
(2019) 11 DEL CK 0067
In the Delhi High Court
Case No : Civil Writ Petition No. 274 Of 2001

I.P.Singh	Vs	APPELLANT
Punjab National Bank & Ors		RESPONDENT

Date of Decision : 07-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 11 DEL CK 0067

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Ashok Bhalla, Pranav Sharma

Final Decision : Disposed Of

Judgement

C. Hari Shankar, J

1. Vide order dated 24th September, 1999, the Zonal Manager of the Respondent No. 1-Bank (referred to, hereinafter, as "the Bank"), in his capacity as Disciplinary Authority, imposed, on the petitioner, a major penalty of reduction to a lower post, i.e. from MMG (Middle Management Grade) Scale-II to JMG (Junior Management Grade), Scale-I, with immediate effect. Vide orders dated 30th March, 2000, and 8th August, 2000, the appeal and review, preferred by the petitioner against the aforesaid order dated 24th September, 1999, were rejected by the General Manager and the Chairman and Managing Director of the Bank, in their capacities as the appellate and reviewing authorities.

2. Assailing these orders, the petitioner has invoked the extraordinary jurisdiction, of this Court, under Article 226 of the Constitution of India.

Facts

3. The petitioner, who was, during the tenure of lapses as alleged, working as the Branch Manager with the respondent Bank's B.B. Nagar Branch, Bulandsahar, was visited with a charge-sheet, dated 12 th August, 1994. The charge-sheet

alleged commission of misconduct, by the petitioner, in terms of the Regulation 3(1) read with Regulation 24 of the Punjab National Bank (PNB) Officers, Employees" (Conduct) Regulations, 1977, and contained four Articles of Charge. The petitioner was directed to respond to the said charge-sheet within 15 days.

4. The petitioner responded, to the charges, leveled against him, in the aforesaid charge sheet dated 12th August, 1994, vide his reply dated 15th October, 1994, and requested that he be exonerated of all charges.

5. Vide Order dated 27th May, 1995, an Inquiry Officer (hereinafter referred to as "IO") was appointed, to enquire into the charges against the petitioner. The IO submitted his Inquiry Report, dated 28th April, 1997, to the disciplinary authority, who forwarded the Inquiry Report, to the petitioner, under cover of letter on the same day, i.e. 28th April, 1997.

6. The four Articles of Charge, numbered Articles of Charge I to IV were sub-divided into various sub-Articles of Charge.

7. Article I was divided into sub-Articles 1a, 1b, 1c, 1d, 1e, 2a, 2b, 3, 4 and 5, whereas the remaining Articles of Charge were not divided into any sub-Articles.

8. It would be appropriate, in order to avoid repetition, to deal with the various Articles/sub-Articles of charge, against the petitioner, his response, thereto, and the observations/findings of the IO, thereon, seriatim and side-by-side.

Article of Charge I

Sub-Article 1a

9. All the sub-Articles of charge, covered in Article-I, dealt with the transactions of the petitioner, in his capacity as Manager of the Daryaganj B.B. Nagar, Bulandshahar, Branch of the Bank, with five partnership firms/proprietorships, namely,

(i) Jai Durga International Udyog (hereinafter referred to as "JDIU"), to whom the petitioner had released cash credit limit of Rs. 2 lakhs on 14th July, 1990,

(ii) Jai Ganesh International Udyog hereinafter referred to as "JGIU"), to whom the petitioner had released cash credit limit of Rs. 2 lakhs on 16th January, 1991,

(iii) Jai Shiv Brick Field (hereinafter referred to as "JSBF"), to whom the petitioner had released cash credit limit of Rs. 3 lakhs on 25th January, 1991,

(iv) Gurunanak Brick Works (hereinafter referred to as "GNBW") to whom the petitioner had released cash credit limit of Rs. 3 lakhs on 25th January, 1991 and

(v) Suresh Cloth Store (hereinafter referred to as "SCS"), to whom the petitioner had released cash credit limit of Rs. 0.75 lakhs on 15th May, 1991.

10. It was alleged that the aforesaid five proprietorships/partnerships were allied/associated, as Mr Shankar Lal was a common partner in JDIU, JGIU and JSBF and

Mr Ram Kumar was a partner in JSBF and GNBW, and was the sole proprietor of SCS.

11. This sub-Article alleged that

(i) though, on 15th May, 1991, the balance outstanding in the account of JSBF was Rs. 3,11,574/- against the sanctioned limit of Rs. 3 lakhs, the petitioner, nevertheless, enhanced the limit from Rs. 2 lakhs to Rs. 3 lakhs on the said date.

(ii) thus, by way of unauthorised transactions, the petitioner sanctioned limits totaling Rs. 11.75 lakhs to the aforesaid five associated/allied concerns, against the maximum power, vested in him, to sanction cash credit limits, which was limited to Rs. 3 lakhs.

(iii) in the limits sanctioned statement, the petitioner concealed the fact that the concerns were allied/associated,

(iv) JGIU was located beyond the service area of the branch,

and

(v) there were no operations in the aforesaid five cash credit accounts, and the parties were not submitting stock statements either, as a result of which the Bank's dues, which amounted to Rs. 17,74,646.25 on 31st March, 1994 and interest with effect from 1st April, 1994, were proving difficult to recover.

