

(2015) 11 AHC CK 0088
In the Allahabad High Court
Case No : Writ - A No. 39036 of 2012

Dinesh Kumar Bhardwaj

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 32
Penal Code, 1860 (IPC) — Section 409, 420, 467, 468

Citation : (2016) 1 ADJ 765 : (2016) 1 AWC 739

Hon'ble Judges : M.C. Tripathi, J.

Bench : Single Bench

Advocate : Siddharth Khare and Ashok Khare, for the Appellant; Satish Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

M.C. Tripathi, J.—Heard Shri Siddharth Khare, learned counsel for the petitioner and Shri Satish Chaturvedi, learned counsel for the respondents.

2. By means of present writ petition, the petitioner has prayed for following reliefs:-

"(i) a writ, order or direction in the nature of certiorari quashing the order dated 7.9.2011 passed by the Assistant General Manager (Administration), State Bank of India, Administrative Office, Bareilly (Annexure 20 to the writ petition) as also the order dated 21.11.2011 passed by the Dy. General Manager (B&O), State Bank of India, Bareilly Division, Bareilly (Annexure 22 to the writ petition).

(ii) a writ, order or direction of a suitable nature commanding the respondents to reinstate the petitioner in service with all consequential benefits of continuity of salary and arrears of salary.

(iii) a writ, order or direction of a suitable nature commanding the respondents

to grant promotion to the petitioner on higher post with effect from the date from which the persons junior than the petitioner has been so promoted with all consequential benefits thereof."

3. It appears from the record that the petitioner was appointed as Clerk-cum-Cashier on 10.02.1981 in the respondent bank. In January 1993 the petitioner was posted as Clerk-cum-Cashier at Chaurasi Ghanta Branch of the State Bank of India at Moradabad City. On 12.1.1993 the cash verification was conducted by the Branch Manager of Katghar Branch and a report was submitted with regard to shortage of sum of Rs. 1,01,000/- in the cash strong room of the Chaurasi Ghanta Branch. The strong room of every branch of the State Bank of India remains in joint custody of more than one person. On the basis of the report dated 12.1.1993 a show cause notice dated 22.1.1993 was issued by the Branch Manager calling upon the petitioner to make good the shortage. This notice contains a recital that this was without prejudice to the bank for taking disciplinary action. A perusal of the notice dated 22.1.1993 would disclose that the petitioner was only a joint custodian and that the cash strong room was in joint custody. A notice dated 22.1.1993 was also issued to Shri C.P. Singh, Accountant at the said Branch, who was also a joint custodian along with the petitioner.

4. On 16.1.1993 an order was passed by the Assistant General Manager placing the petitioner under suspension with immediate effect. Even though the cash section was undisputedly under the joint custody of the petitioner and Shri C.P. Singh, it was the petitioner alone who was singled out for the passing of the order of suspension. No such order was passed with regard to Shri C.P. Singh even though the notice dated 22.1.1993 mentioned above was issued both to the petitioner and Shri C.P. Singh, Accountant.

5. An FIR was lodged against the petitioner by the Branch Manager on 18.1.1993 at P.S. Nagfani, Distt. Moradabad. On the basis of the said FIR, Case Crime No. 14 of 1993 under Section 409 , 420 , 467 , 468 IPC has been registered against the petitioner at the P.S. Nagfani, Distt. Moradabad. Against the said FIR, the petitioner file a writ petition before this Court in which an order was passed on 24.2.1993 directing the petitioner's application of the bail to be considered on the same day. In pursuance thereof the petitioner was released on bail by means of an order dated 29.10.1993 passed by the Chief Judicial Magistrate, Moradabad.

6. A chargesheet was submitted to the court of ACJM, Moradabad in the year 1993 but the trial of the aforesaid case is still pending. It is stated that Shri C.P. Singh, the Accountant, who was the joint custodian along with the petitioner was neither named as an accused in the FIR nor any action has been taken against him. Shri C.P. Singh, who was posted as Accountant was Incharge of the branch of cash balance and the petitioner was to support him with no such direct responsibilities. Shri C.P. Singh has also been granted four promotions after the disputed incident and he is presently working as Chief Manager in the respondent bank.

7. The petitioner was continued under suspension from 16.1.1993. As there was no progress in the criminal proceedings, and no departmental proceedings were commenced against the petitioner, he filed a writ petition being Writ Petition No. 26078 of 1995 challenging the suspension order dated 16.1.1993. The said writ petition was allowed on 13.5.1996. The said judgement was challenged by the respondent bank in Special Appeal No. 474 of 1996, which was disposed of by the Division Bench on 3.12.1998 quashing the order of suspension. However, the judgement of the learned Single Judge was modified to the extent that the direction of Single Judge to the respondent bank whether to take work or not to take work from the petitioner was substituted by a direction that the petitioner would not be posted as Cashier of the bank till the criminal case against him was disposed of and the further direction for payment of full salary from the date of suspension was modified to a direction for payment of full salary from 13.5.1996 i.e. the date of judgement of learned Single Judge.

