(2013) 01 GAU CK 0064

In the Gauhati High Court

Case No : Writ Petition (c) No. 5484 Of 2003

Debashish Bhattacharjee APPELLANT

Vs

Vijaya Bank And Ors RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Indian Penal Code, 1860 — Section 409
Constitution Of India, 1950 — Article 14, 19, 21

Citation : (2013) 01 GAU CK 0064

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This writ petition was filed way back in 2003 (21.07.2003) chall enging the disciplinary proceeding that was initiated against the petitioner vid e charge sheet dated 04.09.2002 (Annexure-X); enquiry report dated 03.03.2003 (A nnexure-XVII) and Annexure- XIX notice dated 24.06.2003 proposing the penalty of compulsory retirement from service with superannuation benefits and without dis qualification for further employment. The petitioner approached this Court witho ut responding to the Annexure-XIX notice proposing the particular penalty. While entertaining the writ petition by order dated 22.07.2003, the proposed penalty vide order dated 24.06.2003 (Annexure-XIX) was stayed and consequently the writ petitioner remained in service all these years.

2. On perusal of the order sheets, it appears that after the said order dat ed 22.07.2003, the matter was listed on four occasions in the year 2003 and on o ne occasion in 2004 (31.04.2004). Thereafter the matter was never listed for lon g more than five years. It was listed on 21.07.2009 and thereafter on 02.03.2010. The matter was again listed on 30.09.2010 on which date none appeared for the petitioner and the Court was inclined to dismiss the writ petition for non-prose cution and in default with the following order:

None appears either for the petitioner or for the respondents. No cause has als o been shown for the non-appearance. As the matter has been pending since 2003 a nd on perusal of the case records, it has been ascertained that no positive step s have been taken by the learned counsel, except adjourning the case. Today also , when the case is called up, none appears for the parties. No cause has also be en shown. This court is left with no other option but to dismiss it. Accordingly , this writ petition is dismissed for non-prosecution and in default.

3. The writ petition was restored to file nearly two years thereafter by or der dated 06.08.2012 passed in Misc. Case No. 1974/2012. After such restoration of the writ petition, the petitioner filed Misc. Case No. 2998/2012 with the pra yer for direction to the respondent Bank to pay the subsistence allowance to the petitioner stated to be withheld from May, 2012. It will be pertinent to menti on here that after initiation of the impugned departmental proceeding another pr oceeding was initiated against the petitioner and by order dated 30.11.2004, the penalty of censure was imposed which was challenged by the petitioner by filing the writ petition being W.P.(C) No. 3363/2005. The said writ petition is still pending for adjudication. The third incident in which the petitioner is involve d is the alleged financial irregularity committed by him worth of Rs. 2,60,640/-. Relating to said incident and on the basis of the FIR lodged by the respondent Bank, Silchar P.S. Case No. 1857/2009 has been registered under Section 409 IPC in connection with which the petitioner was arrested and subsequently was enlar ged on bail.

4. Pursuant to such involvement of the petitioner in the criminal case and his arrest, he was placed under suspension w.e.f. 25.09.2009. Since his subsiste nce allowance was stopped from May, 2012, he filed the said Misc. Case No. 2998/ 2012 with the prayer for granting the same. This prayer will have to be consider ed in the context of the fact that pursuant to the impugned proceeding, the peti tioner has already been imposed with penalty of compulsory retirement vide orde r dated 30.04.2012. This order was passed when the instant writ petition was no longer surviving in view of its dismissal by the above quoted order dated 30.09.2010. Learned counsel for the petitioner submitted that since the said order ha s been recalled and the writ petition has been restored to file, compulsory reti rement imposed on the petitioner vide order dated 30.04.2012 can no longer exist and the petitioner should be deemed to have continued in service and consequently will be entitled to subsistence allowance. Be it stated here that the petiti oner has not challenged the order dated 30.04.2012 by which he has been imposed with the penalty of compulsory retirement pursuant to the proceeding impugned in this proceeding.

5. I have heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. S.K. Medhi, learned counsel for the petitioner as well as Mr. P.N. Choudhury, couns el representing the respondent Bank. I have also perused the entire materials re lating to the impugned enquiry proceeding.

6. The petitioner was appointed in the respondent Bank as Clerk cum Typist in 1981. While he was serving at Golaghat Branch of the Bank, he was served with

Annexure-X charge sheet dated 04.09.2002 with as many as 8 (eight) charges rela ting to a particular incident which occurred in the Bank on 06.07.2001 which the petitioner has described in the writ petition as a minor event. The said event in the own description of the petitioner in paragraph-5 is quoted below:

5. That your petitioner states that on 06.07.2001 while he was posted at the Go laghat Branch, Shri Dipmoni Gogoi, a valued customer of the branch having an S.B. A/C as well as an LMV A/C (vehicle loan A/C) came rushing to the bank stating that he was in urgent need of money of an amount of Rs. 15,000/- as his Maruti G ypsy had met with an accident. In his S.B. A/C No. 5629, the balance available w as little over Rs. 5,000/- and for further Rs. 10,000/-, he requested your petit ioner go give him advance by adjusting with his LMV A/C which was regularly main tained by the customer. Your petitioner on such request gave an advance of Rs. 1 0,000/- to the customer from his LMV A/C after taking a written undertaking date d 06.07.2001 and with information to the Branch Manager. It may be mentioned tha t within a week, the said customer repaid the amount which was accordingly adjus ted.

7. As stated in the writ petition, the aforesaid action of the petitioner w as not approved by the Branch Manager and accordingly the petitioner submitted A nnexure-II letter dated 10.07.2001 to the Assistant General Manager, Vijaya Bank , Regional Office, Rehabari, Guwahati. In the said letter the petitioner admitte d that there was irregularity in the particular transaction and he prayed for no t to pursue the matter any further. For a ready reference, the said letter dated

10.07.2001 is quoted below:

From : Debashish Bhattacharji

Clerk, Code 11242, Golaghat

To

:

The Assistant General Manager,

Vijaya Bank, Regional Office

Rehabari, Guwahati

Sub:

An appeal for transfer to any branch in the Region.

