

(2014) 01 GAU CK 0037
In the Gauhati High Court
Case No : W.P. (C) No. 3851 of 2006

Indra Mohan Pator

APPELLANT

Vs

United Bank of India and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Evidence Act, 1872 — Section 102
Penal Code, 1860 (IPC) — Section 120B, 403, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2014) 1 GLD 567 : (2014) 1 GLT 553

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : S.K. Medhi, Mr. N. Medhi and Mr. J. Das, Advocate for the Appellant;
S. Dutta and Mr. M. Choudhury, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J.—In this writ petition, the petitioner is questioning the legality of the order dated 23.12.1998 passed by the Zonal Manager, United Bank of India, Guwahati Zonal Office, Guwahati imposing a penalty of compulsory retirement upon him and of the inaction of the appellate authority to dispose of the departmental appeal filed by him. The facts giving rise to this writ petition may be briefly noted at the outset. The petitioner was appointed as General Clerk in the Bank on 7.7.1983, was promoted on 1.1.1988 as Officer of the Bank at the Jorhat Branch. After his transfer to the Demow Chariali Branch as Deputy Manager, he was by the order dated 4.8.1995 suspended from service as disciplinary proceedings were contemplated against him for certain acts of misconduct alleged to have been committed by him while functioning as Deputy Manager of the Demow-Chariali Branch of the Bank. On 12.9.1996, he was charge-sheeted and was asked to submit his written statement of defence against the charges. However, on 29.4.1997, the charge-sheet was amended by the respondent-Bank. The following are the charges levelled against the petitioner:

(a) You had regularly opened S.B. A/C No. 8028 of Smt. Champa Sahu on 24.1.1994 with ulterior motive and violating the rules of the Bank under your single signature when other officers were present in the Branch and did not deliberately receive the confirmation of address and occupation either from the introducer or from the customer before or after opening of the account exposing the Bank to fraud in the said account and the account-holder being non-traceable at the recorded address and acted in connivance with Shah Jamal Ali to defraud the Bank.

(b) You had acted in connivance with Shah Jamal Ali, C.C.G. and passed withdrawal slips for Rs. 2,000/- dated 13.3.95, Rs. 1600/- dated 7.4.95, Rs. 300/- dated 13.4.95, Rs. 500/- dated 24.4.95 and Rs. 3000/- dated 20.5.95 totalling to Rs. 7,400/- in the S.B. A/C No. 8028 of Smt. Champa Sahu and also one debit voucher for Rs. 400/- dated 22.4.95 in the same SB A/C deliberately to defraud the Bank although the previous posing/balance figures in the previous occasions were not duly checked and ticked as per rules of the Bank and there were no genuine credit in the account, causing/exposing the Bank to financial risk/loss.

(c) You had acted in connivance with Shah Jamal Ali, C.C.G., and had allowed him deliberately with ulterior motive to defraud the Bank by allowing him to work in S.B. Ledger No. 23 without issuing any formal office order giving the said Ali enough scope to make 21 (twenty one) fictitious and fraudulent entries amounting to Rs. 22,100/- in S.B. A/C No. 8028 of Smt. Champa Sahu on 20 (twenty) different dates from 9.3.95 to 4.7.95 to defraud the Bank causing financial loss to the Bank to that extent, since entire amount was subsequently withdrawn from the A/C.

(d) You had acted in connivance with Shah Jamal Ali, C.C.G. of the Branch and had allowed him deliberately and with ulterior motive to defraud the Bank by allowing him to work in S.B. Ledger No. 19 without issuing any formal office order, giving the said Ali enough scope to make 14 debit entries by fake withdrawal slips without accompanied by Pass Book in S.B. A/C No. 6835 of Shri K.B. Singh from 12.12.94 to 23.6.95 amounting to Rs. 2,95,900/- of which Rs. 2,93,000/- comprising 13 debit entries have been passed by you irregularly and motivatedly. There were two other fake withdrawals totalling Rs. 50,000/- passed by you irregularly and motivatedly from 18.11.94 to 22.11.94 without accompanied by Pass Book. You also allowed the said Ali free access to Ledger Control Sheet and to manipulate Bank's book of record by taking new Control Sheet No. 129249 and by preparing a concocted Ledger Sheet No. 129249 omitting 16 debit entries totalling Rs. 3,45,900/- (Rs. 2,95,00/- Rs. 50,000/-) replacing/destroying original ledger sheet ending No. 3073 and thus caused financial loss to the Bank to the extent of Rs. 3,45,900/-.