12. Defending the above sub-Article of Charge against him, the petitioner submitted that

(i) he was not aware of the concept of allied/associated concerns, whereon the charge against him was based,

(ii) the officer, who processed and recommended the loans, was, apparently, also unaware of this concept,

(iii) all the aforesaid five firms were functioning independently and there was no inter-account transfer among the firms,

(iv) all proposals were sanctioned purely on the basis of merit,

(v) all accounts were processed and recommended by the Loans Officer,

(vi) all loans were properly secured by equitable mortgage of properties worth Rs. 26.65 lakhs, as against the total limit of Rs. 11.75 lakhs, as also by way of third party guarantees,

(vii) the said firms had been dealing with the Branch since 1986, and their dealings were satisfactory,

(viii) the accounts had become irregular on account of general recession in the economy, primarily in the field of real estate and construction, which was the main sphere of the activity of the firms,

(ix) the enhancement of cash credit limit of JDIU on 15th May, 1991, was also on merits, and was as per the recommendation of the Loans Officer of the Branch,

(x) the withdrawal of Rs. 3,11,574/- from the account of JSBF, as against the limit of Rs. 3 lakhs, on 15th May, 1991, was within the discretionary power of the Branch, as well as the value of the security against which the loan had been extended, and it was subsequently regularised,

(xi) there was no concealment of facts, on the part of the petitioner, as the Branch was frequently visited by the Regional Manager, who never identified any irregularity in the extending of cash credit limits, by the petitioner, to the aforesaid five firms,

(xii) the allegation that cash credit limits had been extended to firms which was outside the service area of the Branch was also unmerited, as, the guidelines, applicable to the Bank, permitted the Bank to finance units located within a distance of sixteen kilometers, or motorable by a journey of upto two hours, and

(xiii) during his tenure at the Branch, the securities were being regularly checked by the Branch officials.

Findings/observations of IO

13. In the case of sub-Article 1a, no finding was returned, by the IO, on most of the submissions advanced before him by the petitioner and enumerated in para 10 hereinabove. The IO, in his inquiry report, merely reproduced the allegations in the charge sheet. This would become apparent on a bare reading of the observations and findings of the IO which, for ready reference, may be reproduced, in extenso, thus:

"After going through the management documents, Defence documents, proceedings of inquiry and Written Briefs of CSO and the PO, I observe that : -

1. All the five Units are allied/associate concerns since there are common partners in all the units, which was well within the knowledge of the CSO and it was he who could ensure the use of his discretionary Power correctly.

2. When the limit of M/s Jai Durga Intt Udyog was enhanced from Rs 2 lac to Rs 3 lac on 15.05.1991, its allied/associate firm, M/s Jai Shiv Brick Field was running irregular showing a debit balance of Rs 3,11,574/- against sanctioned limit of Rs 3 lac.

3. As per his discretionary powers, the CSO should have sanctioned limits up to Rs 3 lac in total in all the five units. But he has sanctioned limits as under:-

S.No.

Name of the Firm/ Concern (M/s)

Date of Advance

Limit (Rs.lacs)

1.

Jai Durga Intt. Udyog

14.7.90

2.00 lac (Enhanced to Rs.3 lakhs on 15.05.91)

2.

Jai Ganesh Intt. Udyog

16.01.91

2.00 lac

3.

Jai Shiv Brick Field

25.01.91

3.00 lac

4.

Shri Gurunanak Brick Works

25.01.91

3.00 lac

5.

Suresh Cloth Store

15.05.91

0.75 lac

4. The unit of M/s Jai Ganesh Intt Udyog is situated beyond service area of the Branch.

5. There is no operation in the Accounts as detailed below :-

S.No.

Name of the Party (M/s

No operation in the Account after

i)

Jai Durga Intt. Udyog

14.3.92

ii)

Jai Ganesh Intt. Udyog

5.5.92

iii)

Jai Shiv Brick Field

3.6.92

iv)

Shri Guru Nanak Brick Works

3.4.91

v)

Suresh Cloth Store

29.2.92

Stock Inventories were also not submitted by the above parties regularly.

5. Since there is no operation in the Accounts, a sum of Rs 17,74,646/25 as on 31. 3.1994 is proving difficult of recovery in the accounts as under:

S.No.

Name of the Firm/ Concern (M/s)

Balance outstanding as on 31.3.94 (Rs)

1.

Jai Durga Intt. Udyog

4,19,749.25

2.

Jai Ganesh Intt. Udyog

3,05,128.00

3.

Jai Shiv Brick Field

4,62,706.00

4.

Shri Gurunanak Brick Works

4,81,388.00

5.

Suresh Cloth Store

1.05,675.00

17,74,646.25

HENC, THE ALLEGATION AGAISNT THE CSO, AS SPLIT BELOW :-

(a) He has sanctioned limits beyond his powers.

(b) Enhanced limit of M/s Jai Durga Intt Udyog from Rs 2 lac to Rs 3 lac on 15.5.91 when the account of M/s Jai Shiv Bjick Field was running irregular (both these accounts are Associate concerns),

(c) Concealed the fact that all the five units were associate/allied concerns.

(d) Thee unit of M/s Jai Ganesh Intt Udyog is situated beyond service area of the branch.

(e) There is no operation in the Accounts since long (details on page 4). Stock Inventories are not received regularly.

(f) A sum of Rs 17,74,646. 25 outstanding as on 31.3.94 is proving difficult of recovery.

STANDS PROVED."

The IO, found the said allegation to have been proved.

Sub-Article 1b

14. This sub-Article dealt with the extending of cash credit limit of Rs. 3 lakhs to GNBW on 25th January, 1991. It was alleged that GNBW was not in need of the said cash credit limit, as its balance-sheet, as on 31st December, 1990, disclosed liquid surplus of Rs. 2.42 lakhs. The petitioner was, therefore, alleged to have sanctioned cash credit to GNBW, in excess of its requirement. It was further alleged that GNBW was located outside the service area of the Branch, where supervision was difficult. As the unit was closed, without any operation since 4th April, 1991, it was alleged that the account had gone bad.