Dear Sir,

With due respect and humble submission I beg pardon for incident that had occurr ed only for my open missing and believe with customer. I am very much ashamed an d promise that I would never do such type of act injuring my beloved institution s and family. I had no other way to adjust the cash that I paid to the party, as his Zipsy had met an accident for which, he needed money immediately but he ret urned on 9th July. I had no intention to defraud my institution and never I did and never I would do. So, I pray your highness to give a last chance considering my family and children by dropping further action that would definitely snatch my service.

I also pray your highness to get me transfer to any other branch of the Region s o that I myself rectify. For doing such action of yours, I alongwith my children would remain ever grateful.

Yours faithfully,

Sd/-

8. When the Assistant General Manager to whom the petitioner made the above quoted representation sought for report from the Golaghat Branch of the Bank, the particular customer, namely Shri Dipmoni Gogoi by his Annexure-III letter dat ed 14.07.2001 stated that on 06.07.2001 he had gone to the Branch to draw Rs. 15 ,000/- from the SB A/C No. 5269, but the balance was only Rs. 5000/-. He then re quested the petitioner to ask the Branch Manager to transfer Rs. 10,000/- from h is LMV A/C No. 20/99 to the said SB Account. However, the Branch Manager told th e petitioner and the customer that the same was not permissible. In the letter t he customer further stated that the petitioner made the payment by over draft fr om the SB Account as the transfer was not done from the LMV Account. By the sai d letter, the customer also informed that the amount that was over drawn had bee n deposited in the SB Account. The said letter dated 14.07.2001 (Annexure-III) i s reproduced below:

From : Shri Dipmoni Gogoi

C/o. Shri Rejendra Nath Gogoi,

Rangajan

To

:

The Assistant General Manager,

Vijaya Bank, Regional Office

Guwahati

Sub:

Payment of Rs. 10,000/- from my S.B. a/c. 5269

Dear Sir,

I like to draw your attention to the following matter.

On 06.07.2011, I went to your Golaghat Branch to draw Rs. 15,000/- from my S/B a /c 5269. But the balance was only Rs. 5000/-. I requested cash officer D. Bhatta charjee to ask Branch Manager to transfer Rs. 10,000/- from my LMV a/c no. 20/99 to my S.B. a/c 5269 Bhattacharji da along with the LMV register approached the Branch Manager who told it cannot be done by him as he is not permanent here. It very much required may do so on Bhattacharjee da's own risk. My Gypsy car had an accident the cash was required to meet the immediate experience of the car. Cash was arranged by Bhattacharjee da. On 9th July Bhattacharjee told me how he arranged the payment the overdrawing was occurred due to non-transfcer of Rs. 10 ,000/- from LMV a/c.

Today that is, on 13th July I deposited the cash to my S.B. a/c.

I really feel sorry as for my needs it could happened, I also request you not to think as it could happen only for communication gap Mr. Bhatta da is a man of utmost good faith amongst all of the other staff as I believe.

Yours faithfully,

Sd/-

9. As against the aforesaid story of the petitioner made out in the writ p etition, the Branch Manager by his Annexure -IV letter dated 18.07.2001 addresse d to the Assistant General Manager of the Bank of its Regional Office, Guwahati furnished the actual fact relating to the said incident as follows:

To,

The Asstt. General Manager, Vijaya Bank, Regional Office, Guwahati

Sub: STAFF MATTER - REF: REGIONAL OFFICE LETTER

NO. GRO:PER: MGK: 4616/2001 DATED 14.07.2001

IN RESPECT OF SHRI DEBASHISH BHATTACHARJEE,

CLERK, CODE NO. 11242

With reference to the above letter, we are furnishing herewith the detailed repo rt as sought by you.

Shri Bebashish Bhattacharjee, Clerk, Code No. 11242, is the senior most clerk, w ho is officiating as Special Assistant in the branch since October, 2000. And, s ince then he is working in the Savings Bank, Current Account, Overdraft and Cash Credit sections as the in charge. On 06.07.2001, a withdrawal slip (loose cheque) bearing No. 339709 was passed fraudulently by Mr. Bebashish Bhattacharjee. Th e modus operandi of the transaction was as follows: Being the in charge of the s ection, he took a withdrawal slip himself, entering in the loose cheque issued r egister against Savings Bank account No. 5269 of Shri Dip Moni Gogoi. Then he en tered it in the Token Scroll Register against the Token No. 57 for Rs. 10,000/-Rupees Ten Thousand Only). Subsequently, he posted it in the

Savings Bank ledger , when the actual outstanding balance of the particular account was Rs. 274/- (R upees Two Hundred Seventy Four) only. It is to be noted that on 06.07.2001, the actual balance of the particular account was Rs. 5,274/- (Rupees Five Thousand T wo Hundred Seventy Four) only. In the beginning of the day, i.e. 06.07.2001, a l oose cheque No. 339700 for Rs. 5,000/- (Rupees Five Thousand) only was presented across the counter by the account holder himself, thereby reducing the actual b alance to Rs. 274/- (Rupees Two Hundred Seventy Four) only. In order to make the fraudulent debit of Rs. 10,000/- he inflated (altered) the Balance as on 27.06. 2001 to Rs. 15,274/- (Rupees Fifteen thousand two hundred seventy four) only whi ch was actually Rs. 5,274/-) by putting 1 on the left side of Rs. 5,274/-, and a lso the balance as on 06.07.2001 as Rs. 10,274/- (when the actual balance was Rs. 274/- only.

As the officer's cash scroll was maintained by him, he entered it in the officer 's cash scroll also and passed it to the cash cabin. Later, it was found that th ere also Shri D. Bhattacharjee had entered the amount in the Cashier's Cash Scro ll and denominations of payment were noted on the reverse of the withdrawal slip by Mr. Bebashish Bhattacharee himself.