(e) You had acted in connivance with Shah Jamal Ali, CCG, and deliberately with ulterior motive allowed Shah Jamal Ali, CCG, of the Branch to defraud the Bank by allowing him undue/unauthorised access to Ledger Sheet No. 197335 of S.B.

A/C No. 974 of Shri Amulya Chandra Dey so as to enable him to:

(i) to increase brought forward balance by Rs. 40,000/- from Rs. 29,018.35 p to Rs. 69,018.35 p on 28.10.94;

(ii) to increase the credit balance by Rs. 40,000/- at the time of posting a Cheque No. 936930 for Rs. 10,000/- on 9.3.95 against an unscored unaltered balance dated 6.3.95 without no subsequent correct balance entry whereby the credit balance in the A/C was altered from Rs. 10,218.35p to Rs. 50,218.35p on 6.3.95; and

(iii) to increase the credit balance by Rs. 40,000/- by increasing the credit posting from Rs. 1.000/- to Rs. 41,000/- on 7.4.95 by increasing the balance figure by Rs. 40,000/- from Rs. 31,658.35p to Rs. 71,658.35p.

Further you allowed the said Ali to post debit cheques No. 936928 for Rs. 20,000/- on 28.10.94 and No. 936930 for Rs. 10,000/- on 9.3.95. The cheques were passed by you deliberately with ulterior motive to defraud the Bank without verifying the brought forward balance at the time of passing the aforesaid" two cheques on 28-10.94 and 9.3.95. Thus you had acted in a manner detrimental to the interest of the Bank with intent to provide undue financial benefit to the customer exposing the Bank o financial risk/loss to the extent of Rs. 1,20,000/-.

(f) You had deliberately with ulterior motive to defraud the Bank in not verifying the tempered/altered and unauthenticated increased balance on 6.3.95 and 7.4.95 in SB A/C 974 of Sri Amulya Chandra Dey and passed cheque No. 070393 for Rs. 20,000/- on 21.4.95 for Rs. 10,000/- on 8.4.95 and Cheque No. 070394 for Rs. 20,000/- on 24.4.95 and Cheque No. 936930 for Rs. 10,000/- on 9.3.95 and provided undue financial benefit to the customer and acted prejudicial to the interest of he Bank exposing the Bank to financial risk/loss. You also passed the Cheque No. 70394 for Rs. 20,000/- dated 24.5:95 irregularly and" motivatedly on 24.4.95 knowing fully well that it was a post-dated cheque.

(g) You had acted deliberately with fraudulent intent and fictitiously debited Cheque purchase A/C for Rs. 4,000/- on 13.12.94 and Rs. 10,000/- on 19.12.94 and credited the amount by transfer o SB A/C No. 7861 of Sri J. Bora on respective date as indicated above, by signing the Dr./Cr. Voucher singly which were prepared by you and you fraudulently utilized the total amount of Rs. 25,000/- for your personal gains and purposes by transferring the amount of Rs. 3,000/- on 8.12.94, Rs. 12,000/- on 13.12.94 and Rs. 10,000/- on 19.12.94 from S.B. A/C No. 7861 of yours.

(h) You had acted fraudulently and manipulated books of record of the Bank by increasing the Assam State Pension Receivable Debit Voucher by Rs. 9,900/- on 29.4.94 from Rs. 49,189/- to Rs. 59,089/- in December 94 and by debiting Rs. 3,100/- on 29.12.94 from SB A/C No. 7861 of Sri J. Bora and also by debiting Rs. 1,000/- on 2.3.95 from SB A/C No. 7664 of yours and neutralised and credited the Cheque Purchase A/C by Rs. 14,000/- by signing the Dr/Cr Vouchers singly

which were also prepared by you. You had not only acted prejudicially to the interest of the Bank but also acted in a manner unbecoming of a Bank Officer.

