residential building on a plot of land as described below. The said loan was disbursed from Maharipara Branch.

Dag No. : 416

Periodic Patta No. : 68

Area of Land : 1 Bigha 2 Kathas 10 Lechas

Village : Lakhopur

Mouza : Khetri Dharmapur

District : Nalbari, Assam.

The said Land stands in the name of Shri Dambaru Dhar Barman.

Shri Barman deliberately misutilized the loan amount and the irregularities in this respect are as under:

(A) On verification it is found that Shri Barman has not constructed the house on the plot of land mentioned above.

(B) On physical verification it is found that he has not utilized the entire loan amount of Rs. 7,50,000/- for the purpose for which it was sanctioned.

(C) By not utilizing the loan amount for the purpose of house construction Shri Barman has deliberately and willfully diverted the fund for any other purpose.

The above mentioned acts on the part of Shri Dambaru Dhar Barman constitute acts of misconduct in service apart from constituting the offence of fraud and cheating. Shri Barman has failed to discharge his duties with diligence and honesty; rather he acted with malafide intention for his personal pecuniary gain."

4. In response to the said additional charge sheet, the petitioner vide his Annexure-10 reply dated 24th October, 2009, while denying the charges stated thus:--

"(1) In respect of payment of 67 No. withdrawal as a CTO of rural Branch I had very little scope in the entire process, as because I have no authority to decide upon the mode of making payment against those withdrawal slips. As because only after the payment, I use to enter the withdrawal in computer.

(2) That sir, the facts remains that no of Account holder deposited their old aged pension cheques in our Branch at the time of collection, it was found that a sizeable No. of A/C holder''s Accounts were not entered in the computer system as because those A/Cs had no balance in their respective A/C or with a meager amount with longstanding inoperative in nature. After opening of the A/Cs by those beneficiaries they took cash payment from our Branch and thereafter for one and two years they took cash payment AG V Bank. Hence their A/Cs becomes inoperative. It was decided not to transfer those A/C to computer system by Branch Manager and person deputed with the tusk. After duly collected those cheques when it was found that some of them have no A/Cs in the computer. The Branch Management kept those in unlocated A/C. When the poor illiterate beneficiaries called on the Branch with their pre-written withdrawal slips with proper amount after deduction of collection charges. But they pleaded helplessness due to their illiteracy asked Branch Management to pay whatever was due from their cheque amount after deduction of necessary commission etc.

In view of compelling situation Branch Management decide to pay their dues as per their amount credited in the unlocated A/C and prepared a cash debit voucher for total amount of money claimed on that day and paid those pensioner individually. There were no A/C of those pensioners simply for record, the actual amount paid were written on the face of withdrawal slip and as a token of receipt thumb impression or signature whatever case may be were taken on the reverse of those slips. That was reason probably why the actually amount paid in some cases were higher than what was written in the slip.

On the other hand those pensioners who at that point of time had a account with the Branch but were nor keeping minimum balance, then- payment were made after keeping the minimum balance in their respective A/C.

I have only explained the situation under which the incident as described in the Charge No. 1 was occurred. But in this process as a CTO, I had no role to play and I had no role in flouting the banking norms as because when every thing was done and payment was made by preparing a cash debit voucher was entered in the computer and to tally the amount paid on the face of withdrawal slip and the actual amount paid were written as directed.

In case of payment, pensioner had account with the Branch management decided to make good of the minimum balance from their cheque amount and paid remaining amount to individually and that is why the actual amount paid to them were less than that of collected amount of the cheque and the remaining portion were kept as deposit their respective account as the actual amount paid were written on the face of the withdrawal slip, reason being their inability to write the altered amount. But as a token of receipt they have put their thumb impression or signature on the reverse of the slip. Thereafter the actual amount paid were posted in the computer after payment were made to depositors. I had no role flouting banks norms but acted as directed after payment were made.

In respect of Additional charge No. 2, I humbly beg to state that-

(a) I have constructed the house on the plot of land as described in the Charge sheet.

(b) It is true that I have utilized 85% of the disbursed amount but the construction could not be completed upto the extent of 100% due to hike in price of the construction materials.

(c) I have not diverted any fund to any where else, whatever spent were utilized for development of the plot and for the construction of the house.

In view of the above I beg to state that my house has been inspected twice by the bank officials and after being satisfied, installment were released. It is true that the construction of house is not yet completed, the reason being that the connecting roads to my house disrupted because of construction of bridge for long time and labour problem.