8. Learned counsel for the petitioner submits that as per the observations made by learned Single Judge and Hon"ble the Division Bench it would reveal that a categorical direction was issued to the respondent bank not to proceed departmentally against the petitioner until the criminal case pending against him is disposed of. In the aforesaid fact, he has placed reliance in Paragraph No. 521 Sub-Clause 3 of the Shastri Award, which holds as follows:-

"If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in sub-paragraph (2) above shall apply."

9. In pursuance of the judgement in the special appeal dated 3.12.1998 the petitioner was assigned duties in the respondent bank and has been paid his full salary regularly every month. The petitioner was reinstated with the condition that he will discharge the work as Clerk and receive full salary only from 13.5.1996. In between an order was passed by the Dy. General Manager on 30.09.2005, whereby the petitioner was granted promotion as Senior Assistant. Even though the petitioner was granted promotion as Senior Assistant no promotion was granted to the petitioner as Special Assistant. This was despite the fact that the petitioner had completed more than 23 years of service as a clerical staff while other clerical staff, who had completed 23 years have already been promoted.

10. On 13.12.2007 an order was issued by the Regional Manager to the effect that since disciplinary action was contemplated against the petitioner he was not eligible to be considered for promotion till the conclusion of the disciplinary proceedings. Aggrieved with the said order the petitioner filed Writ Petition No. 40245 of 2008 (Dinesh Kumar Bhardwaj v. Union of India & Ors.). Apart from challenging the order dated 13.12.2007 the petitioner further prayed for promotion being granted to the petitioner as Special Assistant w.e.f. 1.8.2006. The said writ petition was disposed of on 8.8.2008 with following observations:-

"Heard Shri Ashok Khare, learned Senior Advocate in support of the writ petition and Smt. Archan Singh, learned Advocate who appears for the respondent-Bank.

Challenge is to orders passed by respondents authorities dated 13.12.2007 and 25.6.2008 by which petitioner's claim for promotion and claim for housing loan has been rejected. The only ground which is given in the impugned order as is clear from the order/letter is the order of suspension dated 16.1.1993.

Order referred in the aforesaid letter/order i.e. order of suspension dated 16.1.1993 has already been quashed by this Court in Writ Petition and Special Appeal meantime and till date to the best of knowledge of petitioner no disciplinary proceedings has been started and no charge sheet has been served.

Submission is that the order dated 16.1.1993 referred in order dated 13.12.2007 has already been quashed by this court passing of the impugned order cannot be said to be justified.

Accordingly both the orders challenged in this writ petition are hereby quashed.

The matter is relegated back to the competent authority to decide the same afresh preferably within a period of six weeks from the date of receipt of certified copy of this order.

Writ petition stands disposed of."

11. Despite the aforesaid judgement no promotion has been granted to the petitioner as Special Assistant. After the lapse of almost 15 years on 28.8.2008 the Assistant General Manager (Administration) proceeded to issue a departmental charge sheet against the petitioner. The aforesaid charge sheet was followed by further communications dated 2.9.2008 and 5.9.2008. In response to the aforesaid the petitioner submitted a representation dated 6.9.2008. In continuation of the chargesheet a further communication dated 2.12.2008 was also issued by the Assistant General Manager.

12. On 21.1.2010 an order was passed by the Disciplinary authority, whereby an enquiry officer was appointed to conduct departmental enquiry against the petitioner in pursuance of the charge sheet dated 28.8.2008. On conclusion of the enquiry proceedings the enquiry officer submitted an enquiry report dated 29.11.2010. In submitting the aforesaid enquiry report the enquiry officer recorded a finding that from the prosecution case it was not possible to ascertain as to on which date the shortage of cash took place. The allegation of having fraudulently prepared bundles of cash on 11.1.1993 has also not been proved against the petitioner. However, the said enquiry report proceeded to hold the charge as partly proved against the petitioner in so far as the petitioner being joint custodian of the cash was responsible for loss of Rs. 1,01,000/- during the course of cash verification conducted on 12.1.1993. Based upon the aforesaid enquiry report a provisional order dated 21.7.2011 was made available to the petitioner. Against the aforesaid provisional order the petitioner filed a detailed representation dated 12.8.2011. Ultimately on 7.9.2011 the Assistant General

Manager (Admn.) proceeded to pass a final order inflicting the penalty of removal from service with superannuation benefits upon the petitioner.