The Savings Bank Sub-day is usually written by Mr. Naren Kumar Handique, but tha t day, i.e. 06.07.2001, Mr. Debashish Bhattacharjee wrote the subday himself. All the activities compelled us to verify the situation and therefore a Xerox co py of the withdrawal slip was taken for further observation. Subsequently, it wa s observed that the signature on the withdrawal slip apparently differed from th at of the specimen card.

The following day the vouchers were given for updating the daybook. In the eveni ng it was observed that another signature was found to be signed on the particul ar withdrawal slip No. 339709 below the earlier signature which tallied with the signature on the specimen card.

Then the employee was questioned about the malpractice committed by him to which he admitted orally of his involvement in the said malpractice. Subsequently, th e employee was advised to regularise the account immediately. The said account was regularised on 13.07.2001.

We are enclosing herewith copies of all the relevant documents and records avail able in connection with the above mentioned malpractice committed by Shri Debash ish Bhattacharjee for your reference and necessary action.

Sd/-

Branch Manager

10. By Annexure-VI letter dated 28.01.2002, the Investigating Officer of the Bank asked the petitioner to furnish his written statement in respect of the charge of fraud committed by him which is as follows:

On 06.07.2001, a withdrawal slip bearing No. 33909 was passed fraudulently by y ou and payment was effected by Rs. 10,000/- (Say Rs. Ten Thousand only). In S.B. a/c 5269 of Shri Debashish Gogoi. The balance outstanding in the a/c as on the time of passing cheque is only Rs. 274/- (say Rs. Two Hundred Seventy Four only).

The various stages of the transaction such taken issuing ledger passing, passing the cheques for payment and finally authorising for payment is effected by you. We have the reason to believe that even the amount taken of the figures and documents relating to said transaction is done yours.

11. Alongwith the report, the petitioner has also enclosed Annexure-VIII le tter dated 28.02.2002 addressed to the Branch Manager by the particular customer in which he categorically stated that an amount of Rs. 10,000/- was withdrawn b y the petitioner in his absence by forging his signature. The said letter is also quoted below:

To,

The Branch Manager,

Vijaya Bank, Golaghat

Dated 28.02.2002

Sir,

With due respect that on 24th May, 2001 I gave loan of Rupees Ten thousa nd for our week to Vijaya Bank employee Ms. Bebashish Bhattacharji. When I asked for refund of the money from him after about 1 month, he forged my signature an d withdraw Rupees ten thousand from my LMV A/C 20/99 and gave to me. After few d ays he took my signature in a deposit slip of the Bank for Rs. 10,000/- but I don't know whether it is a procedure of the Bank or not.

Shri Bhattacharjee at first asked the Branch Manager, Mr. Baruah to tran sfer the amount from LMV a/c 20/99. But the branch Manager Mr. Baruah did not ta ke the responsibility and if Bhattacharjee took the responsibility then the wrid rawal from the LMV A/C could be made. And for that purpose Shri Bhattacharjee by forging my signature in my absence withdrew Rupees ten thousand (10,000/-) to give to me. In this case, I am not responsible for any violation of the rules of Bank.

Yours faithfully,

Shri Deepmoni Gogoi

Rangajan Tiniali,

P.O. Morongi,

Dist. Golaghat, Assam

12. By Annexure -IX written statement dated 11.02.2002, the petitioner intim ated the Investigating Officer that an amount of Rs. 10,000/- was withdrawn by h im stating that the same was consented to by the Manager of the Bank. It was sta ted that since the Cashier was busy he did the job as per the request. It was fu rther stated that he had requested the customer to come later on to do the bank formalities, but the customer came only on 09.07.2001. In the said written stat ement, the petitioner further stated that he had no knowledge about the balance in the Savings Bank account, but on intimation the customer had cleared the same. According to the petitioner, transaction was done under the pressure of works. The aforesaid developments led to issuance of Annexure-X charge sheet dated 04.09.2002 with as many as eight allegations which are reproduced below.

1. Your action in borrowing a sum of Rs. 10,000/- from Shri Dip Moni Gogoi on 2 4.05.2001 without seeking prior permission from the competent authority of the B ank amounts to doing an act in contravention of the provisions laid down in HO C ircular No. 113/97 dated 23.06.1997 and hence the same constitutes an act of gro ss misconduct within the meaning of sub clause (e) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966.

2. Your action in issuing the withdrawal slip No. 339709 to yourself against SB A/ c. No. 5269 on 06.07.2001 in the absence of the accountholder at the branch wi th a malafide intention of withdrawing cash fraudulently from the branch through the above said SB a/c. amounts to doing an act in violation of the provisions l aid down in HO Circular No. 223/91 dated 21.10.1991 and clause No. 1.97 of Manua l of Instructions Deposits, 1995-96 and hence the same constitutes an act of gross misconduct within the meaning of sub-clause (e) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966.

3. Your action in filling up the particulars on the withdrawal slip No. 339709 i n your on hand writing, affixing forged signature of the account holder of SB A/ c. No. 5269 therein and finally fraudulently withdrawing an amount of Rs. 10,000 /- from the branch through SB A/c. No. 5269 on 06.07.2001 amounts to misusing yo ur official position in the bank and doing an act which is prejudicial and detri mental to the interest of the Bank and hence the same constitutes an act of gros s misconduct within the meaning of sub-clause (j) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966.

4. Your action in manipulation the balance figures in the SB ledger by inflating the credit balance to the extent of Rs. 10,000/- on 27.06.2001 and 06.07.2001 in SB A/c. No. 5269 so as to enable you to pass the withdrawal slip No. 339709 fo r cash payment in an unfair manner amounts to tempering with the official record s of the branch which is prejudicial to the interest of the Bank and hence the s ame constitutes an act of gross misconduct within the meaning of sub-clause (j) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966

5. Your action in passing the withdrawal slip No. 339709 dated 06.07.2001 for

Rs. 10,000/- drawn on SB S/c. No. 5269 for cash payment notwithstanding the fact t hat the credit balance available in the SB A/c. No. 06.07.2001 was not sufficien t to honour the said withdrawal slip and signature of the drawer purportedly aff ixed on the said withdrawal slip was not tallying with the specimen signature of the drawer available on the record of the branch amounts to doing an act in vio lation of the provisions laid down in HQ Codified Circular No. 58/93 dated 27.04.1993 and clause No. 1.89(a) of Manual of Instructions-Deposits, 1995-96 and he nce the same constitutes an act of gross misconduct within the meaning of sub-cl ause (e) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966.

