(2010) 02 GAU CK 0043

In the Gauhati High Court

Case No : Writ Appeal No. 371 of 2007

Dr. Prasanna Kumar Agarwal APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

State Bank of India (Officers Service) Rules, 1992 — Rule 50(1), 50(4), 52(3), 67(1)

Citation : (2010) 3 GLR 715

Hon'ble Judges : Ranjan Gogoi, J;Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : K.N. Choudhury, A. Barua, R. Dubey, J. Patowary, R. Deka, M. Mahanta, B.K. Kashyap and R. Kakati, for the Appellant; S.S. Sharma, G. Jalan and L. Sharma, for the Respondent

Judgement

Ranjan Gogoi, J.—This appeal is directed against the order dated 13th of April, 2007 passed in a proceeding registered and numbered as WP(C) 241(SH)/2004 by which the writ petition filed by the appellant has been dismissed by a learned Single Judge of this Court.

2. The core facts that will be necessary to be unravelled for the purpose of the adjudication of the present appeal may be noticed at the outset.

The appellant, Dr. (Shri) Prasanna Kumar Agarwal, was, at the relevant point of time, working as a Medical Officer of the State Bank of India and he was posted at Shillong. On 30.1.1987 a FIR was lodged by the Bank alleging that the appellant had entered into a criminal conspiracy with the then Chief Regional Manager one Sri J.P. Jakhodia and had cheated the Bank to the extent of Rs. 1,89,815.70 in the matter of purchase of medicine. On the basis of the aforesaid FIR R.C. Case No. 2/87 SHG was registered by the CBI. On completion of investigation charge sheet was filed in the court of the Special Judge, Assam which was registered as Special Case No. 23(c)/88. By an order dated 17.11.1989 the appellant was placed under suspension. He filed a civil suit, i.e., Title Suit No. 11(SH)/89 in the civil court and obtained an ad-interim injunction on 30.11.1989 restraining the Bank from giving effect to the suspension order. The suit was dismissed for default on 24.7.1992. Thereafter, the Bank issued a show-cause notice to the appellant on 29.3.1994 levelling the very same allegations which formed the subject matter of the FIR lodged against him. The appellant, therefore, prayed that the departmental proceeding sought to be initiated by the show-cause notice dated 29.3.1994 be kept in abeyance till disposal of the criminal case. As the Bank did not agree to so act, the appellant instituted a writ petition before this Court challenging the suspension order dated 17.11.1989, the show-cause notice dated 29.3.1994 and the letter dated 27.4.1994 whereby the Bank had rejected the request of the appellant to keep the departmental proceeding against him in abeyance. There was an interim order dated 12.5.1994 in the said writ petition staying further action on the basis of the show-cause notice dated 29.3.1994. The writ petition was dismissed and the appellant instituted a writ appeal, i.e., Writ Appeal No. 515/96 against the order of the learned Single Judge. In the said writ appeal the departmental proceeding against the appellant was, once again, stayed. The writ appeal was also dismissed on 28.8.1997 and the matter was carried by the appellant to the Apex Court which dismissed the SLP of the appellant on 25.12,1997. Thereafter by letters dated 31.12.1998 and 28.1.1999 issued by the Bank explanations were called for from the appellant in response to the show-cause notice dated 29.3.1994. By a communication dated 28.12.1999 the appellant given a detailed reply to the show-cause notice though in the said communication he had referred to the earlier letters submitted by him seeking extension of time and for inspection of documents which, in his comprehension, were necessary to give an effective reply against the show-cause notice dated 29.3.1994.

3. While the aforesaid developments were going on, by order dated 29.9.1998 of the learned Special Judge, Assam the appellant was discharged from the offence alleged. Notwithstanding his discharge in the criminal case, on receipt of the explanation of the appellant to the show-cause notice dated 29.3.1994 (submitted on 28.12.1999) the Bank issued a charge sheet dated 26.4.2000 containing four charges. It will be necessary to extract herein the charges brought against the appellant.