(i) You had acted to defraud the Gov. of Assam and manipulated the records of the Bank in respect of arrear pension of Sri Hem. Ch. Handique from 1.7.92 to 30.6.94 by increasing scroll for June '94 by Rs. 9,900/- by showing it as Rs. 35,550/- instead of Rs. 25,650/- (under a total scroll amount of Rs. 1,46,485/-) and by receiving reimbursement of Rs. 35,550/- from Sibsagar Branch on 13.8.94 instead of actual claim Rs. 25,650/- and credited the amount of Rs. 25,650/- to SB A/C No. 7695 on 29.7.94 and exposed the Bank to undue financial liability to the Govt. of Assam. The said excess amount of Rs. 9,900/- was utilised by you on 29.12.94 for your personal gains and purposes for neutralising Cheque Purchase A/C which was fraudulently debited by you on 13.12.94 and 19.12.94.

(j) You had irregularly and motivatedly passed 15 (fifteen) fake withdrawal slips from 18.11.94 to 23.6.95 in SBA/C No. 6835 of Sri Kunja Bihari Singh of total amount of Rs. 3,43,900/- without accompanied by the Pass Book and had caused financial loss to the Bank to that extent.

(k) On 26.12.92 as Officer attached to our Jorhat Branch you had fraudulently altered the Dr. Voucher in Cheque Purchase A/C from Rs. 35,269.49 to Rs. 39,427.49 and effected a fraudulent credit of Rs. 4158/- in your joint SB A/C No. 30591 with your wife Smt. Arati Saikia Patar in the said Branch. The Dr. & Cr. Vouchers as aforesaid were duly prepared by you and singly signed by you. Thus you had acted fraudulently and misappropriated the amount for your personal gains and purposes by misuse of authority.

2. On receipt of the charge memo, the petitioner submitted his reply on 1.11.1996 and specifically denied therein each and every charge levelled against him. It was asserted by the petitioner that the charges were vague and the nature of misconduct was not specified. He, therefore, requested the respondent authorities to exonerate him of all the charges and drop the proceedings against him in the interest of justice. The respondents, apparently, not satisfied with the explanation of the petitioner, decided to proceed with the departmental enquiry by appointing an enquiry officer as well as presenting officer. To the surprise of the petitioner, while the enquiry was going on, the respondents had issued the letter dated 29.4.97 amending the charge sheet by substituting the date "24.1.94" to "24.1.95". After completion of the enquiry, the enquiry officer vide his letter dated 28.1.97 submitted his report to the respondent No. 2. In the enquiry report, it was evident that the enquiry officer found all the charges except charge No. 1 as proved against the petitioner, who was, accordingly, held guilty as charged. In reply to the enquiry report furnished to him, the petitioner reiterated that he was not guilty of the charges and requested the respondents to exonerate him from all the charges. According to the petitioner, a CBI case on similar charges was instituted against him together with two others including Shah Jamal Ali before the learned Special Judge, CBI, Assam in Special Case No.

102/2004 u/s. 120B/420/471/468/477A IPC and 13(1)(d) read with Section 13(2), Prevention of Corruption Act, 1988. The learned Special Judge by the judgment dated 22.6.2005 acquitted the petitioner while the remaining two accused were convicted. In the departmental appeal preferred by him, the petitioner pointed out his acquittal by a criminal court in respect of the same charges and requested his exoneration in the departmental enquiry on that basis, but his appeal was never entertained. The respondent authority did not accept the representation of the petitioner and issued the impugned order imposing compulsory retirement upon him. The departmental appeal preferred by him also proved futile whereupon he filed this writ petition.