13. Shri Siddharth Khare, learned counsel for the petitioner submits that the reason best known to the respondents they have never challenged the appellate order dated 3.12.1998 passed in Special Appeal No. 474 of 1996 by way of review or recall of the said order, nor they have challenged it before Hon"ble the Apex Court and as such the order dated 3.12.1998 is biding on the respondents. Admittedly the criminal proceedings were pending consideration and as such no material was changed in between. Therefore, in the garb of the order passed by this Court in Writ Petition No. 40245 of 2008 the respondents have issued departmental chargesheet against the petitioner, which is unsustainable in the eye of law.

14. He further submits that the petitioner has been implicated in the matter without any material and as per the enquiry report it was clearly revealed to this Court that the allegations levelled against the petitioner were vague and speculative in nature. He further drawn attention to the Court that no financial loss has been incurred upon the bank as the loss was subsequently made good.

15. Shri Siddharth Khare further makes a submission that if the argument of the respondents is accepted that the orders dated 13.5.1996 and 3.12.1998 passed by this Court were only in relation to the suspension of the petitioner and could not have been read for any other purposes, even then they have failed to demonstrate as to what restrained them from holding departmental proceedings against the petitioner for substantial long 15 years. In support of his contention he has placed reliance on the judgment in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, and The State of Madhya Pradesh Vs. Bani Singh and another, .

16. Learned counsel for the petitioner submits that while passing the impugned order the petitioner was not given the opportunity of personal hearing as per Paragraph 12 of the "Basic Book of Instructions for Departmental Proceedings in the respondent bank". The personal hearing was declined on the ground that full opportunity had already been given to the petitioner before passing the provisional order.

17. Shri Siddharth Khare, learned counsel for the petitioner submits that once the writ petition was allowed by this Court and thereafter the same has also been assailed by means of special appeal, then the same would be resjudicata against the respondents and if they were aggrieved with any observations made by learned Single Judge or by the appellate authority, they have sufficient time to file recall or review of the said order. He submits that at no point of time any leave was granted to the respondent bank to proceed into the matter departmentally. As per their own Regulations once the criminal proceedings have been initiated against the petitioner, they could not proceed departmentally. Then without any leave by any Court, they could not proceed at this belated stage. In a series of judgements Hon"ble Apex Court has observed that at very belated

stage the department cannot proceed into the matter.

18. Aggrieved with the penalty order dated 7.9.2011 the petitioner filed an appeal, which was also rejected by the Dy. General Manager on 21.11.2011. The present writ petition has been filed against the penalty order dated 7.9.2011 and the order passed in appeal dated 21.11.2011.

19. Per contra learned counsel for the respondent-bank submits that the cash section was in the joint custody of the petitioner and Mr. C.P. Singh, who was an Accountant at that time. A punishment was also imposed on Mr. C.P. Singh by stopping his one increment for a period of one year.

20. It is submitted that as per the Debarment Policy under the Services Rules of the respondent-bank, the petitioner could not be considered for promotion as disciplinary proceedings were contemplated against him. For ready reference Clause 5.1 of Debarment is being quoted as under:-

"5.1. Procedure to be followed when disciplinary proceedings are in progress;

i) An employee, against whom disciplinary action is contemplated for an offence amounting to fraud, misappropriation of money, forgery or any other act which prima facie amounts to criminal misconduct, shall be debarred from promotion for a period not exceeding 3 years reckoned from the date such contemplation is advised to the employee in writing. In all other cases of disciplinary action, the bar will operate from the date the employee is served with a chargesheet.

ii) An employee shall not be eligible for any promotion during the period of his suspension irrespective of the period involved."

21. Learned counsel for the respondents has relied upon the judgement in Radhey Shyam Pandey Vs. State of U.P. and another, in which it is held as under:-

"In our opinion in such cases of embezzlement of huge amount of public funds it cannot be said that if the departmental proceedings will go on the criminal trial will be prejudiced."

22. Hon"ble Supreme Court in Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai, has held that scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other.

23. In special Chapter on Vigilance Management in Public Sector Banks the Central Vigilance Commission has envisaged that no Bipartite Agreement should stand in the way of disciplinary action continuing parallel with criminal investigation/trial. Based on the various decisions of the Supreme Court and High Courts, the Vigilance Department of the respondent bank has codified the guidelines as under:-

"The legal position is clear that in vigilance cases against workmen staff,

departmental proceedings can simultaneously proceed along with a criminal trial in order to bring the departmental enquiry to an expeditious conclusion."

24. The said Manual further stipulates as under:-

"If the trial does not get completed within one year from the date of withholding the departmental proceedings, such proceedings should be revived and concluded expeditiously without waiting for the trial to be over."