6. Your action in unauthorisedly entering the particulars relating to withdrawal slip No. 339709 dated 06.07.2001 for Rs. 10,000/- before and after fraudulent encashment of the withdrawal slip in certain relevant records/registers which are to be handed by other staff members of the branch amounts to doing an act in vi olation of the job allocation made by the higher authority and with an ulterior motive of concealing your misdeed from the notice of other staff members and off icials of the branch which is prejudicial to the interest of the Bank and hence the same constitutes an act of gross misconduct within the meaning of sub-clause (j) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966.

7. Your action in managing to get the genuine signature of the account holder of SB A/c. No. 5269 affixed on the paid withdrawal slip No. 339709 dated 06.07.2001 for Rs. 10,000/- subsequent to passing of the said withdrawal slip for cash pa yment with a view to giving an impression that the accountholder himself had wit hdrawn a sum of Rs. 10,000/- from his SB A/c. No. 5269 on 06.07.2001 amounts to making an attempt to conceal your involvement in the fraud and tampering with th e official records of the branch which is prejudicial to the interest of the Ban k and hence the same constitutes an act of gross misconduct within the meaning o f sub-clause (j) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966.

8. Your action in deriving undue pecuniary benefits to the extent of Rs. 10,000/ - by fraudulently withdrawing the said amount from the branch on 06.07.2001 thro ugh SB A/c. No. 5269 of the customer amounts to tarnishing the image of the Bank in the eyes of the customer/public which is also prejudicial to the interest of the Bank and hence the same constitutes and act of gross misconduct within the meaning of Sub-clause (j) of clause 19.5 of Chapter XIX of the Bipartite Settlem ent, 1966.

13. In response to the said charge sheet the petitioner submitted his writte n statement of defence denying the charges levelled against him. In paragraphs 2 , 3 and 5 he made the following statements.

2. I had no malafide intention of withdrawing cash fraudulently from SB A/c. No. 5269 as alleged in the charge sheet. Infact, it was only due to the insistence of the said SB A/c holder to meet his emergency due to road accident the said a

mount was drawn hurriedly. The incident was well within the knowledge of the In-charge Branch Manager, Mr. Barua who directed me to somehow help the party to meet his emergency as the latter happened to be well wisher of our Bank/ Branch.

3. The signature on the withdrawal slip under reference was not a forged one. It was signed by the concerned account holder in a hurried manner due to the reasons that he met with an accident and his vehicle was severely damaged and he want ed money urgently. He signed the withdrawal slip under reference on tensed up re stive condition.

5. In my eagerness to help the customer under reference I made immediate cash p ayment to him after obtaining his signature in the withdrawal slip. However, sin ce the signature of the customer did not tally with the signature on the record of the Branch I have obtained one more signature from him subsequently which tal lied with the signature of the Branch record. Further, as I was very busy and th e customer under reference wanted cash immediately I did not scrutinize the conc erned ledger on the spot. But later it was found that there was no sufficient ba lance and hence the said account was overdrawn to the extent of Rs. 10,000/-. It was only due to my anxiety to help the customer at the time of need this over-d rawing did occur in the account.

14. On perusal of the above statements made by the petitioner in response to the charge sheet, what is transpired is that the petitioner has virtually admitted the charges explaining the same in reference to the alleged emergent situa tion. Be that as it may, in due course the departmental enquiry was held in whic h the petitioner was assisted by a defence representative. On conclusion of the enquiry proceeding, the enquiry officer submitted his enquiry report on 03.03.20 03 vide his forwarding letter dated 07.03.2003 (Annexure-XVII) holding the petit ioner guilty of the charges. On receipt of the copy of the enquiry report and o n being asked, the petitioner made his Annexure-XVIII representation dated 01.04.2003 against the same. Thereafter, the disciplinary authority issued the impugn ed Annexure-XIX notice dated 24.06.2003 asking the petitioner to furnish his rep ly to the proposed penalty of compulsory retirement from service of the Bank wit h superannuation benefits and without disqualification from future employment. A s noted above, it was at that stage the petitioner invoked the writ jurisdictionof this Court without responding to the said notice and by virtue of the interi m order operating in this proceeding for all these years, he was still in servic e till the compulsory retirement was imposed on him by the aforesaid order dated 30.04.2012 which according to the petitioner is non existent in view of restoration of the writ petition subsequently.

15. According to the petitioner, the impugned departmental proceeding is abs olutely farce and ought not to have been initiated on the basis of the particula r transaction which eventually did not result in any loss to the Bank. It is the stand of the petitioner that whatever he had done was on good faith without an y ill intention. Mr. K.N. Choudhury, learned Sr. counsel for the petitioner referring to

the enquiry proceeding submitted that there is absolutely no evidence t o sustain the charges against the petitioner and that the matter has been blown out of proportion and that it is not a case for initiation of departmental proce eding. However, he fairly submitted there might be some negligence on the part of the petitioner, but the same cannot entail penalty of compulsory retirement. A ccording to him, the customer, i.e. the key witness, having not been examined i n the enquiry, the enquiry proceeding is vitiated. He submitted that the affidav it submitted by the customer, copy of which has been annexed to the writ petitio n as Annexure-VII, ought to have been accepted by the enquiry officer for the pu rpose. He submitted that when the affidavit was not accepted by the enquiry offi cer in absence of the customer, same very principal ought to have been followed in respect of the particular document MEX 17, a letter from the customer as he w as not present in the enquiry proceeding to identify the said letter. Referring to the enquiry report he submitted that the petitioner was deprived of submissio n of his written argument.