3. The writ petition is opposed by the respondent authorities, who filed their affidavit-in-opposition. In their counter-affidavit, the respondents pointed out that the departmental appeal was filed by the petitioner after the period of limitation and was, accordingly, rejected. It is the case of the respondents that the petitioner was afforded reasonable opportunity of hearing by allowing him to engage his defence representative and was allowed to cross-examine and re-examine the witnesses. It is pointed out by the answering respondent that the petitioner himself admitted of having committed irregularities with regard to certain charges even though he took the vague plea that the Bank did not suffer any loss thereby, which is untenable at all. In his written brief also, according to the answering respondents, he took the stance that the irregularities were committed due to heavy work load thereby admitting his negligence at any rate. As all the charges were proved, there was no disproportionality in the punishment of compulsory retirement imposed upon him.

4. It is also asserted by the answering respondent that the fate of the criminal case has no bearing upon the disciplinary proceeding as the nature and scope of proof in a criminal case is different from that of the disciplinary proceeding and the order of acquittal in the criminal case does not conclude the departmental proceedings. In a criminal case, the charge has to be established by proof beyond reasonable doubt while in a departmental enquiry, the charge is to be proved by preponderance of probability. It is pointed out by the answering respondent that there were as many as 11 specific charges of major misconduct against the petitioner, namely, defrauding the Bank by tampering, altering, forging the Bank's documents, ledger vouchers, manipulating the records to make fictitious debt entries and except for Charge No. 1, all other charges have been emphatically proved against the petitioner in the enquiry. The points raised against the enquiry in the writ petition were never raised at the time of the enquiry. The petitioner is absolutely wrong in terming the charges against him as mere errors of judgment Whereas the irregularities committed by him was totally unbecoming of an Officer of the Bank as he dealt with public money, was engaged in financial transactions or acts in a fiduciary capacity and, therefore, highest degree of integrity and trustworthiness is a must.

5. It is the further case of the respondent-Bank that the charges proved against

him Were those of failure to take all possible steps to ensure and protect the interest of the Bank and of failure to discharge duties with utmost integrity, honestly, devotion and diligence and acting in a manner unbecoming of an officer, which constitute major misconduct within the meaning United Bank of India Officers Employees (Discipline and Appeal) Regulation, 1976. Consequently, the punishment imposed upon him was not at all disproportionate to the charges proved against him: instead of dismissing removing him from service, he was awarded the lesser punishment of compulsory retirement, for which he cannot have any legitimate grievance. It is reiterated that all reasonable opportunities were given to him in the enquiry but failed to establish his innocence whereas the Bank successfully proved its case. The mere fact that the Bank had passed a different order in the case of some other similarly situated persons can never be a ground for issuing a writ on the plea of discrimination: illegal action cannot be used as a precedent to claim similar relief. These are the sum and substance of the case projected by the respondent authorities in defending the impugned order and the disciplinary proceedings in connection therewith.

6. I have carefully gone through the pleadings of the parties together with the materials on record including the findings in the enquiry report. I have also given my thoughtful consideration to the submissions advanced by the learned counsel appearing for the rival parties. It is the submission of Mr. S.K. Medhi, the learned counsel for the petitioner, that the petitioner, who had no occasion to face an enquiry earlier, was never made aware of his rights as a delinquent by the Bank during the enquiry nor was he given an opportunity to cross-examine the witnesses. He was also never informed of his valuable right to cross-examine the witnesses and was, therefore, denied of his right to effectively defend himself. The learned counsel further contends that the so-called confessional statement of Shah Jamal Ali upon which the petitioner has been found guilty of the charges was never proved as he was never examined by the Bank and the enquiry officer has committed perversity by relying on such evidence to record a finding of guilt against the petitioner.

7. The learned counsel further submits that the Bank authorities acted arbitrarily in not exonerating him of the charges after it was made known to them that he was acquitted by a criminal court with respect to the similar charges levelled against him in the enquiry: both the criminal case and the enquiry are based on the same set of allegations, the same set of witnesses and the same set of documentary evidence. He maintains that the petitioner has been subjected to hostile discrimination in view of the fact that in the case of another officer, namely, Sri Kalyan Chakravorty, who was also charge-sheeted for alleged misconduct with 18 charges, was merely let off with stoppage of a certain number of increments and reduction of basic pay. So is in the case of one Shri Subodh Ranjan Sengupta, another officer of the Bank, was imposed a penalty of reduction in scale only even though he was also found guilty of the charges levelled against for serious offences. It is, therefore, submitted by the learned counsel that the petitioner should also be treated equally by reducing the penalty

imposed upon to the lesser penalties awarded upon the said two Bank officers. In support of his various contentions, the learned counsel relies on the following decisions: G.M. Tank Vs. State of Gujarat and Another, ; Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, and Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, .