Over above mis, I have been kept out of service before 18 months from 1st disbursal of the loan. And this is a direct Housing Loan where my wife is also a co-borrower. Hence it is not a staff loan and it is frilly secured because on the plot of land, a house apart from the house under construction are in the same plot and the co-borrower my wife is also a teacher of a high school.

I also beg to state that in my construction site brick, sand and chips were stocked and wooden framed were also ready for utilization."

5. In due course enquiry proceeding followed and on conclusion of the enquiry, the Enquiry Officer submitted 2(two) independent enquiry reports in respect of both the charge sheets. While the first enquiry report is dated 17th August, 2009 and forwarded to the petitioner on 19th August, 2009, the second enquiry report is dated 11th December, 2009 and forwarded to the petitioner on 15th December, 2009. In both the enquiry reports, the Enquiry Officer recorded that the charges stood established against the petitioner.

6. On receipt of the enquiry reports, the petitioner responded to the same by filing his representations and thereafter, the disciplinary authority vide its Annexure-15 order dated 18th January, 2010 required the petitioner to submit representation against the enquiry reports. He was also allowed personal hearing if he would desire. The petitioner responded to the same by Annexure-16 representation dated 20th January, 2010. Thereafter, the disciplinary authority

vide its Annexure-17 order dated 1st February, 2010 having imposed the penalty of dismissal from service, the petitioner preferred the Annexure-18 appeal dated 11th March, 2010 before the departmental appellate authority, who in turn having dismissed the same vide the impugned appellate order dated 28th February, 2011 (Annexure-19), the petitioner invoked the writ jurisdiction of this Court by filing the instant writ petition.

7. While according to the petitioner, he was not at all responsible for the alleged misconduct on his part but according to the respondents Bank, the petitioner was fully responsible for illegal financial transactions and consequently, the disciplinary authority had to impose the penalty of dismissal from service.

8. According to the petitioner, the charge No. 1 apart from being vague, is also not attributable to him. The petitioner has contended that even the second charge also clearly indicated that he had to make payments to the agitated customers to nullify the misappropriation and pacify the said customers and there was no allegation of misappropriation against him. It is the further case of the petitioner that the penalty of dismissal from service imposed on him is wholly based on irrelevant consideration and application of perverse logic to evidence recorded in the enquiry proceeding.

9. The respondent Bank has filed the counter affidavit stating therein that the disciplinary proceeding was conducted against the petitioner in a fair and transparent manner and he was provided with all reasonable opportunity of being heard. It has also been stated that in the departmental proceeding, it was established that the petitioner had put his signatures on the pay slips of the Bank in the names of the customers, but there was no record of entering the amounts mentioned therein, rather the original amounts were scored off and new amounts were indicated/inserted by the petitioner. However, while doing so although there was alteration in figures but the words remained the same. The amounts so written by the petitioners on the withdrawal slips were not entered in the respective Registers of the Branch.

10. The petitioner has filed an affidavit-in-reply to the counter affidavit explaining the circumstances in which the amounts were rewritten. What the petitioner has contended both in the writ petition as well as in the reply affidavit is that he was not instrumental in misappropriation of Bank''s money and that whatever he had done was in good faith and the repayment of the amounts not deposited was on the request of the said Shri Karuna Kanta Das.

11. I have heard Mr. U.K. Nair, learned counsel for the petitioner and have also heard Mr. M.K. Misra, learned standing counsel representing the respondent Bank. I have also perused the entire materials on record including the disciplinary proceeding file.

12. Mr. Nair in his usual persuasive pursuits referring to the evidence on record submitted that no fault is attributable to the petitioner. According to him, the petitioner was made a scapegoat. As regards the refund of the amounts

misappropriated, he submitted that same was done as was asked by the other co-accused Shri Karuna Kanta Das and he did so on good faith.

13. As to what was the charges levelled against the petitioner has been noted above alongwith his defence statement When the first charge memo was issued to the petitioner on 16th April, 2009 alleging collusion with Shri Karuna Kanta Das, Head Cashier and being instrumental for making personal payment to the customers by receiving cash from Shri Karuna Kanta Das, the petitioner''s reply was that he had never colluded with Shri Das but being his colleague, on the strength of such relation, he had to assent to his request. He also stated that he had collected the amount at a particular place at Guwahati for onward repayment to the parties. His defence was that he simply collected the amount from Shri Das. In this connection, he also named the Branch Manager, one Shri A.K. Goswami.