25. It is submitted that the High Courts/Tribunals while exercising power of judicial review cannot normally substitute its own conclusion on penalty and imposing some other penalty unless the punishment imposed seems to be disproportionate.

26. Shri Satish Chaturvedi, learned counsel for the respondents submits that in the matter the petitioner has not challenged the chargesheet and previous writ petition was only confined to the suspension order and at no point of time the respondent bank was precluded from proceeding in the matter departmentally. The chargesheet has been served to the petitioner. He had responded to the chargesheet and in the writ petition in the absence of challenge to the chargesheet, the termination cannot be set aside.

27. Shri Churvedi, learned counsel for the respondents has placed reliance in The State of Madras Vs. G. Sundaram, in which it was held that a High Court in exercise of its jurisdiction under Art.226 of the Constitution cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it is shown that the impugned findings were not supported by any evidence. In State of Andhra Pradesh Vs. Sree Rama Rao, , it was held as under:-

"The High Court is not constituted in a proceeding under Art.226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: iris concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art.226 to review the evidence and to arrive at an independent finding on the evidence."

28. In B.C. Chaturvedi Vs. Union of India and others, , Hon"ble the Supreme Court held as under:-

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry

is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

29. Shri Chaturvedi, learned counsel for the bank submits that initially the petitioner had filed Writ Petition No. 26078 of 1995 with two reliefs namely (a) challenge to the suspension order dated 16.1.1993 and (b) claimed full salary for the suspension period and as such the judgment passed by the learned Single Judge and the Division Bench judgment in special appeal has to be confined to the extent the relief sought in the aforesaid writ petition. Similarly the effect of any observation made would be confined to the suspension order and the connected reliefs sought by the petitioner only, which were complied with by reinstating the petitioner and paying him the fully salary. Admittedly, the department had complied the said order and reinstated the petitioner and paid the entire arrears. In the aforesaid circumstances there was no hurdle in the way of the bank from proceeding with the departmental enquiry, even pending

criminal case as the Hon''ble Court had not restrained the bank for not proceeding departmentally. As such no fault can be found with the action of the bank to proceed with the departmental enquiry and passing of the punishment order finally. He further made submission that the present departmental enquiry would also be sustainable and there is no bar even in the Shastri Award. In any view, if the petitioner had any grievance regarding the departmental proceedings he may have approached to the Hon''ble Court at the relevant point i.e. after the chargesheet was served upon him or even during the continuance of the departmental enquiry. But infact he had participated in the departmental proceedings. He has placed reliance on the judgment in U.P. State Road Transport Corporation Vs. State of U.P. and Another, .

30. He further made submissions that by means of present writ petition the petitioner has not prayed any relief relating to the chargesheet or serving chargesheet belatedly. No categorical averment has been made in the writ petition except a reference in para 27 of the writ petition of serving of the charge sheet after 15 years. In absence of any pleading there was no occasion for the bank to make averment as to serving the charge sheet in 2008 and as such the bank had rightly proceeded in the matter. Further mere chargesheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. The petitioner has neither pleaded nor proved the prejudice caused to him because of the action of the bank.

31. Shri Chaturvedi submits that absence of financial loss is not a defence and in this regard he has placed reliance in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, ; State Bank of India and others Vs. T.J. Paul, and Ved Prakash Mowar Vs. Chairman/Managing Director, Punjab National Bank and Others, . He further submits that the plea of not providing oral hearing referred in the supplementary affidavit is totally misconceived. Oral hearing and personal hearing are different. Oral hearing is during the proceeding before the enquiry officer and the personal hearing is contemplated at the time or before passing of the punishment order by the departmental authorities. It is stated that the order was passed after hearing the petitioner personally on 14.11.2011 and thus it was clear that the opportunity of personal hearing was also given.

32. Heard rival submissions, perused the record and respectfully considered the judgments cited at the Bar.

33. From the perusal of the record it appears that due to shortage of sum of Rs. 1,01,000/- in the cash strong room of the Chaurasi Ganta Branch, the petitioner, who was the joint custodian of the strong room, was suspended with immediate effect on 16.1.1993. Although the cash strong room was in joint custody of the petitioner and Shri C.P. Singh, the petitioner alone was singled out for passing the order of suspension. No such order was passed with regard to Shri C.P. Singh. An FIR was lodged against the petitioner by the Branch Manager on