8. Mr. S. Dutta, the learned counsel for the Bank, however, maintains that the impugned penalty does not suffer from any disproportionality when the misconduct of grave nature has been proved against the petitioner. He further submits that the findings of the disciplinary authority are based on the solid documentary evidence as well as the admission made by the petitioner himself in his written argument: admitted need not be proved. The learned counsel this reminds this Court that it is a settled law that in a departmental enquiry, if only one of the charges are proved and even if remaining charges are not proved also, the disciplinary authority can always record a finding of guilt against the delinquent on one of the charges so proved. In the instant case, not one but many charges have been proved against the petitioner with the result that such findings cannot be interfered with by this Court sitting in a Writ Court: this Court is not sitting in an appeal over the decision of the disciplinary authority. He also contends that the punishment imposed upon the petitioner proportionate to the misconduct charge against him; loss of confidence is the primary factor and not the amount of money misappropriated. To buttress his various contentions, the learned counsel relies on the following decisions: (a) U.P. State Road Transport Corporation Vs. Vinod Kumar, ; (b) Nareendra Nath Bhalla v. State of UP & Ors., (2007) 15 SCC 775; (c) Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, ; (d) Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, ; (e) State of U.P. and others Vs. Nand Kishore Shukla and another, ; (f) Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and Another, and (g) Prasanta Kumar Ganguly v. State Bank of India & Ors., 2011 (4) GLT 814.

9. After careful consideration of the learned counsel appearing for the rival parties, I find force in the contention of the learned counsel for the respondent-Bank. In respect of the petitioner deliberately allowing the said Shah Jamal Ali to post debit cheques No. 936928 for Rs. 20,000/- on 28.10.94 and No. 936930 for Rs. 10,000/- on 9.3.95 with the ulterior motive to defraud the Bank without verifying the brought forward balance at the time of passing the aforesaid two cheques on 28.10.94 and 9.3.95, he had replied in the following manner:

(e) While passing the cheque on 28.10.94, no suspicion arose in the minds of the CSO because the balance was an unaltered one. Whether the balance after making a "B/F" was correctly written or not cannot be ascertained at this juncture in the absence of the original sheet. No charge can be brought against the CSO on the strength of a restructured sheet because the genuineness of the same is in question. While passing the withdrawal of 7.4.95 the altered balance escaped the notice of the CSO because of his heavy preoccupation with other

occupational work.

(Underlined for emphasis)

10. With respect to fraudulently debiting Rs. 3,000/-, Rs. 10,000/- and Rs. 12,000/- from the S.B.A/C No. 7861 of Shri J. Bora on 19.12.94 and crediting the entire amount of Rs. 25,000/- to his own SB A/C No. 7664 irregularly and fraudulently for his personal gains and purposes on the aforesaid dates and exposed the Bank to corresponding financial risk/likely loss, the following are the answer of the petitioner in his written argument:

The cheques purchased in the account on 13.12.94 and 19.12.94 were not at all fake ones. Cheques were genuinely offered by the party and the numbers of the cheques duly recorded on the voucher itself. Please see MEX 67 where it is found the cheque was numbered as 141582 drawn on PNB and on 19.12.94 there is a mention in MEX 70 the cheque was numbered as 141882. The transfer of funds which were done on three occasions to the account of CSO were affected in pursuance with the written instruction of (sic) the party and those letters might have been displaced in subsequent days. That the contention of CSO is genuine will be further amplified from the fact that the party never lodged any complaint to the Bank for such transfer of funds. This fact stands corroborated by MW-1 during cross-examination in page-20 of the proceeding.