15. To this sub-Article, the petitioner responded that the sanction of cash credit limits to GNBW, on 25th January, 1991, was on merit, as per the best judgment of the petitioner and as per the recommendation of the Loan Officer. The petitioner submitted that, in his opinion, the said sanction was need based.

16. The petitioner also disputed the charge that, owing to the distance between the unit of GNBW and Branch, the cash credit limits ought not to have been sanctioned. He submitted that it hardly took half an hour, to journey to the unit of GNBW and that, during his tenure, he never had any difficulty in supervising the unit. He also pointed out that the unit was, even as on that date (i.e. the

date of his reply on 15th October, 1994), working. He drew attention to the basic term of sanction, being that the unit was to deal exclusively with the B.B. Nagar Branch, which would have been violated, had he allowed GNBW to approach other Banks for finance. This could have been detrimental to the interests of the Bank. The grant of cash credit limits to GNBW, he pointed out, was within the discretionary power vested in him and also covered by the security furnished.

Findings/observations of IO

17. The only finding returned by the IO, in respect of this sub-Article of charge is that the unit of GNBW was situated outside the service area of the branch, being about 25 kms. from the branch office. This allegation was therefore, found to have been proved.

Sub-Article 1c

18. In this sub-Article, it was alleged that the petitioner had extended unauthorized accommodation to JDIU and JGIU. Against the sanctioned limit of Rs. 2 lakhs in each case, it was alleged that the petitioner had accommodated JDIU to the extent of Rs. 2,48,528.10 as on 23rd January, 1991, and JGIU to the extent of Rs. 2,21,501/- as on 23rd January, 1991 and up to Rs. 2,33,001/- as on 28th January, 1991. These accommodations, it was alleged, had been extended by the petitioner without sending the proposal, for temporary enhancement, to the regional office and without executing documents for the said allegedly unauthorized accommodation, though the conduct of the accounts of these firms did not warrant such accommodation.

19. To this, the petitioner responded that there was no question of temporary enhancement of the cash credit limit to JDIU or JGIU, as over-drawing was allowed within the discretionary power of the Branch, so long as it was covered by the value of security furnished. Insofar as the irregularity in the accounts of JDIU and JGIU was concerned, the petitioner pointed out that the said irregularity was on account of charging of interest, for the quarter ending December, 1991. If this component was excluded, he submitted that the outstanding in the accounts was within limits. The allegation of unauthorised accommodation of JDIU and JGIU by him, was, therefore, disputed by the petitioner.

Findings/observations of IO

20. The defence of the petitioner, to this sub-Article of charge, was found to be meritless by the IO, as the accounts of JDIU and JGIU had been allowed to be overdrawn by more than 10% of the sanctioned limit, to which alone the discretionary power of the branch extended. This allegation was, therefore, found to have been proved.

Sub-Article 1d

21. This sub-Article dealt with the transactions of the petitioner vis-à-vis JSBF. It

was alleged that

(i) on 12th August, 1991, though Rs. 3,29,996/- was outstanding in the account of JSBF, the petitioner, nevertheless, purchased two Demand Drafts (DDs), in the said account, for Rs. 50,000/- each,

(ii) these DDs, which were drawn on the Sathla Branch office of the Bank, were returned unpaid by the said branch office on 19th August, 1991,

(iii) the petitioner did not report the purchase of the DDs, or their return, to the Regional Office,

(iv) in the Statement of Daily Returns/Weekly Certificates of Unauthorised DDs purchased/received back unpaid, for the month of August, 1991, the petitioner sent a "nil" statement, thereby misleading the Regional Office,

(v) the aforesaid amount of Rs. 50,000/- was debited, by the petitioner, to the account of JSBF only on 15th November, 1991,

(vi) the amount had, moreover, been debited to the Cash Credit category instead of the Protested Advance Category, in the account of JSBF,

(vii) the Cash Credit account remained irregular till 31st January, 1992,

(viii) the petitioner did not report the irregularity in the cash credit account in the Statement of Irregular Cash Credit Accounts for the months of November and December, 1991; instead, he misleadingly reported the said information as "nil", in his letters dated 16th December, 1991 and 2nd January, 1991,

22. In response to the aforesaid sub-Article of Charge, the petitioner acknowledged, in his reply, that he had, indeed, purchased, on 12th August, 1991, two DDs for Rs. 50,000/- each, which were received back unpaid. However, he submitted that the facts of return of DDs were never brought to his notice. He further submitted that, according to him, the debiting of the amount to the cash credit account of JSBF instead of Protested Advance Category was in order. As regards submission of "nil" statement, he pointed out that the said statement had been prepared by another officer, to whom the job of preparation of statement was exclusively assigned and that he was unaware of how a "nil" statement had been submitted, especially as the allegation was being made at a belated stage. In any event, he pointed out, the amount was subsequently realized, in full, from JSBF.

Findings/observations of IO

23. The IO found, in respect of this sub-Article of charge, that

(i) the petitioner had acted beyond his power in purchasing the two DDs, for Rs. 50,000/- each,

(ii) the fact of such purchase, and the fact of receipt back, of the said DDs, unpaid, were not reported by the petitioner to the regional office, and

(iii) the petitioner could not disown responsibility for the submission of "nil" statements of daily returns/weekly certificates of DDs purchase/receiving back unpaid, on the ground that the statement had not been signed by him, as he was incumbent in charge, the petitioner could have sent revised statements, correcting the position but did not do so.

The IO found the said allegation to have been proved.

Sub-Article 1e

24. This sub-Article alleged that the petitioner had sanctioned cash credit limits to JGIU in violation of the Bank's guidelines, as the office of JGIU was situated beyond the service area of the Branch.