18.1.1993 a P.S. Nagfani, Distt. Moradabad and on the basis of said FIR, Case Crime No. 14 of 1993 under Section 409 , 420 , 467 , 468 IPC has been registered against the petitioner at P.S. Nagfani, Distt. Moradabad. The petitioner was bailed out in the said offence by the Chief Judicial Magistrate, Moradabad on 29.10.1993 but the trial is still pending consideration before the court concerned. The petitioner was continued under suspension from 16.1.1993. As there was no progress in the criminal proceedings, and even no departmental proceedings were commenced against the petitioner, he filed Writ Petition No. 26078 of 1995 challenging the suspension order dated 16.1.1993, which was allowed on 13.5.1996 which following observations:-

"The petitioner was placed under suspension vide order dated 16.1.1992 on the ground that some departmental action in the matter of irregularities of serious nature were to be taken against him. It is alleged that though a period of about 3 and 1/2 years have lapsed no departmental action for holding enquiry proceedings has been taken against the petitioner and the petitioner has been since then kept under suspension.

Sri Navin Sinha, learned counsel appearing for the respondent bank state that after suspension order was passed a criminal case was launched against the petitioner in which police has already filed charge sheet and the criminal case is still pending at the trial stage.

It is further contended by Sri Sinha that since the charge sheet has already been framed against the petitioner in the criminal court, it is not open under the service rules for respondents to proceed against the petitioner with the departmental disciplinary enquiry. It was for this reason that no charge sheet was served and disciplinary proceedings could not be started against the petitioner.

Be that as it may, the fact is that about 3 and 1/2 years period has passed since after the petitioner was placed under suspension. The petitioner has yet not been found guilty of any offence or misconduct.....

In the above circumstances, it is directed that until the petitioner is convicted by the criminal court, he shall be reinstated in service on the condition that it will be open to the respondents to take work or not to take work from him. The respondents shall also pay entire salary of the petitioner with effect from the date was placed under suspension.

In the result, the writ petition succeeds and is allowed and the suspension order is quashed."

34. The said judgment was challenged by the respondent bank in Special Appeal No. 474 of 1996, which was disposed of by the Division Bench on 3.12.1998 with following observations:-

"On careful consideration of the facts and circumstances of the case, gist of which has been discussed in the foregoing paragraphs, we are not persuaded to

accept the contention of the learned counsel for the appellants that any interference with the judgment of the learned Single Judge quashing the order of suspension in appeal is warranted. If any decision is necessary in support of the view, we may notice the case of State of H.P. v. B.C. Thakur, (1994) 27 Administrative Tribunals Cases 567 in which the Supreme Court upheld the decision of the State Administrative Tribunal to set aside suspension order on the ground of its continuance for two years without substantial progress in departmental enquiry. It is our considered view that the further direction in the judgment that it will be open to the respondents (appellants herein) to take work or not to take work from him should not stand; instead it should be ordered that the respondent shall not be posted as Cashier of the Bank till the criminal case against him is disposed of. We are of the further view that the further direction in the judgment that the respondents (appellants herein) shall pay entire salary of the petitioner (respondent herein) with effect from the date he was placed under suspension should be modified to the effect that the petitioner (respondent herein) shall be paid fully salary from the date of the impugned judgment, that is, 13.5.1996.

The impugned judgment/order is modified to the extent noted above. The appeal is disposed of."

35. In pursuance of the aforesaid judgment the petitioner was reinstated with condition that he will discharge the work as clerk and receive full salary only from 13.5.1996. Thereafter, the petitioner was promoted as Senior Assistant on 30.09.2005. But inspite of completing more than 23 years of service as clerical staff he was not given promotion as Special Assistant. On 13.12.2007 an order was passed to the effect that the petitioner will not be promoted until the conclusion of the disciplinary proceedings. The said order was assailed in Writ Petition No. 40245 of 2008, which was disposed of by quashing the said order and relegating the matter back to the competent authority for deciding it afresh within six weeks. Inspite of the aforesaid order of the Court, the petitioner was not granted promotion and after the lapse of almost fifteen years on 28.8.2008 a departmental chargesheet has been issued against the petitioner. In response thereof the petitioner filed representation dated 6.9.2008. On 21.1.2010 an enquiry officer was appointed, who submitted enquiry report on 29.11.2010 recording a finding that from the prosecution case it was not possible to ascertain as to on which date the short of cash took place. The allegation of having fraudulently prepared bundles of cash on 11.1.1993 was also not proved against the petitioner. However, the said enquiry report proceeded to hold the charge as partly proved against the petitioner in so far as the petitioner being joint custodian of the cash was responsible for loss of Rs. 1,01,000/-. Based upon the enquiry report a provisional order dated 21.7.2011 was made available to the petitioner against which the petitioner filed detailed representation dated 12.8.2011 and ultimately on 7.9.2011 the final order was passed removing the petitioner from service with superannuation benefits upon the petitioner.