CHARGE I

It is observed that while you were Medical Officer at Zonal Office, Shillong medicines worth Rs. 40,120.48 and Rs. 44,690.17 were purchased from M/s. Agarwal Pharmacy, Guwahati for Zonal Office Dispensary. It is also observed that prior to your appointment as the Bank''s Medical Officer, you used to function as consultant doctor at the above mentioned pharmacy and the proprietor of the pharmacy is your father. You had failed to disclose the fact to the appropriate authority. You have, thus, violated Rule 50(1) and 52(3)(iii) of the State Bank of India Officer Service Rules which are applicable to you.

CHARGE II

Medicine worth Rs. 65,518.25 and Rs. 39,486.80 were purchased from M/s. Shalex Distributors, Pan Bazar, Guwahati, a fictitious firm. The licence No. 1630/1631 mentioned on the bills, etc. actually belong to M/s. Mehendi Medical Store, Nagrijuli, Kamrup, under the restricted drug licence issued by the Controller of Drugs, Assam. No such firm under M/s. Shalex Distributors or its proprietor Shri Bimal Choudhury is registered with the Controller of Drugs, Assam. The firm also does not exist in the given address at Pan Bazar, Guwahati. It is alleged that the bills of the medicines purported to have been supplied by M/s. Shalex Distributors paid by bank draft issued by Laitumkhrah branch vide drafts No. OL/AP 305632 dated 19.2.1985 for Rs. 39,486.80 and No. OL/AP 305330 date 12.11.1984 for Rs. 65,518.25 were received by you under your signature. Thus, you have violated Rules 50(4) and Rule 52(3)(iii) of SBI Officers Service Rules by placing order with a non-existent/fictitious firm.

CHARGE III

It is observed that the bills for Rs. 40,120.48 and Rs. 44,690.17 submitted by M/s. Agarwal Pharmacy were paid on the strength of the certificates given by you on the body of the said bills to the effect that the medicines were duly received for use at the bank''s dispensary. Whereas actually the medicines were not received by the bank at all. The bill for medicine supplied by M/s. Agarwal Pharmacy, a Guwahati based firm was dated 7.5.1984 and you had certified having received the medicines on the same day. Thus, you have violated Rule 50(4) of the SBI Officers Service Rules by giving false certificate.

CHARGE IV

It is observed that during your incumbency as Medical Officer, order for medicines were hurriedly placed and the bills were paid with equal alertness at your behest. Moreover, no proper records were maintained at the dispensary in regard to medicines received/purchased. Thus, you have violated Rule 50(1) of State Bank of India Officers Service Rules by disobeying the instructions issued by your superior.

4. In response to the aforesaid charge memo dated 26.4.2000 the appellant filed his reply on 5.6.2000 stating, inter alia, that he denies the charges levelled against him in toto.

5. As the Bank continued to treat the appellant to be under suspension and had specifically rejected his request for revocation of the suspension order by an order dated 19.8.2000, the appellant instituted another writ proceeding before this Court, i.e., WP(C) No. 261(SH)/2000 challenging his suspension made by order dated 17.11.1989, the charge memo dated 26.4.2000 and the order dated 19.8.2000 rejecting his request for revocation of the suspension. The writ petition was allowed by a learned Single Judge of this Court by order dated 1.6.2001. Aggrieved, the Bank had instituted a writ appeal, i.e., Writ Appeal No. 234/2001. By order dated 18th of March, 2002 the appeal filed by the Bank was allowed and the order of the learned Single Judge dated 1.6.2001 was set aside.

While deciding the said appeal the Bench left it open for the Bank to pass fresh orders in accordance with law with regard to the suspension of the appellant and also directed that the Enquiry Officer may now conclude the enquiry against the appellant within a period of six months from the date of the first sitting of enquiry.