25. As in the case of sub-Article 1a, the petitioner answered this allegation, too, by pointing out that, according to the guidelines by which the Bank was governed, cash credit limits could be extended to units located within a distance of sixteen kilometers or two hours motorable journey. The allegation that, by extending cash credit limit to JGIU, he had violated the guidelines of the Bank, was, accordingly, denied.

Findings/observations of IO

26. The IO has found the defence, of the petitioner, to be untenable, as it was not the office of the unit, but the unit of the customer, which was required to be inspected to find out whether it was functioning properly. This allegation was also, therefore, found to have been proved.

Sub-Article 2a

27. Sub-Article 2a dealt with four units, namely,

(i) M/s Inderjeet Singh Jasbir Singh (hereinafter referred to as "ISJS"),

(ii) M/s Sirohi International Bhatta (hereinafter referred to as "SIB"),

(iii) M/s Jeet Brick Works (hereinafter referred to as "JBW"),

and

(iv) M/s Ravindera Singh Brick Works (hereinafter referred to as "RSBW").

28. Sub-Article 2a alleged that the petitioner had

(i) enhanced cash credit limits of SIB from Rs. 2 lakhs to Rs. 3 lakhs on 30th March, 1991 without recommendation of the Second Man/Loans Officer,

(ii) enhanced the cash credit limit of JBW from Rs. 1.5 lakh to Rs. 3 lakhs on 30th March, 1991, without recommendation of the Second Man/Loans Officer,

(iii) enhanced the cash credit limit of ISJS from Rs. 2 lakh to Rs. 3 lakhs on 29th May, 1991,

(iv) overlooked the fact that the aforesaid four firms were allied/associated concerns, as

(a) Inderjeet Singh Sirohi was a common partner in ISJS and JBW,

(b) Jitendra Singh Sirohi and Vijayvir Singh Sirohi were common partners in SIB and JBW, and

(c) Chandrakanta was a common partner in SIB and RSBW,

(v) the petitioner had, therefore, sanctioned cash credit limits aggregating to Rs. 12 lakhs to the above associated firms, against the maximum powers vested in him, in that regard, which was limited to Rs. 3 lakhs,

(vi) in the Limit Sanctioned Statement, the petitioner had concealed the fact of the aforesaid four concerns being allied/associate firms, and

(vii) RSBW was located outside the service area of the Branch.

29. In response to the aforesaid sub-Article of charge, the petitioner submitted as under:

(i) The cash credit limits had been sanctioned to the aforesaid units prior to the petitioner joining/taking over charge of the Branch,

(ii) The enhancement of the cash credit limits to Rs. 3 lakhs, in the case of ISJS and SIB and JBW, and sanctions of cash credit limit of Rs. 3 lakhs in favour of RSBW were purely on merits.

(iii) All the aforesaid sanctioned facilities were reported, by the petitioner, in the Limit Sanctioned Statement, submitted to the Regional Office, which also contained the names of the borrowers and guarantors. No discrepancy, in this regard, was ever pointed out by the Regional Office.

(iv) The concept of allied/associated concerns was neither clear to the petitioner, nor to the officer dealing at the Branch. Had this fact being pointed out by the Regional Office, care would have been taken in that regard.

(v) It could not be alleged that the petitioner had concealed any facts, material or otherwise, from the higher authorities.

(vi) All the units were located within a distance of eight kilometers.

(vii) All accounts were collaterally secured by way of mortgaged or immovable property, covering double the amount of finance extended, for which all formalities were completed and duly signed documents obtained.

(viii) All accounts were running regular, within the sanctioned limit, even till 28th September, 1994. Transactions were being allowed even as on the said date, which was more than three years from the date of sanction. This itself confirmed that the decision to sanction the cash credit was in order and based on merit, and that the interests of the Bank were secured,

(ix) The marginal excess, of the outstanding in these accounts, over the sanctioned limit was attributable to levy of interest.

(x) Even as on 30th September, 1994, these units were running within the sanctioned limit, and were treated as Performing/Standard Assets.

Findings/observations of IO

30. Regarding this sub-Article of charge, the IO observed/found as under:

(i) ISBS, SIB, JBW and RSBW were associated/allied concerns, as they had common partners. Besides, there were instances in which one of the said firms had made payments on behalf of the other.

(ii) The petitioner had accommodated these four firms to the tune of Rs. 12 lakhs.

(iii) RSBW was located outside the service area of the branch.

(iv) The contention, of the petitioner, that he had not concealed any facts, was incorrect, as the Statement of Limits Sanctioned of March, May and June, 1991, as sent to the regional office, showed no remark in the column meant for "facilities sanctioned to associated/allied concerns".

31. No finding was returned, however, by the IO, regarding the submissions, of the petitioner, that the accounts had been collaterally secured by way of mortgage or immoveable property, covering double the amount of finance extended, and that the accounts were running regular, in which transactions were being allowed even till the date of filing of the reply.

32. In view of these findings, the IO held this charge, also, to stand proved against the petitioner.

Sub-Article 2b

33. This sub-Article alleged that the petitioner had

(i) accommodated SIB in its cash credit account to the extent of Rs. 3,29,812.50, on 4th April, 1992, unauthorisedly, against a cash credit limit of Rs. 3 lakhs, without sending the proposal for temporary enhancement to the Regional Office or executing necessary documents in that regard,

(ii) accommodated JBW in its cash credit account to the extent of Rs. 3,30,448/- on 10th December, 1991, unauthorisedly, against the cash credit limit of Rs. 3 lakhs,

(iii) permitted withdrawal of Rs. 5,000/- from the account of JBW on 4th April, 1992, when the account already had a outstanding balance of Rs. 3,17,290/-.