36. It is unfortunate that an employee suspended on 16.1.1993, even though the said suspension order was quashed by learned Single Judge and affirmed by the Division Bench of this Court, had to face the departmental enquiry on 28.8.2008 after about fifteen years from the date of suspension. Not only this, although the prosecution could not be able to prove the charges against the petitioner, charges were held against him as partly proved and he was removed from service with superannuation benefits. Discrimination can also be seen on record that on one hand the petitioner was removed from service with superannuation benefits, whereas on the other hand Shri C.P. Singh, who was joint custodian of the cash strong room was awarded minor punishment by stopping his one increment for a period of one year and he has been promoted upto the post of Chief Manager in the bank.

37. The Manual of the Bank itself says that if the trial does not get completed within one year from the date of withholding the departmental proceedings, such proceedings should be revived and concluded expeditiously without waiting for the trial to be over. But in the case in hand no departmental proceedings have been initiated against the petitioner for about fifteen years and it was initiated only on 28.8.2008.

38. The action of the respondents in not promoting the petitioner is also not justified under the present peculiar facts specially after reinstatement. The petitioner was given promotion as Senior Assistant on 13.9.2005 but had been denied further promotion. As it is not the issue before this Court, therefore, the Court is not expressing any opinion for his further claim of promotion but if one promotion has been given by the respondent bank to the petitioner, how can it be denied further on the ground that proceedings against the petitioner are continuing and as such he could not be promoted as Special Assistant. If the trial of the case was not concluding within time, it was the responsibility of the respondent bank to initiate departmental proceedings within time and conclude the same expeditiously. The petitioner was compelled to remain in uncertainty for about 18 years.

39. As apparent above, the aforesaid judgment passed by the Division Bench had declined to interfere in the judgment passed by the learned Single Judge quashing the suspension order, but the judgment passed by learned Single Judge for direction to the respondent bank whether to take work or not to take work from the petitioner was substituted by a direction that the petitioner would not be posted as Cashier of the bank till the criminal case against him was disposed of and further modified for payment of full salary from 13.5.1996 i.e. the date of judgment of learned Single Judge instead of the date of suspension. It is also not disputed that the said judgment passed by the appellate court has attained finality and at no point of time the bank has challenged the same by means of special leave petition or filed any recall or review of the same and as such attained finality between inter parties. It is relevant to indicate that even the order passed by the appellate court had been complied with by the respondent

bank by order dated 25.1.1999 passed by the Asstt. General Manager (Admn.) and reinstated the petitioner in service and had assigned the work as clerk at Chaurasi Ghanta Branch of the State Bank of India at Moradabad City. It is also apparent from the record that the aforesaid criminal proceedings are still pending consideration and have not been finalised till date. The petitioner was also granted promotion as Senior Assistant. When he had asked for next higher promotion as Special Assistant, inspite of the fact that he has already rendered 23 years of service in clerical staff, due to inaction of the respondent bank in this background an order dated 13.12.2007 had been passed by the Regional Manager to the effect that since the disciplinary action was contemplated against the petitioner and as such he was not eligible to be considered for the promotion till the conclusion of the disciplinary proceedings. The said order had been assailed by means of Writ Petition No. 40245 of 2008 and this Court vide order dated 8.8.2008 had disposed of the writ petition. It is relevant to indicate that while disposing of the said writ petition learned Single Judge had observed that only reason assigned for rejecting the claim of the petitioner was order of suspension dated 16.1.1993 but the same was quashed by learned Single Judge in Writ Petition No. 26078 of 1995 and affirmed in Special Appeal No. 474 of 1996 and in the meantime till date to the best knowledge of the petitioner, no disciplinary proceedings have been started and no chargesheet has been served. As the order dated 16.1.1993 referred in the order dated 13.12.2007 has already been quashed by this court, orders impugned in Writ Petition No. 26078 of 1995 was set aside.

40. What transpires to the Court that in view of disposal order dated 8.8.2008 passed in Writ Petition No. 40245 of 2008 after lapse of 10 years on 28.8.2008 the Asstt. General Manager (Administration) proceeded to issue a departmental chargesheet against the petitioner. While proceeding departmentally a reference has been made to the judgment of Hon'ble Apex Court in Civil Revision No. 4814 of 2002. After the aforesaid chargesheet further communications were made on 2.9.2008 and 5.9.2008 and in response the petitioner had submitted detailed representation on 6.9.2008. On 21.1.2010 an order was passed by the disciplinary authority, whereby an enquiry officer was appointed to conduct departmental enquiry against the petitioner in pursuance to the chargesheet dated 28.8.2008 and finally the present impugned order had been passed, whereby the services of the petitioner had been dispensed with.