14. Referring to the questions and answers of the witnesses in the enquiry proceeding, Mr. Nair, learned counsel for the petitioner submitted that the petitioner was not instrumental in misappropriation of any amount. In the enquiry proceeding held on 26th June, 2009, the Presenting Officer while submitting/exhibiting documents also exhibited as MEX-2 the letter dated 16th March, 2009, whereby the petitioner had admitted that he had deposited Rs. 2,25,000/- on 16th March, 2009 against the accounts of various parties. In the proceeding held on 7th July, 2009 when the defence representative questioned the Management, witness in respect of MEX-12 and what is the headline therein, the reply of the MW was "This is to certify that we have received claims from the following account holder of Maharipara branch of various dates whose amount were misappropriated/not deposited by Head casher/CTO" (petitioner being identified as CTO). In the proceeding held on 11th July, 2009, the defence witness, namely, Mr. Nitai Debnath, Proprietor of Jhuma Stores appearing as defence witness stated the following:--

"I have deposited Rs. 93000/- on 04.03.2009 and 07.03.2009 respectively in my CD a/c in the name of Jhuma Stores. But when I approach the Branch to withdraw money on 12.03.2009 it was found that above two deposits were not credited to my account till 12.03.2009. Then I inform the branch manager and he advised me give a written complain. On that day itself I telephonically contracted Mr. Karuna Das cashier of the branch to whom I was tendered money. In reply Mr. Das informed me due to mistake he did not deposited the money and he will refunded the same to me by some way. In my next telephonic call to Mr. K.K. Das I could not contract him but his wife told me that I need not worry and money will be refunded to me. Thereafter on 13.03.2009 as assured by them as per direction of Branch manager Mr. Goswami in presence of all staff of the Branch Mr. D Barman refunded me 93000/- which was sent to me through Mr. D. Barman by K.K. Das as assured earlier. In respect of cash transaction of the Branch I always dealt with Mr. K.K. Das the cashier of the Branch and I have not seen any body as cashier other than Mr. K.K. Das in my legacy with the branch."

15. Similarly in the proceeding held on 16th July, 2009, another defence witness, namely, Shri A.K. Goswami, when questioned by defence representative as to whether he had met me wife of Shri Karuna Kanta Das at the particular place, he replied:

"I met wife of Mr. K.K. Das along with the Boy and have been informed that she had handed over the amount of Rs. 225000/- to Mr. barman for returning of customers money and the rest amount will be returned subsequently." 16. Although much was argued in reference to additional charge No. 1 involving the purported distorted amounts/altered for payments (altogether 67 transactions) that the amounts taken together do not come to Rs. 41.08 Lakhs as pointed out in the charge, however, on perusal of the statement of allegation immediately after the entire charge of distorted amounts (ending at serial No. 67), it is found that there are 2(two) parts, namely, attribution to the petitioner of criminal offence and misconduct for the distortion/alteration and secondly, tarnishing the image of the Bank besides causing pecuniary loss to the tune of Rs. 41.08 Lakhs (Exhibit-12). Exhibit-12 is the certificate of the Branch Manager, Maharipara Branch dated 20th June, 2009 certifying receipt of claims from 23 7 account holders of Maharipara Branch, whose amounts were misappropriate/not deposited by the Head Cashier/CTO, i.e. the petitioner. In the first enquiry report referring to the refunded amount of Rs. 2,25,000/- by the petitioner, the Enquiry Officer also referred to two documents. Mex-1 to MEX-12, which were examined through the Management witness one Shri A.N. Naskar, Branch Manager, Maharipara Branch. MEX-2 is the letter dated 16th March, 2009, whereby the petitioner admitted that he had deposited Rs. 2,25,000/- on 16th March, 2009 against the accounts of various parties.

17. Referring to the charge No. 1, the Enquiry Officer has held thus:--

"Charge No. 1:

With regards to Charge No. 1 much discussion is not required as this charge can be proved on basis of Charge 2 which is interlink with Charge No. 1. It is an feet that on 16.03.2009 Mr. D.D. Barman deposited Rs. 225000/- in the account of a few account holders namely

It is an admitted fact in the Enquiry that various amounts were received by Sri K.K. Das from the above account holders on various dates. If such amounts were received by Sri K.K. Das why did Mr. Barman returned the said money to the said customers if he had no collusion or link with Mr. K.K. Das. It indicates that Mr. Barman was well aware of the misdeeds of Sri K.K. Das. No person with ordinary prudent without having any personal interest would do such thing.

I am therefore inclined to hold the view that Mr. D.D. Barman had collusion with Sri K.K. Das in misappropriating customer''s money. And therefore Charge No. 1 is held as proved without any doubt."