34. To this sub-Article of charge, the petitioner, in his response, pointed out that the outstanding in the account of SIB was only due to levy of interest for the quarter ending 31st March, 1992. He also pointed out that the figures in the charge-sheet itself revealed that the outstanding had never been in excess of the

discretionary power vested in the Branch and that the account, even on the date of his visit, i.e. 28th September, 1994, was within the sanction limit/drawing power, though more than two years had lapsed since the petitioner had left the Daryaganj Branch.

Findings/observations of IO

35. In respect of this sub-Article of charge, the IO found the allegation proved to the extent of accommodation, by the petitioner, of JBW, to the tune of Rs. 3,30,488/- on 10th December, 1991, against a limit of Rs. 3 lakhs.

Sub-Article 3

36. This sub-Article alleged that

(i) the petitioner had unauthorisedly purchased a demand draft of M/s BJBK for Rs. 80,000/-, on 29th April, 1992, when the balance outstanding in its cash credit account was Rs. 3,24,563/-, against a sanctioned limit of Rs. 3 lakhs,

(ii) the said DD had been received back paid, unpaid, on 29th May, 1992, and debited the amount to the Cash Credit account of BJBK, instead of the Protested Advance account, thereby raising the outstanding to Rs. 3,79,810/-, and

(iii) the petitioner did not report the fact of unauthorised purchase, or return, of the DD to the Regional Office, in time, as per the guidelines governing the Bank.

37. To this, the petitioner responded that

(i) the DD, dated 29th April, 1992, of BJBK, was purchased as the party was in emergent need of funds to run its units, which could, otherwise, had gone sick,

(ii) the debiting of the said amount to the cash credit account of BJBK, instead of the Protested Advance Account was perfectly in order,

(iii) the said amount was, subsequently, liquidated by BJBK,

and

(iv) there was no concealment of fact, as the returning of the DD was reported, for the month of May, 1991, vide PNB 221.

Findings/observations of IO

38. In respect of this sub-Article of charge, the IO, surprisingly observed that the petitioner had not put up any point in his defence, thereby ignoring the submissions of the petitioner, as reproduced in para 37 supra. On the basis of this erroneous observation, the allegation against the petitioner was found to be proved.

Sub-Article 4

39. This sub-Article dealt with facilities extended to one Vinod Kumar. It was alleged that

(i) though, on 16th April, 1991, the balance outstanding in the account of Vinod Kumar was Rs. 42,553.18, the petitioner, nevertheless, sanctioned cash credit limits of Rs. 50,000/- to Vinod Kumar on the said day, in the name of his sole proprietorship M/s Rahul Brothers, thereby flouting loan norms and without the recommendation of the Second Man/Loans Officer,

(ii) in the Limit Sanction Statement, for the month of April, 1991, the petitioner concealed the information that Vinod Kumar was already availing a term loan which was running irregular, and

(iii) as the account had gone bad, the Bank's dues, of Rs. 70,335/-, as on 31st March, 1994, and interest with effect from 1st April, 1994 were proving difficult to recover.

40. To this sub-Article, the petitioner responded that

(i) the sanction of term loan of Rs. 35,000/-to Vinod Kumar, on 18th March, 1989, was itself irregular, as the account was not collaterally secured,

(ii) in order to overcome this lacuna and safeguard the Bank's interest, the petitioner extended financial assistance by way of cash credit limit of Rs. 50,000/- when Vinod Kumar approached him,

(iii) this extension was genuine and after considering the merits of the case,

(iv) Vinod Kumar deposited more than the irregular amount, before the release of the cash credit limits and also closed the term loan account on 31st August, 1991, within four months from the date of sanction of cash credit limit, as promised by him,

(v) there was no bar to sanction of cash credit limit to a depositor who had a term loan account with the Bank,

(vi) in the circumstances, the petitioner had regarded it as prudent to have the term loan adjusted and extend financial assistance to Vinod Kumar by way of cash credit limit,

(vii) the cash credit limit was collaterally secured by way of equitable mortgage which was double the amount of limit,

(viii) Vinod Kumar was, even as on the date of submission of reply, by the petitioner, carrying on the activity for which he

was financed, so that the Bank's interests were secured,

(ix) all that was required was to work out a strategy to get the account regularised, and

(x) the account was also reported in the limit sanction statement submitted by the petitioner to the Regional Office for the relevant month and there was no concealment.

Findings/observations of IO

41. In respect of this sub-Article of charge, the IO observed that the cash credit limit of Rs. 50,000/- had been sanctioned, by the petitioner in favour of M/s Rahul Brothers, though it was not recommended by the Second Man or the Loans Officer. The contention, of the petitioner, that he had acted as a prudent banker, was found unacceptable, despite the adjustment a loan of Rs. 35,000/-, in view of a higher amount (Rs. 50,000/-) having been advanced by the petitioner, which had become difficult to recover, resulting in a balance of Rs. 70,335/- in the account of Rahul Brothers on 31st March, 1994. In view of these observations, the IO found the charge against the petitioner to stand proved except regarding the allegation of concealment of vital information in the limits sanctioned statement.