41. While allowing the Writ Petition No. 26078 of 1995 learned Single Judge has noted down the ground taken by the bank that since the chargesheet has already been framed against the petitioner in the criminal court, it was not open under the Service Rules for the respondents to proceed against the petitioner with the departmental disciplinary enquiry. It was the reason that no chargesheet was served and disciplinary proceedings could not be started against the petitioner. Learned Single Judge had allowed the writ petition on 13.5.1996 on the ground that 3 and 1/2 years had passed since the suspension and the petitioner was not yet found guilty of any offence or misconduct. Therefore, the order impugned i.e.

suspension could not sustain and was accordingly set aside. The same was also assailed in the special appeal and the appellate court while deciding the appeal had modified the judgment passed by learned Single Judge as indicated above vide order dated 3rd December, 1998. Therefore, both the orders i.e. judgment dated 13.5.1996 passed by learned Single Judge and the judgment and order dated 3.12.1998 passed by appellate court had attained finality inter parties and are binding on the principal of resjudicata.

42. Once a direction has been issued by learned Single Judge that until the petitioner is convicted by the criminal court, he shall be reinstated in service and the same has not been modified in special appeal and as such the same was binding inter-se parties and the principal of resjudicata would be applicable in the present case. In this regard the reliance has been placed on the judgment in U.P. State Road Transport Corporation Vs. State of U.P. and Another, , the relevant paragraphs of which are reproduced as under:-

"10. In Daryao & others vs. State of U.P. & others AIR 1960 SC 1457, a Constitution Bench considered the application of rule of res judicata in writ petitions. It was held that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. Similarly, in Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, , which is also a decision by a Constitution Bench, it was held that it would not be right to ignore the principle of res judicata altogether in dealing with writ petitions filed by citizens alleging the contravention of their fundamental rights. It was further held that considerations of public policy cannot be ignored in such cases, and the basic doctrine that judgments pronounced by the Supreme Court are binding and must be regarded as final between the parties in respect of matters covered by them must receive due consideration. In The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, , the Constitution Bench emphasized that the binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasized by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32 .

11. The principle of res judicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of Code of Civil Procedure in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one

way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. (See Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another,)."

43. The arguments advanced by Shri Satish Chaturvedi, learned counsel for the bank to the extent that non-challenge of the chargesheet would be fatal in the present circumstances would have no bearing and accordingly rejected. Once the admitted situation is still that the criminal case is pending consideration, therefore, there was no material before the respondent bank to initiate the departmental proceedings after substantial lapse of more than 23 years. Therefore, at this stage, taking a technical view that the petitioner had not challenged the chargesheet and the previous writ petition was only confined to the suspension order and at no point of time the respondent bank was precluded from the proceedings in the matter departmentally would not be sustainable and at no point of time the appellate court while disposing the special appeal No. 474 of 1996 had given any leverage or relief to the respondent bank to proceed in the matter and even the arguments advanced by learned counsel for the bank would not be sustainable in the circumstances that the appellate order had been passed on 3.12.1998 and the said order had not only been complied with but even the petitioner has been afforded promotion meanwhile. After more than one decade of passing of order by the appellate Court, the respondent bank had all of sudden wake up from the deep slumber and started departmentally, which would not be sustainable.

44. Hon'ble the Apex Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, while considering the inordinate and unexplained delay of 10 years in issuance of charge memo vitiated the disciplinary proceedings. The relevant paragraphs of the judgment is reproduced hereunder:-

"This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31.7.1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 1.6.1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.

Mr. Prabhakar also invited our attention to the affidavit filed by the appellant in support of his case. It is stated in para 14 of the affidavit that the respondent with the mala fide intention issued the present charge memo against the appellant even though the alleged incident of issuance of sale deed was of the year 1990, which was 10 year prior to the issuance of charge memo and that very reason for issuing charge memo was that the appellant could be detained from promoting to the post of Chief Engineer of the Housing Board.

The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the

departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

Our attention was also drawn to the counter affidavit filed by the respondent-Board in this appeal. Though some explanation was given, the explanation offered is not at all convincing. It is stated in the counter affidavit for the first time that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-1995.

Section 118 and 119 of the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act No. 17 of 1961) read thus:

"118. At the end of every year, the Board shall submit to the Government an abstract of the accounts of its receipts and expenditure for such year.

119. The accounts of the Board shall be examined and audited once in every year by such auditor as the Government may appoint in this behalf."

Section 118 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 relates to annual audit of accounts. These two statutory provisions have not been complied with at all. In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in the 1994-1995. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr. R. Venkataramani, learned Senior counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter affidavit is not convincing and is only an afterthought to give some explanation for the delay.

Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At

this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs."