6. Pursuant to the aforesaid order of this Court dated 18th of March, 2002 in Writ Appeal No. 234 of 2001, the Bank issued a notice dated 23.9.2002 requiring the appellant to participate in the enquiry. It appears that the appellant took part in the enquiry held against him at the conclusion of which the Enquiry Officer submitted a report dated 31.3.2003 holding all the charges brought against the appellant by Charge memo dated 26.4.2000 to be not proved. The Bank forwarded a copy of the enquiry report to the appellant by communication dated 8.5.2003 whereby the appellant was also informed that the Disciplinary Authority had differed with the findings of the Enquiry Officer insofar as the Charge I is concerned on the following grounds:

That the medicines were indented from M/s. Agarwal Pharmacy, Fancy Bazar, Guwahati where you worked as a consultant involving sum of Rs. 40,120.48 and Rs. 44,690.17 as per (PEX-1 to PEX-4). It is also alleged that the proprietor of the firm is your father. As a responsible officer of the Bank you should have disclosed the fact to the appropriate authority of the Bank before placing the indent to the said pharmacy. You have, thus, violated the rules and regulations of the Bank by allowing the authority of the Bank to place order for supply of medicines to a firm where you had personal interest. Thus, you have acted in a manner prejudicial to the interest of the Bank. Therefore, I hold the allegation as "proved".

The communication dated 8.5.2003 was followed by another letter dated 6.8.2003 indicating that the Disciplinary Authority had differed with the findings of the Enquiry Officer on Charges-I and II on the following farther grounds:

Allegation I

As per PEX-1, a list of medicines was prepared and duly signed by you on 1.5.1984 and the order dated 1.5.1984 for supply of medicines was signed by the CRM. The related bill No. HS/10101-105 dated 7.5.1984 for Rs. 40,120.48 was paid on 29.5.1984. The said bill dated 7.5.1984 has been paid by a simple instruction ''Please pay by a draft on Guwahati" on the order letter by the then Office Manager.

(ii) As per PEX-7 and PEX-8, two supply orders both dated 24.9.1984 were placed to M/s. Shalex Distributors, Guwahati in a similar manner. The bill (PEX-9) dated 28.9.1984 was paid in the similar fashion.

(iii) Again as per DEX-6, page 85, you placed indent for supply of medicines to the Office Manager on 2.5.1987 and as per page 83, the Office Manager prepared a note to the CRM on 20.5.1987 seeking his approval and the bill was paid subsequently to the respective firm.

(iv) But PEX-2 appears to be an order addressed to M/s. Agarwal Pharmacy, Guwahati listing the medicines to be supplied and signed by you. PEX-2, unlike PEX-7 and PEX-9 is not supported by a separate authority letter from the CRM. It is only due to this lacunae in the process adopted by you that the Office Manager apparently sought the approval of CRM on PEX-2. Thus, it is clear that you had directly placed the order (PEX-2) to M/s. Agarwal Pharmacy, Guwahati violating the extant procedure.

(v) As per PEX-17, the proceeds of the aforesaid bill was paid by means of a draft bearing No. 305202 dated 5.9.1984 for Rs. 44,690.17 favouring M/s. Agarwal Pharmacy, Guwahati which was collected by you under your full signature. You have, thus, shown extra interest in the transaction. This is further supported by documentary evidence that you are one of the partners of M/s. Agarwal Pharmacy, Guwahati alongwith one Mrs. Shanti Devi Chandgathia. Hence, your act in directly placing order with M/s. Agarwal Pharmacy, Guwahati in which you had interest without disclosing the interest in the firm to the Bank is violation of Rule 52(3)(iii) of State Bank of India Officers'' Service Rules.

Allegation-II

It has been clearly established in the enquiry that Shalex Distributors is a fictitious firm. You were instrumental in placing order to M/s. Shalex Distributors. This fact is amply established by the procedure followed in placing orders. PEX-20 is the note dated 22.3.1985 placed by you detailing the procedure followed in placing orders. A reading of paras 1 and 2 of the note indicates that the Medical Officer was the key person in the whole process for preparing the list of medicines, interacting with the distributors and eventually placing orders with the distributors. The distributors supplied the medicines to the Medical Officer and only upon his certification the payment of the bill was effected. The other two persons involved in the process, the CRM and the Office Manager were pure Bankers and it would be naive to suggest that they would have chosen the distributors for supplies. Considering the preponderance of probability under these circumstances it is more than likely that you were responsible for the placement of the two large value orders with the fictitious firm M/s. Shalex Distributors, Guwahati.