Sub-Article 5

42. This sub-Article dealt with facilities extended by the petitioner, on behalf of the Bank, to one M/s S.A. India and Company (hereinafter referred to as "SAI"). In respect thereof, the sub-Article alleged that

(i) the petitioner had sanctioned and released a cash credit limit of Rs. 25,000/- in favour of SAI, which was enhanced to Rs. 50,000/- on 27th April, 1992, though the account of SAI showed a debit balance of Rs. 34,885.50,

(ii) on the said date, while sanctioning the limit, the petitioner committed the following irregularities:

(a) the agreement of guarantee was not signed by the guarantor Vimla Devi,

(b) though the title deeds of the property were held on record, no equitable mortgage had been created, as the letter of intent, dated 22nd February, 1991, was not signed by Vimla Devi,

(c) the petitioner had sent a registered letter, dated 11th January, 1993, informing Vimla Devi that the property was equitably mortgaged with the Bank against cash credit limits of Rs. 25,000/- to SAI, even after the limit had been enhanced to Rs. 50,000/- on 27th April, 1992, and

(d) no collateral security had been obtained for the enhanced limit of Rs. 50,000/-, though, in the limit sanction recommendation, it was specifically mentioned that the enhancement limit was required to be collaterally mortgaged by double the amount of cash credit limit,

(iii) a cheque for Rs. 10,000/-, favouring self, had been passed from the said account, on 8th June, 1993, thereby increasing the outstanding to Rs. 60,075.60, in violation of the Bank's norms,

and

(iv) the account was never regularised thereafter, so that the Bank's dues of Rs. 73,629.50 and interest with effect from 1st January, 1994, were proving difficult

to recover.

43. To this sub-Article, the petitioner responded as under:

(i) The proposal to enhance the cash credit limit of SAI was as per the recommendations of the Loan Officer.

(ii) The agreement of guarantee, for the original limit of Rs. 25,000/-, was prepared and filled in by the Loan Officer and was ready for signature by the guarantor Vimla Devi. All formalities for creation of equitable mortgage were complete. Later, however, it transpired that the limit, being only of Rs. 25,000/-, was not required to be guaranteed. It was for this reason that the guarantee agreement was not signed by Vimla Devi.

(iii) The borrower approached the Bank to consider the enhancement of the facility. The proposal was processed and recommended by the Loans Officer. Total dues were deposited by the father of the borrower, and the account was thus collaterally secured.

(iv) The transactions were allowed and passed by the dealing officer, who was actually required to ensure compliance with the terms and conditions of the sanction,

(v) The officer, who processed the proposal and recommended the enhancement, had commented that the conduct of the account was satisfactory. No demerits had been pointed out by him and enhancement of cash credit limit was sanctioned in accordance with the recommendations.

(vi) Regarding the cheque for Rs. 10,000/-, which was passed on 8th June, 1993, the petitioner submitted that, on the said date, he was not working at the Daryaganj Branch.

Findings/observations of IO

44. The IO found the defence, of the petitioner, that he had ignored the defects in the guarantee as the limit was only Rs. 25,000/- to be devoid of substance, as, even after enhancement of the limit to Rs. 50,000/-, the defects in the guarantee were not removed. It was further found that the material terms and conditions of the sanctioned dated 25th April, 1992 were not adhered to, and no collateral security was obtained. The evidence on record, it was found, indicated that the limit was enhanced even though the account was already running irregular and showed a debit balance of Rs. 34,885.50.

45. As such, the article of charge except for the allegation relating to the cheque of Rs. 10,000/-, was found to stand proved against the petitioner.

Article of Charge II

46. This Article of Charge contained, essentially, three allegations. Firstly, it was alleged that the petitioner had not pursued effectively for recovery of Bank's dues, by issuing demand notices and recovery certificates, and had also

defaulted in proper post-sanction follow-up as a result whereof securities were missing in over 500 loan accounts and overdues in borrowable accounts had increased from Rs. 27.76 lakhs on 17th December, 1990 to Rs. 51.36 lakhs on 22nd January, 1992. Secondly, it was alleged that the petitioner had not conducted periodical inspections of tractors/trucks in violation of Bank's guidelines, resulting in mounting of overdues. The third allegation was that, the stock statements had not been submitted by seven named parties at prescribed intervals as per the Bank's norms, and that the petitioner did not pursue with the said parties for adopting corrective measures, such as issuance of notice and stopping of operations in their accounts. Of the accounts of the said seven parties, it was alleged that three had gone bad and recovery therefrom was proving difficult.

47. To the aforesaid Article of Charge, and the three allegations levelled therein, the petitioner responded thus:

(i) The allegation of default, on the part of the petitioner, in pursuing effectively, with the borrowers, for recovery of the Bank's dues, was without substance. During the petitioner's tenure at the Branch, he pointed out that he had visited all the villages/borrowers. The months of visit, and the number of days of visit, were also pointed out. The allegation of lack of post sanction follow-up was, therefore, denied. It was also submitted that these facts could be verified from the bank record, including movement register, T.A. bill register, office order etc. Progress reports of the recovery campaign/visits, were regularly submitted to the Regional Office.

(ii) As regards issuance of demand notices and recovery certificates, the petitioner pointed out that these accounts were in the nature of agricultural advances sanctioned under Government sponsored schemes much before he had joined the Branch and that, during the relevant period, the Government had issued a Notification waiving agricultural and rural advances upto Rs. 10,000/-. Owing to the said notification, no recovery was possible.

(iii) The allegation that, owing to the petitioner's default, overdues had increased from Rs. 27.76 lakhs on 17th December, 1990 to Rs. 51.36 lakhs on 22nd January, 1992, was also denied as being erroneous on facts, as the total outstanding in the said accounts was only Rs. 10.85 lakhs. The charge-sheet did not indicate the basis for computing the figure of Rs. 51.36 lakhs.

(iv) The petitioner also denied the allegation that he had not physically inspected tractors/trucks on periodical intervals. The dates of such physical inspection, as documented by PNB 551, which was part of the record, were also indicated by the petitioner. It was further pointed out that the security in the said accounts was still intact and the accounts were running satisfactorily even as on date, so that the interests of the Bank were safe and secured.

(v) The petitioner also referred, in the circumstances, to an internal Circular, issued by the Bank, which read thus:

"Reg. Staff side cases relating to Small Priority Sector Loans.