16. As against the aforesaid submission made by the learned counsel for the petitioner, Mr. P.N. Choudhury, learned counsel representing the Bank submitted that this Court sitting in writ jurisdiction cannot reappreciate the evidence on record so as to give a different finding. He also submitted that there being no allegation of causing any prejudice to the petitioner in the enquiry proceed ing and the enquiry having been conducted in a just and fair manner, the enquiry proceeding and the impugned notice indicating the proposed penalty are not liab le to be interfered with. He also submitted that the petitioner having already b een imposed with the penalty of compulsory retirement and the said order being not under challenge, this writ petition is liable to be dismissed.

17. Mr. K.N. Choudhury, learned Sr. counsel appearing for the petitioner dur ing the course of his argument placed reliance on the two decisions of the Apex court as reported in AIR 1957 SC 882 (Union of India vs. T.R. Varma) and (1970) 1 SCC 709 (State of Assam and anr. vs. Mahendra Kumar Das and ors.) . The said t wo decisions have been relined upon to substantiate the submission that no mater ials should be relined on against the delinquent without giving an opportunity o f explaining them.

18. Throughout the writ petition there is no allegation of any procedural ir regularity in conducting the enquiry. What the petitioner has contended in the writ petition is that the enquiry report was prepared in a manner most prejudici al to the interest of the petitioner and that the enquiry proceeding could not h ave been initiated on the basis of the purported letter addressed to the Bank by the particular customer. It has also been contended that there being no malafid e intention on the part of the petitioner in respect of the transaction in quest ion and he having had 22 years of dedicated service, the proposed penalty of com pulsory retirement is totally uncalled for. The petitioner has also referred to non-acceptance of the affidavit submitted by the customer and written brief that was allegedly submitted by him. But while contending so, the petitioner has not even

obliquely referred to any prejudice, if any, that was caused to him. The b asic thrust of the case is that the particular incident being a minor one and th ere being no malafide intention on the part of the petitioner, the impugned proc eeding ought not have been initiated. However, as noted above, Mr. Choudhury, le arned counsel for the petitioner during the course of his argument fairly admitt ed that there might be some amount of negligence on the part of the petitioner, but the same cannot entail the major penalty of compulsory retirement.

19. As to what are the charges against the petitioner has been noted above. His reply to the charges has also been noted. The only defence advanced by the p etitioner is that he had allowed the overdrawal to meet the emergent situation a s was disclosed by the customer. But the real fact is as has been discussed in the above quoted Annexure-V letter dated 18.07.2001.

20. At the time of the incident the petitioner was the senior most clerk of the Branch officiating as Special Assistant. On 06.07.2001, a withdrawal slip (l oose cheque No. 339709) was passed by him fraudulently. Being the in-charge of t he Section, he took the withdrawal slip himself entering into loose cheque issue register against Savings Bank Account of the customer. He then entered the same in the token scroll register against Token No. 57 for Rs. 10,000/-. Subsequentl y he deposited the same in the Savings Bank ledger although the actual outstandi ng balance in the account was only Rs. 274/-. It is to be noted that on 06.07.20 01, the actual balance of the particular account was Rs. 5,274/-. In the beginni ng of the day of 06.07.2001, the loose cheque mentioned above for Rs. 5000/- was presented across the counter by the account holder himself by which the actual amount got reduced to Rs. 274/-. In order to make fraudulent debit of Rs. 10,000 /-, the petitioner inflated/altered the balance as on 06.07.2001 to Rs. 15,274/-which was actually Rs. 5,274/-, thereby showing the balance as Rs. 10,274/- although the actual balance was Rs. 274/- only.

21. It will be pertinent to mention here that cash scroll was maintained by the petitioner in which he entered the transaction and passed the same to the ca sh cabin. Upon verification, it was found that the signature bearing in the with drawal slip was not of the customer. However, subsequently, the actual signature of the customer was obtained below the earlier signature. Being asked, the peti tioner admitted orally of his involvement in the malpractice. Subsequently, the account was regularised on being advised. As per letter dated 28.02.2002 address ed to the Bank by the customer (Annexure-VIII), the petitioner had fraudulently withdrawn Rs. 10,000/- from his LMV Account No. 20199 and gave it to him towards repayment of the loan of Rs. 10,000/-. That was taken by the petitioner from th e said customer. Thereafter, the petitioner obtained his signature in a pay in s lip for depositing Rs. 10,000/-. In the process, there may not be any financial loss to the Bank, but the manner in which the petitioner carried out the transac tion forging the signature of the customer, cannot be viewed lightly. The Bank b eing a financial institution cannot give indulgence to such activity on the part of its employee which has a potential of exposing the

Bank to financial loss an d lack of faith on the Bank. In fact, as noted above, besides this departmental proceeding, the petitioner was involved in another departmental proceeding and p resently a criminal proceeding is pending pertaining to financial loss to the Bank.

22. As has been held by the Apex Court in Municipal Committee, Bahadurgarh v s. Krishnan Bihari and ors. reported in (1996) 2 SCC 714, quantum of amount misa ppropriated is not relevant. The amount misappropriated may be small or large, i t is the act of the misappropriation that is relevant. In that case, the delinqu ent was imposed with penalty of dismissal from service which the Apex Court uphe ld.

23. In another decision in Additional District Magistrate, City, Agra vs. P rabhakar Chaturvety and anr. reported in (1996) 2 SCC 12, the Apex Court uphel d the order of dismissal from service with charges of temporary misappropriation of an amount of Rs. 21,000/-. It was held that mere non supply of enquiry offic er's report to the delinquent could not have led to annulment of the order of di smissal, more particularly when the delinquent did not show any prejudice because of non supply of enquiry report.