18. As regards the charge No. 2 while detailing with the amount of Rs.

2,25,000/-, the Enquiry Officer when found that all the amounts totalling to Rs. 2,25,000/- was received by Shri Karuna Kanta Das by putting his seal and signatures in the counterfoils but did not deposit in the Bank''s coffer but later on deposited by the petitioner on 16th March, 2009 (Mex-2) found the petitioner guilty of the charge. In this connection, the Enquiry Officer has also referred to the statement of the previous Branch Manager, namely, Shri A.K. Goswami, who had attended the enquiry as defence witness on behalf of the petitioner. If it was the Head Cashier, namely, Shri Karuna Kanta Das, who alone had misappropriated the amounts by not depositing in the respective accounts inspite of receipt of the amounts and providing counterfoils with due signatures, the question necessarily arises as to why the petitioner withholding the said fact re-deposited the amounts. Even if the story of receiving the amounts from Shri Das and re-depositing the same in the respective accounts just to help Shri Das is accepted, then also collusion with Shri Das is clearly established leading to breach of discipline by the said conduct of the petitioner.

19. As regards the second enquiry report dated 15th December, 2009, it is an admitted fact that there was ctistortion/alteration of the original amounts filled in by the depositors in the withdrawal slips and such alterations were done by none other than the petitioner. The second enquiry report has mentioned 67 transactions with the alterations/distortions. Although the petitioner tried to defend such alterations/distortions on certain technical grounds but the same could not have been done without authentication of the depositors. There was also no change in the words in respect of the amounts, but only figures were changed. Exhibits Mex-1 to Mex-67 are the withdrawal slips clearly indicating alteration of the original figures and as has been admitted, such alterations were only by the petitioner. MEX-2 is a document in which the petitioner with his clear signature with the date as 16th March, 2009 clearly admitted the following:--

Sd/- Illegible (D.D. Barman) 16.3.2009"'

20. In Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , the Apex Court held that a Bank Officer having regard to the nature of duty involved, should act with utmost integrity, honesty, devotion and diligence and should do nothing unbecoming of a Bank Officer. As held in the said case, a Bank Officer acting beyond his authority, even if not causing any loss to the Bank is nonetheless committing an act of misconduct In the said case, the Apex Court was also concerned with the imposition of penalty/punishment and the judicial interference thereof. It was held that the punishment imposed by the disciplinary authority unless shocking to the conscience of the Court is not subject to judicial review.

21. In Narendra Nath Bhalla v. State of Uttar Pradesh and Ors. reported in (2007) 15 SCC 775, the Apex Court was concerned with the charges of misappropriation of money and using false receipt on plain papers. When the said charges were found proved against the appellant in the departmental enquiry, the Apex Court held that the punishment of dismissal from service was

not too harsh, having regard to the nature of charges, although the money misappropriated was given back by the appellant.

22. In the instant case, the petitioner was with the Bank job of trust and responsibilities, which he betrayed by his conduct referred to in the charges levelled against him. Although he tried to justify his action relatable to the charges with the plea of helping his colleague with innocent motive but unless he himself was involved in the transactions, more particularly, the ones relatable to alteration of the amounts in the withdrawal slips, such transactions would not have been possible. As noted above, it was the duty of the petitioner to inform the Bank Management about the return of the amounts by Shri Karuna Kanta Das to him (even if it is believed) but instead he was more concerned with his colleague than the Bank and its customers. MEX-12 is the documents pertaining to the claims received from as many as 237 customers of Maharipara Branch in which the petitioner had been working. Such claims pertain to various dates on which amounts were deposited but not accounted for. The amount stood at Rs. 41 Lakhs (approximate).

23. Apart from the findings recorded by the Enquiry Officer referring to all the evidences on record, the disciplinary authority also independently considered the materials on record while passing the detailed order of penalty. On appeal, the appellate authority also discussed the relevant materials on record and passed the impugned appellate order. I see no reason to interfere with the said findings of fact. It is not the case of the petitioner that the findings recorded by the Enquiry Officer, disciplinary authority and the appellate authority are perverse and/or based on no evidence at all. Needless to say that it is only when findings are found perverse or based on no evidence, the writ Court exercising its power of judicial review is entitled to interfere with such findings. Even insufficiency of evidence cannot be a ground to interfere with such findings. It is the preponderance of probability, which matters in a departmental proceeding, unlike a criminal proceeding where the test is "beyond all reasonable doubt".

24. It will be pertinent to mention here that during the course of hearing, it was submitted by Mr. Misra, learned counsel representing the Bank that pursuant to the departmental proceeding, pertaining to the same incident, both Shri Karuna Kanta Das and Shri A.K. Goswami, who appeared on behalf of the petitioner as defence witnesses, have also been dismissed from service. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed without, however, any order as to costs.