Because of inherent difficulties, a large no. of small PS Loans pose problems in monitoring/post sanction controls and become irregular or difficult of recovery. The matter of initiation of staff side in such small accounts, which are on the increase, has been examined by the executive committee and it has been decided that C/S may not be served in small PS Loans with outstanding of and upto Rs. 5,000/- merely on grounds of the accounts becoming irregular and proving difficult of recovery except in cases of gross negligence or malafides.

This may be noted for scrupulous compliance while examining staff side cases relating to such small PS Loans.

Sd/-

Dy. General Manager (I) "

The charge against the petitioner, it was pointed out, was in contravention of the aforesaid Circular, as all amounts were small PS Loans which were upto Rs. 5,000/- and no malafides or gross negligence, on the petitioner's part, could be alleged.

(vi) As regards the seven accounts, with respect to which it was alleged that stock statements had not been submitted at prescribed intervals, the petitioner submitted that inventories were being submitted in all these accounts, except in the account of M/s Madan Lal Vijay Kumar, which was marked for adjustment. All accounts were collaterally secured by way of mortgage and the parties, even on the date of reply, were carrying on the activity for which they were financed, so that the Bank's interests were sufficiently safeguarded.

Findings/observations of IO

48. The IO found the above article of Charge II to be proved only in respect of the allegation regarding non-receipt of stock statements from seven units and default, on the part of the petitioner, in taking appropriate corrective steps, as a result of which four of the accounts had to be treated as non-performing assets.

Article of Charge III

49. This Article of Charge alleged that the petitioner had paid interest on Call Deposit Receipts (CDRs), payable on demand and issued in favour of Cooperative Cane Development Society, Simbhaoli (hereinafter referred to as "CCDU"), in violation of Bank instructions, as no interest was payable on CDRs payable on demand, either as per the said instructions or as per the directives of the Reserve Bank of India. As a result, it was alleged that the Bank had suffered a loss of Rs. 19,726/-.

50. In response to this Article of Charge, the petitioner submitted that the deposit of Rs. 60 lakhs, from the Cooperative Cane Development Society (CCDS), had been procured, by him, on his own, on 25th March, 1992 and 31st

March, 1992, after getting the said amount withdrawn from the Oriental Bank of Commerce. The petitioner submitted that he had done so in order to fulfil the target of the Branch. As the amount belonged to the CCDS, the petitioner regarded it as exempted. As the credit limits of M/s Simbhaoli Sugar Mills were not released by the State Bank of India, and farmers of the area were agitating for cane payment, the CCDS was compelled to withdraw the FDRs. Treating the amount as exempted, the petitioner paid interest for the period the FDRs remained with the Bank. The petitioner submitted that this was a bona fide commercial decision taken by him in the facts of the case. The allegation that, as a result thereof, the Bank had suffered loss of Rs. 19726/-, was denied. Rather, submitted the petitioner, the Bank had earned a profit of Rs. 35704/-, representing the interest on the amount of the FDRs, for the period during which they remained with the Bank. The petitioner submitted that it was injudicious to avoid deposits for the fear of having to pay interest.

Findings/observations of IO

51. The IO held this article of charge to be proved, observing that the petitioner had not put up any defence against the allegation. This observation of the IO is obviously incorrect, in view of para 50 supra.

Article of Charge IV

52. This Article of Charge dealt with the hiring, by the petitioner, of a private generator set. It was alleged that, though the Bank had its own generator set, the petitioner had hired a private genset without permission of the competent authority, and had, in order to avoid detection of said allegedly unauthorised act, debited the monthly rent to the "expenditure-rent, taxes and lighting" account instead of the "miscellaneous account". It was also alleged that the rent paid by the petitioner was more than the rent paid by any branch of comparable size in the region.

53. To this Article of Charge, the petitioner responded that even prior to his joining the Daryaganj Branch, the Branch used to hire a generator for a rent of Rs. 80/- per day and was debiting the amount towards water and light charges. Though he was initially continuing the said practice, a dispute arose when the lessor of the generator set asked for higher rent. The petitioner hired the generator set, as the genset with the Branch was out of order and was not working despite heavy expenditure having been incurred on its repair. Even as on date, it was pointed out that the Branch was dependent on a hired generator and was paying rent around Rs. 1600/- per month. It was also pointed out that, in the Daryaganj Branch, there was frequent power cut, resulting in higher expenses.

Findings/observations of IO

54. The above article of charge was found proved, against the petitioner, to the extent that he had paid rent for hiring generator set on the higher side, and had

debited the amount of rent to "expenditure-rent taxes and lighting" instead of "miscellaneous expenditure".

55. The aforesaid Inquiry Report, of the IO, was communicated to the petitioner, by the Zonal Manager of the Bank (ASCAP Disciplinary Authority), vide letter dated 28 April, 1997, inviting him to submit his response, to the Enquiry Report, if he so chose, within 15 days. The petitioner did not, however, avail of the said opportunity, or present any arguments to rebut the findings of the IO.

56. Vide communication dated 25th September, 1999, the Manager of the Bank informed the petitioner that the Zonal Manager of the Bank, in his capacity as Disciplinary Authority, had decided to impose, on the petitioner, the major penalty of reduction to a lower post, i.e. from MMG Scale II to JMG Scale I, with immediate effect.

57. The petitioner appealed, against the decision, of the Disciplinary Authority, to penalise him by reducing him to a lower post, vide communication dated 15th October, 1999, addressed to the General Manager (Administration), being the designated appellate authority. Apropos the various Articles of Charge against him, and the findings of the IO thereon, the petitioner submitted thus:

(i) Re. Article of Charge I

(a) All advances were duly processed and recommended for sanction by the Second Man.

(b) The parties, to whom facilities were extended, were existing customers of the Bank, who were regarded as credit-worthy. They were already enjoying credit facilities, extended by the petitioner's predecessor.