45. In the The State of Madhya Pradesh Vs. Bani Singh and another, Hon"ble the Supreme Court, reiterating the aforesaid view, has observed as under:-

"6. The learned counsel for the appellant contended that the non-selection of the respondent for selection grade by the Screening Committee in 1980 should not have been interfered with by the Tribunal. We are unable to agree with this contention of the learned counsel. The Tribunal itself pointed out that the remarks of the Inspector General of Police, above quoted, is general observation of a reviewing officer and that could not have been taken into account. Generally, in relation to this the Tribunal pointed out that the Screening Committee seems to have been weighed in not selecting the respondent on the ground that there were some complaints about integrity and the decision will have to be deferred until the decision on such complaints. The Tribunal pointed out that on these complaints not even a preliminary enquiry have been completed and that therefore they should not have been weighed with the Screening Committee. This statement of the Tribunal cannot be said to be an incorrect approach. Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was "sealed cover" procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deferring the consideration in the Screening Committee meeting held on 26.11.1980 on this ground was therefore unsupportable. In fact, even in respect of the adverse remarks which has been now quashed the respondent officer had made his own representation and the representation also was pending consideration at that time and it was disposed of only in December 1986. The remarks, therefore, should not be taken to have become final so as to enable the Committee to take that remark into consideration. The deferring of the consideration in the meeting held on 26.11.1980, therefore, could not be considered as valid.

7. However, the learned counsel for the appellant contended that even if the Tribunal was right in this view it should have remanded the matter for fresh consideration by the Screening Committee and the Tribunal itself should not have given the relief of retrospectively promoted him to the selection grade. In any case, the learned counsel contended that since the Tribunal itself has upheld the remarks for the year ending 31.3.1977 it should not have interfered with the decision of the Screening Committee deferring the claim of the respondent in the meetings held on 27.2.1979 and 3.3.1979. The learned counsel may be well-founded in the contention relating overlooking of the respondent's claim by the Screening Committee when it met in 1979 by reason of this adverse remark but on that ground we do not want to interfere with the order of the Administrative Tribunal because it had taken into an overall consideration of the entire facts and circumstances of the case in granting the relief.

8. The learned counsel also contended that though Screening Committee met in 1979-80 the application under Section 19 of the Administrative Tribunals Act was filed only on 19.12.1986 and that therefore the application should have been dismissed on the ground of delay and laches. The Tribunal considered this question in detail and held that since the representation for the year 1980 was pending till 198G and there is an allegation that the respondent had been making representation to the Government in this regard and in fact one such representation was accepted and it is on that basis in spite of the fact that the facts and situations remained the same in the 1982 the respondent was selected for selection grade with effect from 4.3.1982. In those circumstances the Tribunal said that they were not willing to dismiss the application on ground of the laches and it has to be decided on merits. In these circumstances we are also unable to interfere with the order of the Tribunal.

9. The learned counsel for the appellant did not question the direction given by the Tribunal relating to consideration by the Special Screening Committee in respect of promotion to the post of Super Time Scale, in the rank of D.I.G. No other point also arises in this appeal. Accordingly, both the appeals are dismissed. However, there will be no order as to costs in both the appeals."

46. As stated above, in Special Chapter on Vigilance Management in Public Sector Banks the Central Vigilance Commission has envisaged that no Bipartite Agreement should stand in the way of disciplinary action continuing parallel with criminal investigation/trial. Based on the various decisions of the Supreme Court and High Courts, the Vigilance Department of the respondent bank has codified the guidelines. At no stage the bank was precluded not to proceed in the departmental proceedings. Even this could be agitated before the learned Single Judge in Writ Petition No. 26078 of 1995. Admittedly the judgment passed by learned Single Judge had been assailed by the department in the appeal and at no point of time this aspect has been brought before the appellate Court. Even though Manual clearly postulates that if the trial does not get completed within one year from the date of withholding the departmental proceedings, such

proceedings should be revived and concluded expeditiously without waiting for the trial to be over. Admittedly, still the criminal case has not been finalized and the department has also not shown any relevant material before this Court to indicate that they had ever initiated any efforts so that criminal proceedings could be concluded to its logical end.

47. Once there was no embargo not to proceed departmentally as per the guidelines and manual as indicated above, then the department had every right to initiate departmental proceedings within reasonable time. The suspension order so passed way back on 16.1.1993, which was eventually quashed by learned Single Judge and the judgment passed by learned Single Judge has been affirmed by appellate court and the judgment passed by the appellate Court had not been assailed by means of review, recall or by filing special leave petition, then as such the same has attained finality inter-parties and resjudicata will also be attracted in the matter.

48. In view of the aforesaid facts and circumstances, the orders impugned cannot sustain and are accordingly set aside. The writ petition is allowed.