(Underlined for emphasis)

11. With regard to charge No. 11 about fraudulent crediting of Rs. 4,158/- to his joint account with his wife, Smt. Arati Saikia by altering the debit voucher in cheque purchase A/c from Rs. 35,269.49p to Rs. 39,427.49p, he admitted that during his period of suspension, on the persistent demand made by the authorities, he without verification of original record deposited a sum of Rs. 4158/- in the account of the concerned customer: there was no question of the Bank suffering from loss. In so far as the fraudulently claiming Rs. 9900/- in excess of what was actually paid by the Branch and of utilizing this amount by him on 29.12.94 for his personal gain and purpose for neutralizing fictitious debits done by him in the cheque purchase account of J. Bora, his reply is as follows:

(5) In the pension receivable account and CP account of Sri Jayanta Bora, there is unrealised amount of 9900/- only. This amount of unrealized nature cropped up due to certain chain of voucher which the undersigned is not in a position to exactly recollect after a lapse of so many years. If however, the authority asks the CSO to repay this "9900/- he is agreeable to comply with.

(Underlined for emphasis)

12. Compared the aforesaid reply with his earlier reply towards the end of the subparagraph of para (C) under the heading "Pension receivable account:

.....Before getting the payment in the last week July/94, the pensioner

submitted defence exhibit number-34 wherefrom it was evident that a sum of Rs. 9900/- was already drawn by him as provisional pension. When this particular fact came to the notice of CSO he deducted a sum of Rs. 9900/- from the total payable amount and credited a sum of Rs. 25,650/- only to the account of the pensioner. Up to this stage there is no question defrauding the Bank or the state government because lodging an excess claim and getting subsequent reimbursement may be adjusted at any point of time by making less charge in subsequent scrolls(?). This particular fact has been corroborated by MW-1 in page number-43 of the proceeding.

(Underlined for emphasis)

13. In my opinion, on reading and rereading all the sentences underlined herein above, there is no room for doubt that the petitioner has admitted, expressly or by necessary implication, the charge that he on 7.4.95 negligently allowed the withdrawal by cheque as the altered balance escaped his attention due to "his pre-occupation with other occupational works". This can hardly be an excuse for one holding a very responsible position in the Bank. With respect to the charge of debiting a total of Rs. 25,000/- from SB A/C No. 7861 of J. Bora on 19.12.94 and crediting it to his own account i.e. SB A/C No. 7664, his explanation is that he did so on the written instructions of the account holder. However, he is unable to produce such written instructions. u/s 102, Evidence Act, 1882, the burden of proof in a suit or proceeding lies on that person who would fail if not evidence at all were given on either side. Now, if the petitioner would like to prove that he did so under such instructions, it is for him to produce those "written instructions" to substantiate his case that he had debited those amounts and credited to his account on such instructions. Having been unable to do so, it is quite safe to conclude that the petitioner committed breach of trust. Regarding charge No. 11 of fraudulently crediting Rs. 4158/- in his joint account with his wife, Smt. Arati Saikia Patar, he admitted that he had deposited the said amount in the account of the customer on the demand made by the authorities during his suspension. Now, if he was really innocent as he claimed, why should he deposit this amount from his own pocket? The Bank could hardly expect charity or donation from the petitioner. This is evidence of temporary misappropriation. This also, at any rate, amounts to admission of misappropriation of the Bank's money, albeit even for a short period, by necessary implication: there is thus temporary misappropriation of depositor's money. The aforesaid admissions are repeated by the petitioner in his representation against the findings of the enquiry officer.

14. In Delhi Transport Corporation Vs. Shyam Lal, , it is held by the Apex Court that it is a fairly settled position in law that admission is the best piece of evidence against the person making it, though it is, however, open to the person making the admission to show why the admission is not to be acted upon. This was also the view taken by the Apex Court subsequently, in Prabhakar Chaturvedi (supra) when it observed that:

4..... Under these circumstances request by the Respondent I to examine four more witnesses was rightly considered by the Enquiry Officer to be an afterthought and accordingly such request was rightly rejected. In fact on account of the clear admission contained in writing given by Respondent 1 on 14.12.1984 the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him.....