PW1 has never confirmed in the enquiry that the signature in PEX-6 and PEX-17 against these Drafts are not your signature as contended by you in the Defence submission. It is obvious that you had more than ordinary interest in M/s. Shalex Distributors. As per PEX-6, it is amply clear that Draft Nos. OL/AP/305338 dated 12.11.1984 for Rs. 65,518.25 favouring M/s. Shalex Distributors and as per PEX-17 Draft No. OL/AP/305632 dated 19.2.1985 for Rs. 39,486.80 favouring M/s. Shalex Distributors were received by you under your signatures which are in conformity with your recorded signature.

Taking all the factors into account I hold the Allegation II is proved.

7. The appellant had submitted his response to both the aforesaid two letters of the Bank dated 8.5.2003 and 6.8.2003 on consideration of which by order dated 27th October, 2003 the appellant was communicated that the Disciplinary Authority had taken the decision to impose the following punishment:

Reduction to one stage lower in the time scale of pay for a period of 2 years with further direction that you will not earn increments to pay during the period, the reduction will have the effect of postponing the future increments of your pay in terms of Rule 67(1) of State Bank of India Officers'' Service Rules. The period of suspension will be treated as such, i.e., not on duty and you will earn notional increment in your pay during the period.

8. Aggrieved by the said order the appellant filed a departmental appeal which was rejected by order dated 9.1.2004 passed by the Chief General Manager of the Bank. In the aforesaid circumstances, the appellant had instituted WP(C) No. 241(SH)/2004 challenging the punishment imposed. The learned Single Judge having negatived the aforesaid challenge the present appeal has been filed.

9. We have heard Sri K.N. Choudhury, learned senior counsel appearing for the appellant and Sri S.S. Sharma, learned Counsel appearing for the respondent-Bank.

10. Sri Choudhury, in the course of his long and elaborate argument, has submitted that the appellant having been discharged in the criminal case on the same allegations as contained in the show-cause notice dated 26.4.2000 the Disciplinary Authority could not have held any of the charges leveled against the appellant to have been proved, and that too, by disagreeing with the findings recorded by the Enquiry Officer. In this regard, Sri Choudhury has submitted, by referring to the report of enquiry dated 31.3.2003, that the Enquiry Officer has recorded good and cogent reasons for holding Charges I and II to be not proved against the appellant. Learned Counsel has further submitted that the reasons appearing in the communications dated 8.5.2003 and 6.8.2003, on which basis the Disciplinary Authority had differed with the findings of the Enquiry Officer on Charges I and II, do not indicate any sound basis for such disagreement to have the acceptance of the court. Specifically, Sri Choudhury has referred to the letter dated 8.5.2003 to contend that the Enquiry Officer had categorically found that the allegation that the proprietor of M/s. Agarwal Pharmacy is the father of the appellant had not been established in the enquiry. According to Sri Choudhury, there is no disagreement of the Disciplinary Authority with the said finding. Yet, the said fact is, once again, reiterated in the dissent contained in the letter dated 8.5.2003. Sri Choudhury has further submitted that in the reply submitted by the appellant to the show-cause notice dated 29.3.1994 the appellant had clearly admitted that Agarwal Pharmacy belongs to his family and that the said fact was disclosed by the appellant while applying for the post of Medical Officer in the Bank. Sri Choudhury, therefore, has submitted that the disagreement contained in the communication dated 8.5.2003 is based on virtually non-existent facts.