24. It has been held in Canara Bank vs. V.K. Awasthy reported in AIR 2005 SC 2090 that in absence of any ground of prejudice or violation of the principle of natural justice either in the memorandum of appeal or in the time of hearing b efore the appellate authority, the order of punishment imposed on the Bank emplo yee was not liable to be interfered with. As in the instant case, in the said ca se also the respondent was a Bank employee. The charges levelled against him wer e proved in the enquiry. It was found that the bank employee failed to discharge his duty with utmost integrity and devotion and his acts were prejudicial to th e interest of the Bank. The Apex Court dealing with the plea of violation of pri nciples of natural justice, held that interference in the quantum of punishment was not called for. In paragraphs 8, 9, 22 and 27 of the judgment, the Apex Cour t observed thus:

8. Natural justice is another name for common-sense justice. Rules of natural j ustice are not codified canons. But they are principles ingrained into the consc ience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted con siderations which are usually associated with a formulated law involving linguis tic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions natural justice and legal justice do not present a water ight classification. It is the substance of justice which is to be secured by bo th, and whenever legal justice fails to achieve this solemn purpose, natural jus tice is called in aid of legal justice. Natural justice relieves legal justice f rom unnecessary technicality, grammatical pedantry or logical prevarication. It

supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

22. It is to be noted that the detailed charge-sheets were served on the respond ent employee who not only submitted written reply, but also participated in the proceedings. His explanations were considered and the inquiry officer held the c harges to have been amply proved. He recommended dismissal from service. The sam e was accepted by the disciplinary authority. The proved charges clearly establi shed that the respondent employee failed to discharge his duties with utmost int egrity, honesty, devotion and diligence and his acts were prejudicial to the int erest of the Bank. In the appeal before the prescribed Appellate Authority, the findings of the inquiry officer were challenged. The Appellate Authority after a nalysing the materials on record found no substance in the appeal.

27. In Union of India v. G. Ganayutham47 this Court summed up the position relat ing to proportionality in paras 31 and 32, which read as follows: (SCC pp. 478-8 0)

31. The current position of proportionality in administrative law in England an d India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, n ormally the Wednesbury test is to be applied to find out if the decision was ill egal or suffered from procedural improprieties or was one which no sensible deci sion-maker could, on the material before him and within the framework of the law , have arrived at. The court would consider whether relevant matters had not bee n taken into account or whether irrelevant matters had been taken into account o r whether the action was not bona fide. The court would also consider whether th e decision was absurd or perverse. The court would not however go into the corre ctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administ rator. This is the Wednesbury32 test.

(2) The court would not interfere with the administrator's decision unless it wa s illegal or suffered from procedural impropriety or was irrational - in the sen se that it was in outrageous defiance of logic or moral standards. The possibili ty of other tests, including proportionality being brought into English administ rative law in future is not ruled out. These are the CCSU33 principles.

(3)(a) As per Bugdaycay48, Brind39 and Smith49 as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary ju dgment to find out if the decision- maker could have, on the material before him , arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the princip le of proportionality, then the English courts will render primary judgment on t he validity of the administrative action and find out if the restriction is disp roportionate or excessive or is not based upon a fair balancing of the fundament al freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain wi th the executive or administrative authority. The secondary judgment of the cour t is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority h as reasonably arrived at the decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting funda mental freedoms, the courts in our country will apply the principle of 'proporti onality' and assume a primary role, is left open, to be decided in an appropriat e case where such action is alleged to offend fundamental freedoms. It will be t hen necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19 and 21 etc. are involved and not for Article 14.

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of 'proportionality'. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to 'irrationality', there is no findi ng by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on materi al, that the punishment is in 'outrageous' defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain 'Ranjit Thakur50'.

25. The enquiry officer in his detailed report has discussed the entire evi dence and upon due analysis of the same, has held the petitioner guilty of all t he charges. Much have been emphasised on the alleged denial of opportunity of su bmitting the written brief, but there is absolutely no whisper as to how any pre judice was caused to the petitioner because of non submission of the written bri ef. In the aforesaid case of V.K. Awasthy (supra) also somewhat similar allegati on was made alleging that the order of dismissal could not have been passed befo re 15 days notice period. When it was noticed that the grounds of prejudice or v iolation of the principles of natural justice was not raised by the employee, th e Apex Court held that that by itself cannot lead to interference with the order of dismissal. Moreover, as in the said case, in the instant case also in the de tailed representation dated 01.04.2003 (Annexure-XVIII) submitted by the petitio ner against the enquiry report, no prejudice and/or violation of the principles natural justice had been alleged on that count.

26. On perusal of the detailed representation made by the petitioner what is discernible in clear terms is that the petitioner duly participated in the enquiry proceeding without alleging any violation of the principles of natural justi ce or causing any prejudice. In the said representation he made his argument in reference to certain case laws, but without raising any issue in procedural irre

gularity and/or causing any prejudice to him, more particularly in respect of th e submission of written brief. As has been held by the Apex Court in State Bank of India, Patiala vs. S.K. Sharma reported in (1996) 3 SCC 364, the interest of justice demands that guilty should be punished and that technicalities and irre gularities which did not cause failure of justice should not be allowed to defea t the ends of justice. Principles of natural justice are measures to achieve th e ends of justice. They cannot be perverted to achieve the very opposite end tha t would be counter productive exercise. Making a distinction between substantive nature and procedural in character in respect of rules/regulation/statutory pro vision, it was held by the Apex Court that in case of violation of procedural pr ovision and violation thereof cannot be said to automatically vitiate the enquiry held.

27. Much have been emphasised on the affidavit that was submitted by the cus tomer after the incident furnishing a different view than the one the customer h imself had pleaded before the Bank. Although such affidavit is used with the sta tement that same would be used as a piece of evidence, but in a departmental pro ceeding, the disciplinary and the enquiry authority are not to be solely guided by such an affidavit, but rather to be guided by the entire facts and circumstan ces and the evidence on record. In the enquiry proceeding, the said affidavit came up for consideration and the enquiry officer rightly observed that such an af fidavit cannot be accepted and that too in absence of the maker of the same.

28. In the above context, the learned counsel for the petitioner submitted t hat there were two different standards in respect of the said affidavit and the particular letter (MEX 17) on the basis of which departmental proceeding was ini tiated. So far as the particular letter of the customer is concerned, same was i dentified by MW 2. Raising objection to such identification, the defence represe ntative of the petitioner had contended that the letter could not be accepted in absence of the maker of the same, i.e. the customer. The fact that the letter w as addressed to the Bank alleging forgery of the customer's signature is a fact admitted by the petitioner. The customer being known to the Bank, his letter (M EX 17) was taken into account and the same was identified by MW 2, a Bank employ ee. An extreme technical plea was raised by the defence representative of the pe titioner that the said letter cannot be identified by a Bank officer in absence of the customer himself. The enquiry officer rightly held that the letter having been addressed to the Bank, it became a record of the Bank and thus there was n othing wrong in placing reliance on the same and thus could be identified by a n officer of the Bank.