Having admitted that he debited Rs. 25,000/- from the account of J. Bora on 19.12.94 and credited it to his account without any instruction from him, the petitioner has thus committed breach of trust or, at any rate, temporary misappropriation, which is crime punishable u/s 403 Indian Penal Code. This also certainly amounts to a criminal misconduct. In the case of Rs. 4,158/-, which he had fraudulently credited to his joint account with his wife, his subsequent act of re-depositing it to the account of the account-holder does not absolve him of the offence of temporary misappropriation. Therefore, I have no difficulty in holding that the charges proved against the petitioner amount to misconduct/criminal misconduct.

15. In Narendra Nath Bhalla (supra), it was held by the Apex Court that mere repayment by the delinquent official of the money misappropriated would not absolve of the serious charge proved against him. The fact that no loss is suffered by the Bank is no ground for exonerating the charge against a delinquent official has been reiterated by the Apex Court in Nikunja Bihari Patnaik (supra) by holding that proof of loss is not really necessary and such loss cannot be characterized as error of judgment: such act is misconduct. No Bank can function properly and effectively if its officers and employees do not observe the prescribed norms and procedure. At this stage, it may be recalled that the learned counsel for the petitioner had insisted before the commencement of the hearing that the file relating to the departmental enquiry be produced by the learned counsel for the Bank. The learned counsel for the Bank has not been able to do so and submitted that the admitted facts on record are sufficient to dispose of this writ petition and that these admissions also obviated the need for producing the file relating to the enquiry. I agree. When there are admissions by the petitioner, which are sufficient to prove a case of misconduct, this Court will not needlessly insist on production of some record which is by now some 15 years old and which could not be easily traced out.

16. The question is whether the few charges proved against the petitioner can be sufficient to dismiss the petitioner, is no longer res integra. In Nand Kishore Shukla (supra), it was argued by the learned counsel for the respondent that in view of the findings given by the enquiry officer that 5 charges were proved and in view of the fact that Charges 1,3,4 and 5 could not be gone into due to his failure to avail of the opportunity offered by the respondent, it could not be predicted with certainty that the disciplinary authority would have passed the order of removal from service on the basis of Charge 2 alone. The contention was

repelled by the Apex Court in the following manner:

7. It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of punishment to be imposed on a government servant. Its proportionality also cannot be gone into by the Court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellant authority, the court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him from seeking any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order.

17. Coming to the contention that as the petitioner has been acquitted in the connected criminal case, which is based on identical facts and evidence, he is equally entitled to be exonerated from the charges, the settled law is that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same. After all, the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probability. Therefore, this contention is to be noted only to be summarily rejected. This then takes me to the last question, namely, whether the punishment of dismissal from service on the proved facts of this case is liable to be interfered with in my opinion, the law in this behalf is succinctly explained by the Apex Court in *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, . This is what it said:

11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was i [logical or suffers from procedural impropriety of was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Associated Provincial Picture House Ltd. Wednesbury Corporation* (1948) 1 KB 223: (1947) 2 All ER 680 (CA), the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary or appellate authority shocks the conscience the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

18. In the instant case, I have no hesitation to hold that the punishment imposed on the respondent cannot be said to be disproportionate to the gravity of the charges proved against the respondent. The charges related to the conduct of the petitioner in a financial institution whereby taking advantage of the official position he has attempted to misappropriate customer's money. The charges pertain to misappropriation, breach of trust, fraud and irregularities with regards to operation and maintenance of the accounts of customers. He has been proved to be siphoning off the money belonging to the account holders. In other words, ignored the fact that he was holding a position of trust in the Bank, which he betrayed and thereby exposing the Bank to a great risk. He has acted in a manner unbecoming of an officer of a Bank as he was dealing with public money and was engaged in financial transactions or acted in a fiduciary capacity and, therefore, the highest degree of integrity and trustworthiness is a must in the position he held. Any sympathy shown to him can only be a misplaced sympathy. In this view of the matter, the interference of this Court either in the impugned order of dismissal or in the connected departmental enquiry is not warranted. The off-shoot of the foregoing discussion is that there is no merit in this writ petition, which is, accordingly, dismissed. However, on the facts and in the circumstances of the case, there shall be no order as to costs.