11. Insofar as the communication dated 6.8.2003 is concerned, Sri Choudhury has submitted that the grounds (i), (ii) and (iii) mentioned by the Disciplinary Authority for disagreeing with the findings of the Enquiry Officer cannot, on the face of it, sustain any such disagreement or dissent. Learned Counsel has further submitted that what has been recorded under ground (iv) in respect of Charge No. 1 contradicts the stand of the Disciplinary Authority with regard to Charge No. II, i.e., the allegation of placing of supply orders by the appellant with M/s. Shalex Distributors. In this regard, learned Counsel has specifically submitted that the Disciplinary Authority has taken the view that PEX-2 is an order issued to M/s. Agarwal Pharmacy for supply of medicine listed therein which has been signed by the appellant. To sustain its views on PEX-2 document the Disciplinary Authority had referred to PEX-7 and PEX-9 (sic) which are admitted to be separate supply orders issued by the Chief Regional Manager to M/s. Shalex Distributors for supply of medicine on the basis of indents signed by the appellant. Sri Choudhury, therefore, has submitted that the Disciplinary Authority has, thus, virtually admitted that the supply orders to M/s. Shalex Distributors had been placed by the Chief Regional Manager and not by the appellant. Apart from pointing out the aforesaid fact, Sri Choudhury has submitted that though there is no separate supply order on the basis of PEX-2 the said document, i.e., PEX-2, properly read and understood, together with the endorsement contained therein seeking the approval of the Chief Regional Manager for payment to the supplier would indicate that the PEX-2 document is also an indent though the name of Agarwal Pharmacy had appeared therein. Sri Choudhury has further submitted that the allegation of receipt of the Bank draft of Rs. 44,690.00 by the appellant vide PEX-17 document, on which fact also the Disciplinary Authority had disagreed with the findings of the Enquiry Officer is not established inasmuch as the oral evidence on record (PW1) is to the clear effect that the said witness could say as to who had received the payment against Bank Draft No. 305632 for Rs. 39,486.00. In this regard Sri Choudhury has pointed out that the aforesaid amount of Rs. 39,486.00 represents the second bill raised by M/s. Shalex Distributors and, therefore, the evidence with regard to the said bill will stand good in respect of the payment of the bill of M/s. Agarwal Pharmacy for Rs. 44,690.00 paid by Bank Draft No. 305202, details of which have been mentioned in ground (v) under Allegation No. 1 in the communication dated 6.8.2003.

12. Coming to the contents of the aforesaid document dated 6.8.2003 on Charge-II, Sri Choudhury has submitted that the conclusions therein are mere conjectures which apart from being contradictory as mentioned above is plainly contrary to the clear evidence on the record of the disciplinary proceeding which indicates that what was done by the appellant is to merely indent the medicine required, orders for which were placed by the Chief Regional Manager by PEX-7 and PEX-9 (PEX-8).

13. In reply, Sri S.S. Sharma, learned Counsel for the respondent Bank, has pointed on the limitations of the writ court in matters of appreciation of evidence. Sri Sharma has contended that as long as there is some evidence to indicate that

the view taken by the Disciplinary Authority is a possible view the writ court would never judge the quantitative or qualitative value of such evidence so as to supplant its views in place of the departmental authorities. Sri Sharma has also pointed out to the documents exhibited as PEX-3 and PEX-4 (bills raised by Agarwal Pharmacy) which are available on record to show that the appellant had also signed the said bills on behalf of M/s. Agarwal Pharmacy. Sri Sharma has submitted that the conduct of the appellant as a Medical Officer of the Bank has been highly improper and, therefore, taking into account all the facts and circumstances of the case the punishment imposed should not be disturbed. Sri Sharma has further submitted that, in any event, if the court is inclined to interfere with the punishment imposed the Bank should be given a further opportunity of having a fresh enquiry into the matter in order to maintain due and proper conduct by officers, employees and staff of the Bank.

14. We have carefully considered the detailed facts of the case, particularly the report of the Enquiry Officer, the communications dated 8.5.2003 and 6.8.2003 of the Disciplinary Authority indicating the reasons for its disagreement with the findings of the Enquiry Officer as well as the order of the learned Single Judge under appeal. We have also given due consideration to the submissions advanced on behalf of the rival parties and have sought to correlate the said submissions to the documents referred by the learned Counsels which are available on the record of the appeal.

15. The power of the writ court in matters pertaining to disciplinary action on the basis of a regular departmental proceeding is a severely circumscribed power though such circumspection is largely self-imposed. The writ court is not to act as an appellate body either in respect of the findings of the Enquiry Officer or the view of the Disciplinary Authority. As long as the proceedings are held in accordance with the norms in force which may be laid down by Rules or Regulations framed by the employer and in such proceedings the charged officer has been given a reasonable opportunity to defend himself and further the conclusions recorded are possible conclusions, the writ court will normally not interfere. It is keeping in view the aforesaid self-imposed limitations that we may now proceed to analyse the situation in the present case.