29. As regards the affidavit in question, the petitioner could have examined the customer as witness instead of insisting on the enquiry officer that the said affidavit should be accepted. There may be numerous circumstances in which co mplainant of a particular case might change is stand and such changed stand ma y not be acceptable to the Bank and that too on the basis of the affidavit later on

sworn in by the said complainant. It will have to be borne in mind that in B ank's transaction question of integrity and confidence are involved. In the inst ant case, there is absolutely no manner of doubt that the Bank had lost confiden ce on the petitioner because of his conduct in respect of the particular transac tion and if the same led to initiation of departmental proceeding with consequen tial imposition of penalty of compulsory retirement, it cannot be said to be misplaced or unwarranted.

30. The enquiry officer upon a detailed appreciation of the entire evidence on record, discussed the same charge wise and recorded the finding of guilt agai nst the petitioner. Such finding recorded by the enquiry officer cannot be inter fered with sitting on appeal over the same reappreciating the evidence on record. It has been held by the enquiry officer that the action of the petitioner in d eriving undue pecuniary benefits to the extent of Rs. 10,000/- by fraudulently w ithdrawing the same from the branch on 06.07.2001 through SB account of the peti tioner amounted to tarnishing the image of the Bank in the eyes of the customer /public which is prejudicial to the interest of the Bank and construed the act o f gross misconduct within the meaning of Bank's norms.

31. In the impugned notice proposing the punishment of compulsory retirement , the disciplinary authority discussed in detail once again the evidence on reco rd with following observations.

10. Since you were handing supervisory functions pertaining to SB Section of the branch on 06.07.2001, it is quite natural that you have manipulated the fig ures in SB ledger so as to facilitate passing of the withdrawal slip in question for cash payment. In that event, it is not necessary that somebody should witne ss the act of manipulation of the figures in the SB ledger made by you. The evid ential value associated with the documents produced in the departmental enquiry, particularly the undisputable facts reflected in MEX-14, 16 and 17, would defin itely indicate you involved in manipulation and tampering with the official records of the branch.

11. The modus operandi adopted by for passing the withdrawal slip in question fo r payment by tampering with the official records of the branch shows that you ha d blatantly violated the instructions laid down in the Manual of Instructions-Deposits, 1995-96 and HO Codified Circular No. 58/93 dated 27.04.1993 at the time of passing the said instruction for cash payment as supervisory staff in charge of SB Section of the Branch on 06.07.2001.

12. The sequence of events narrated in the charge sheet in connection with fraud ulent withdrawal of Rs. 10,000/- made from SB A/c. No. 5269 indicates about your malafide intention and the same also testifies that you had resorted to unautho rised act of entering the particulars of the withdrawal slip in question on various other subsidiary records/registers of the branch with the sole intention of concealing you misdeed from the notice of the other staff members and the higher authorities.

13. The contents of MEX-17 produced before the departmental enquiry coupled with the procedure prescribed by the Bank in regard to the essential steps to be taken by a supervisory staff member before passing an instrument for cash payment g ive a strong impression that the genuine signature of the customer was obtained in the withdrawal slip in question at a later stage for concealing you involvem ent in the fraud perpetrated on the Bank.

14. MEX-17 produced before the departmental enquiry speaks about the fraudulent means adopted by you for withdrawing an amount of Rs. 10,000/- from the SB A/c. of the customer by misusing your official position in the Bank. Thus, there is n o iota of doubt over the fact that your said fraudulent act has tarnished the im age of the bank in the eyes of the customer/public.

32. However, before the same could be proceeded with by the respondent bank to its logical conclusion, the petitioner approached this Court by filing the i nstant writ petition in which the aforesaid interim order was passed and consequ ently no action could be taken against the petitioner. It was only after dismiss al of the writ petition the disciplinary authority passed the order dated 30.04. 2012 imposing the penalty of compulsory retirement. Although the petitioner has not amended the writ petition, but a copy of the order has been brought on recor d by the respondent Bank in the aforesaid Misc. Case No. 2998/2012 in which the claim of the petitioner is for subsistence allowance. On perusal of the order o f compulsory retirement imposed on the petitioner by order dated 30.04.2012, it appears that the disciplinary authority has taken note of all the facts and cir cumstances. So far as the criminal case against the petitioner referred to above and as resulted in GR case No. 3456/2009 is concerned, as per the documents an nexed to the counter affidavit filed by the respondent Bank in the said Misc. ca se, it appears that the petitioner has been declared absconder as he has not res ponded to the criminal proceeding in which he has also been charge sheeted. The affidavit has also further disclosed that the petitioner has also been charge sh eeted departmentally vide charge sheet dated 18.08.2010 for his alleged misappro priation of Rs. 2,60,240/-. The allegations against the petitioner are as follow s:

1. A shortage of cash of Rs. 2,66,640/- was reported while closing the cash on 14.09.2009. The difference of Rs. 6,400/- was located on the succeeding day and thus cash shortage of Rs. 2,60,240/- was debited to Suspense Payment Account by the branch. The shortage of cash has occurred due to mis-appropriation of money by you.

2. It is reported that you were in the habit of borrowing money from the custome rs. You had asked for Rs. 3.05 from Shri Debottam Roy, Proprietor of M/s. Select Wine Shop, CCH A/c. holder of the branch and when he refused to give any amount , you resorted to asking money from other customers at the counter on 14.09.2009. You had many times borrowed money from Shri Debottam Roy to the tune of Rs. 10 ,000/- to Rs. 15,000/- from him and returned within 3 to 5 days.