16. The Enquiry Officer in his report dated 31.3.2003 had exonerated the appellant from all the four charges leveled against him. The Disciplinary Authority had disagreed with the findings of the Enquiry Officer on Charges-I and II alone. Charges III and IV, therefore, will not be relevant for any discussion. Insofar as Charge I is concerned, the Enquiry Officer has held that PEX-2 (one of the alleged supply orders to M/s. Agarwal Pharmacy) is a list of medicine indented by the appellant and cannot be treated as a supply order placed on M/s. Agarwal Pharmacy by the charged Officer. The Enquiry Officer took the view that had it been a supply order the said document had been remained with the supplier. In this regard the Enquiry Officer also took note of the endorsement of the Office Manager on the left-hand corner of PEX-2 by which he had sought

approval of the Chief Regional Manager. The Disciplinary Authority in its dissent note in the communication dated 6.8.2003 took the view that in case of other indents issued by the appellant, e.g., in the case of M/s. Shalex Distributors, separate supply orders were issued by the Chief Regional Manager on the basis of the said indents which were exhibited as PEX-7 and PEX-9. Therefore, according to the Disciplinary Authority, PEX-2, if it was an indent, should have also been supported by a separate supply order which, however, was not the case.

17. PEX-2 document indicates that the medicine listed therein is to be procured from M/s. Agarwal Pharmacy whereas the indents issued in case of M/s. Shalex Distributors does not contain any details of the source of procurement. The said document (PEX-2) is signed by the appellant. The endorsement on the top of PEX-2 of the Office Manager seeking approval of the Chief Regional Manager is dated 1.9.1984 whereas the PEX-2 document is dated 7.8.1984. What has been sought by the endorsement of the Office Manager is the approval of the Chief Regional Manager for payment of the price of the medicine listed in PEX-2. In such circumstances, if the Disciplinary Authority took the view that PEX-2 document is a supply order on M/s. Agarwal Pharmacy issued by the appellant, there being no separate supply order by the Chief Regional Manager in case of the medicine listed in PEX-2, the view taken by the Disciplinary Authority cannot be termed to be an impossible view. It is a possible view and so long as the view taken is a possible view, the correctness of it should not be determined by the writ court by testing the same on hypothesis other than the one that was adopted by the Disciplinary Authority.

18. The first charge against the appellant is for violation of Rules 50(1) and 52(3)(iii) of the State Bank of India Officers Services Rules. Rules 50(1) and 52(3)(iii) are to the following effect:

50. (1) Every officer shall conform to and abide by these rules and shall observe, comply with and obey all lawful and reasonable orders and directions which may from time to time be given to him by any person under whose jurisdiction, superintendence or control he may for the time being be placed."

52. (3)(iii) No officer shall in discharge of his official duties knowingly enter into or authorize the entering into by or on behalf of the Bank any contract, agreement, arrangement or proposal not being related to a loan or advance referred to in Clause (i) or (ii) above, with any undertaking or person if any of his relatives is employed in that undertaking or under that person or if he or any of his relatives has interest in any other manner in such contract, agreement, arrangement or proposal and the officer shall refer every such matter, contract, agreement, arrangement or proposal to his superior and the matter of such contract, agreement, arrangement or proposal shall thereafter be disposed of according to the instructions of the authority to whom such a reference is made.

19. While Rule 52(3)(iii) of the Rules may not have been violated by the

appellant in view of the clear disclosure made to the Bank with regard to the appellant''s relationship with Agarwal Pharmacy, it appears from the report of the Enquiry Officer that a note dated 22.3.1985 (PEX-20) containing the prevailing practice of purchase of medicine for the Bank''s Clinics was an admitted document of both sides. It also appears from the materials on record that under the norms in force laid down in the said document, the Medical Officer is only to prepare an indent of the medicine required by a Clinic, orders for which are to be placed by the Chief Regional Manager. Rule 50(1), therefore, will appear to have been clearly breached by the action of the appellant in preparing the PEX-2 document.