3. You are also is in the habit of borrowing money from other people against you r own cheques. It is reported that three cheques favouring Shri Bhanu Singh i.e. , Cheque No. 375315 dated 16.10.2008 for Rs. 3.00 Lakshs, Cheqaue No. 375317 dat ed 12.10.2008 for Rs. 5.00 lakhs and Cheque No. 375316 dated 03.04.2009 for Rs. 8.00 laksh which were returned on 13.02.2009, 09.04.2009 and 24.06.2009 for insu fficient funds and stop payment. You have given stop payment of the cheque stati ng that the cheque book was stolen and some cheques in the book were to be issue d to the money lenders from where you borrowed money. A cash has been filed agai nst you in CJM Court, Silchar under case No. NI/7/2009 on 22.07.2009 in this reg ard which establishes the fact that you were resorting to external borrowing eve ry now & then.

4. The branch has received a letter dated 07.04.2009 from Sri Sanat Chattergee w herein it is mentioned that you have cheated Shri Sanat Chattargee, Tinsukia by promising to sell the property to him, which was mortgaged to the Bank for housi ng loan, and taken an advance of Rs. 2,50,000/- during 2004.

33. Annexure-5 is the order dated 30.04.2012 by which the petitioner has bee n imposed with the penalty of compulsory retirement pursuant to the impugned pro ceeding in respect of which the impugned notice proposing the said penalty was i ssued. In the order a detailed discussion has been made regarding misconduct att ributed to the petitioner and upon analysing the entire facts and circumstances, the disciplinary authority has imposed the compulsory retirement from service w ith the following observations.

In view of the foregoing detailed discussions made by me on the contentions/ple adings advanced by the CSE in his representation dated 01.04.2003 on the enquiry findings, the contentions/pleadings of the CSE are totally devoid of merits. I, therefore, accept the report of enquiry findings of the EO, wherein, all the ei ght charges have been held as proved against the CSE and accordingly, he is held guilty of the said charges, which constitute acts of misconduct under Bipartite Settlement, 1966/Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002.

As the bank is widely considered as the trustee/custodian of public money, it is the duty and responsibility of each and every employee of the bank to safeguard the public money/ funds of the customers by showing the highest standard of hon esty and integrity at the time of discharging his official duties and responsibi lities. On the contrary, it is found in the instant case that the CSE has commit ted an act of dishonesty and breached the trust reposed on him by the bank by pe rpetrating fraud of an amount of Rs. 10,000/- through the SB Account of the cust omer as stated above. As a responsible employee of the bank, the CSE was fully a ware of the fact that he was required to discharge his duties and responsibiliti es in the bank with utmost integrity, devotion and diligence and not to commit a ny act which would endanger the interest of the bank and amount to unbecoming of an employee of the bank. In other words, as stated above, it is expected from t he employees of the bank that they should not put the public money and funds of the customers/ bank in jeopardy under any circumstances and take all possible st eps to safeguard the interest of the bank. In the acts of misconduct committed b y the employees have the ramification of putting the interest of the bank in dis tress as well as tarnishing its image in the eyes of the valued customers/public, then such acts of the employees are required to be dealt with sternly and in t hat event, the bank would be left out with no alternative other than terminating services of such delinquent employees in the bank so as to disseminating the me ssage across all the sections of the employees in the bank that the employees in dulging in grave misconduct of committing fraud/ misappropriation and siphoning o ff the bank's funds would meet the consequences of losing their jobs in the bank. Since it is amply clear that an employer cannot retain the services of an empl oyee who is dishonest, the pleading made by the CSE to exonerate him from all th e charges does not merit any consideration.

34. Even after the aforesaid order of compulsory retirement the petitioner a pproached the respondent Bank by his Annexure-6 letter dated 11.08.2012 enclosed alongwith the Bank's affidavit praying for subsistence allowance, as if the Ban k is a charitable institution to provide money to the petitioner who is no longe r in its service. The penalty of compulsory retirement imposed on the petitioner is with superannuation benefits and without disqualification for future employm ent. But for the interim order passed by this Court on 22.07.2003 directing the Bank not to take any action on the basis of the impugned notice dated 24.06.2003 (Annexure -XIX), compulsory retirement could have been imposed on the petition er immediately thereafter. However, by virtue of the said interim order, the pet itioner remained in service for more than 9 years. In the meantime, he was invol ved in another departmental proceeding and presently a criminal proceeding is pe nding against him in which he has been declared to be an absconder.

35. The above aspect of the matter has been mentioned in view of the fair s ubmission of Mr. Choudhury, learned counsel for the petitioner that there could be some amount of negligence on the part of the petitioner in respect of the tr ansaction in question leading to initiation of the impugned disciplinary proceeding. It was submitted by him that for such minor commission or omission penalty of compulsory retirement ought not have been proposed and imposed. He also submi tted that punishment imposed on the petitioner is harsh and disproportionate.

36. It is not for the writ Court to interfere with the punishment imposed by the disciplinary authority which is a matter within the domain and jurisdiction of the said authority. If the Bank has lost its confidence on the petitioner, it is within its competence and jurisdiction to impose penalty as it may consider adequate commensurating to the misconduct attributed and proved. It is not for the writ Court to prescribe another penalty in lieu of the penalty imposed by th e disciplinary authority. It will have to be borne in mind that the job entruste d to

the petitioner in a financial institution like Bank is that of faith and c onfidence and once it is lost, it is for the Bank to decide as to what penalty s hould be imposed. The amount involved is immaterial, but what matters much is ta rnishing the image of the Bank in the eyes of the valued customers/ public. The petitioner being a Bank employee ought to have marinated utmost integrity, devo tion and diligence.

37. For all the aforesaid reasons, I do not find any merit in the writ petit ion. Accordingly, it is dismissed upholding the impugned departmental proceeding and Annexure-XIX notice dated 24.06.2003 and so also the order dated 30.04.2012 by which the penalty of compulsory retirement has been imposed on the petitione r. Consequently, he is not entitled to any subsistence allowance which he has cl aimed from May, 2012, i.e. after his compulsory retirement pursuant to the impugned departmental proceeding.

38. The writ petition is dismissed. There shall be no order as to costs.