20. Insofar as Charge II is concerned, PEX-7 and PEX-8 which are available on record would clearly indicate that on the basis of the indents prepared by the appellant separate supply orders, i.e., PEX-7 and PEX-8 were issued by the Chief Regional Manager. PEX-8, coincidentally, has been wrongly mentioned as PEX-9 by the Disciplinary Authority in the communication dated 6.8.2003, as already noted above. The above fact, i.e., that separate supply orders were issued by the Chief Regional Manager to M/s. Shalex Distributors on the basis of indents prepared by the appellant, has been virtually admitted by the Disciplinary Authority in the communication dated 6.8.2003. In such circumstances, the disagreement of the Disciplinary Authority in respect of the findings of the Enquiry Officer on Charge II will have no legal credibility. Such disagreement being founded on virtually non-existent facts the same would be appropriate for interference by the court.

21. Insofar as the allegation of receipt of bank drafts by the appellant is concerned, the aforesaid allegation is contained under Charge II contained in the charge memo dated 26.4.2000, i.e., in respect of bills submitted to M/s. Shalex Distributors. In the dissent communication dated 6.8.2003 of the Disciplinary Authority, however, such an allegation has been leveled against the appellant in respect of the receipt of Bank draft No. 305202 for Rs. 44,690.17 made to M/s. Agarwal Pharmacy which could not have been done as the said allegation was not included in any of the allegations contained under Charge I. Be that as it may, a consideration of the oral evidence of PW1, which is available on record, clearly indicates that though the said witness was able to identify the signature of the appellant in other connected documents, e.g., PEX-3, in response to pointed questions with regard to receipt of Bank drafts by the appellant either on behalf of M/s. Agarwal Pharmacy or on behalf of M/s. Shalex Distributors the reply of the witness is in the negative, i.e., he cannot say who had received the said payments. In such circumstances, the disagreement of the Disciplinary Authority with regard to the findings of the Enquiry Officer on the aforesaid count cannot be sustained by the court.

22. Coming to the issue raised by Sri S.S. Sharma, learned Counsel for the respondent Bank with regard to the signature of the appellant in the bills raised by M/s. Agarwal Pharmacy (PEX-3 and PEX-4) it will suffice to say that the same

was not an allegation contained under any of the charges leveled by the charge memo dated 26.4.2000. Therefore, no discussion on the said issue will be called for.

23. The above discussions make it clear that the disagreement of the Disciplinary Authority on a part of the findings of the Enquiry Officer pertaining to Charge I, i.e., those relatable to PEX-2 and consequential violation of Rule 50(1) of the Rules alone can have the court''s approval. What should be the adequate measure of penalty in a situation where only the above part of the charge No. 1 can be found to have been proved against the appellant is another thorny question revolving around the powers of the writ court to interfere with punishment imposed by the employer. Fortunately the law in this regard has reached a stage of clear crystallization and it is for the Disciplinary Authority and not for the court to decide on the quantum of punishment.

24. In the present case the Disciplinary Authority had imposed the punishment in question on satisfaction that the entire of Charge No. I and Charge No. II are proved against the appellant. The court, for reasons mentioned above, has taken the view that such satisfaction of the Disciplinary Authority is not well-founded to the full extent and only a part of such satisfaction will survive. What should be the measure of punishment in the changed situation, in our considered view, should be left to the Disciplinary Authority to decide.

25. A significant fact that the Disciplinary Authority may have to take into consideration is that the appellant has by this time retired from service and had been engaged in defending himself against the very same charges which were first leveled in the FIR filed on 30.1.1987. The exoneration of the appellant at different stages of the long journey is too vital a fact for exclusion. The Disciplinary Authority, therefore, will now re-decide the appropriate measure of penalty that should be imposed on the appellant in the light of the findings recorded in the present order and the other relevant facts and circumstances as indicated. The order of punishment dated 27.10.2003 is, accordingly, set aside to the above extent and the writ appeal is partly allowed.