(c) All accounts were secured by third-party guarantees and equitable mortgage of immovable properties securing more than double the limits extended. All supporting documents were on the record of the enquiry proceedings.

(d) The accounts were running regular, and had been renewed.

(ii) Re. Article of Charge II

The Disciplinary Authority had erred in failing to notice that Article-II, of the Articles of Charge against the petitioner had, to a substantial extent, been found, by the IO, not to be proved.

(iii) Re. Article of Charge III

(a) The deposit of Rs. 60 lakhs remained with the Bank for 28 days, as a result of which the Bank earned a revenue of at least Rs. 71,342/-, as against which it paid only Rs. 19,726/-.

(b) The vouchers, relating to payment of the FDRs, were prepared by the Second Man, and were put up to the petitioner because of his passing powers.

(c) The Bank, too, never proceeded against the depositors, for refund of the amount allegedly wrongly paid to them, as the deposit was to Sugarcane Cooperative Society.

(d) The deposit was secured with the intent of enhancing the deposit of the Branch, and in its best interests, to ensure its growth.

(iv) Re. Charge IV

The generator was hired in order to improve working conditions in the Branch, as water and light were basic amenities. Using of the generator was preferable to the running cost of diesel for more than 8 hours daily. The Disciplinary Authority had failed to notice that the IO had observed, in his Enquiry Report, that the Presenting Officer had not produced any evidence as to whether permission to hire private generator set was obtained, or not, by the petitioner, and had also not produced any evidence regarding the amount of rent being paid by other Branches of comparable size in the region at the material time.

In view of the submissions, the petitioner prayed that the decision to penalise him be withdrawn and the charges, against him, dropped.

58. Vide Order dated 30th March, 2000, the General Manager of the Bank, as the Appellate Authority, dismissed the aforesaid appeal, preferred by the petitioner before him. Paras 6 and 7 of the decision of the General Manager, which constitute the reasoning and the operative portion of its order, read as under:

"6. I have examined the various points raised by Shri Singh in his appeal along with records of the case. My observations are as under: -

6.1 Charge I - The appellant sanctioned credit facility in favour of the allied/ associate firms to the extent of Rs. 13.75 lac and Rs. 12 lakh against his powers of Rs. 3 lac in each case. He also allowed unauthorised accommodation beyond the sanctioned limits and also concealed the fact of their being associated/allied concerns from Regional Office. Two units were situated out of service area of the branch.

6.2 Charge II - the appellant has been held responsible for not pursuing with the party for periodical submission of inventories and for not adopting corrective measures by giving notice to stop operations in the account. He has not raised anything on merits in respect of the charge established against him.

6.3 Charge III - The appellant allowed interest on Call Deposits aggregating to Rs. 19,726/- against the guidelines of the bank as well as RBI. Though the deposit of Rs. 60 lacs remained with the bank yet the fact remains that payment of interest was unauthorised.

6.4 Charge IV - it has been established from the evidence on record the generator was subsequently hired as approved by the Regional Office for a lower amount than the amount paid by the appellant.

7. In view of the foregoing, the penalty imposed on Sh. Singh is commensurate with the gravity of charges proved against him and the points raised in his appeal do not warrant any interference with the decision of the Disciplinary Authority. I, therefore, rejected his appeal and confirm major penalty of "Reduction to lower post, i.e. from MMG Scale II to JMG Scale I with immediate effect" post by the Disciplinary Authority."

59. The petitioner, thereafter, submitted a Review Petition, before the Chairman and Managing Director (CMD) of the Bank, seeking review of the aforesaid order, dated 30th March, 2000, the appellate authority. Vide order dated 8th August, 2000, the said Review Petition was dismissed by the CMD.

60. It is in these circumstances that the petitioner has moved this Court, by means of these proceedings, under Article 226 of the Constitution of India, seeking quashing of the order dated 24th September, 1999, of the Zonal Manager, imposing, on the petitioner, the major penalty of deduction to the lower post, as well as the orders dated 30th March, 2000, of the General Manager and 9th August, 2000, the CMD, whereby the appeal, and subsequent review, preferred by the petitioner against the order of punishment, stood dismissed.

61. During the pendency of these proceedings, the petitioner superannuated, in March, 2015.

Rival contentions

62. I have heard Mr. Ashok Bhalla, appearing for the petitioner and Mr. Pranav Sharma, for the respondent-Bank.

63. Appearing for the petitioner, Mr. Ashok Bhalla advances the following submissions:

(i) The proceedings were highly belated, as they pertained to alleged lapses committed in 1990.

(ii) The disciplinary, appellate and reviewing authorities, overlooked the fact that the alleged lapses, on the part of the petitioner, had not resulted in any loss or prejudice to the Bank.

(iii) The proceedings were conducted in violation of Regulation 10 of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977 (hereinafter referred to as "the Discipline and Appeal Regulations"), which provided thus:

"10. Common proceedings. -

Where two or more officer employees are concerned in a case, the authority competent to impose major penalty on all such Officer employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceeding."

(iv) In connection with this contention, it is sought to be pointed out that a

separate and independent enquiry had been ordered against Mr. Mahavir Singh, the officer who had processed and recommended the proposals, which formed part of the alleged lapses on the petitioner's part, and that, consequent thereto, Mr. Mahavir Singh had been awarded a penalty of reduction in salary by one stage. Similarly, the petitioner sought to point out that his predecessor Mr. S. S. Verma, who had also committed similar lapses, was left untouched, and no action had been initiated against him. In any event, it is submitted, as per Regulation 10 of the Discipline and Appeal Regulations, the enquiry against the petitioner and Mr. Mahavir Singh were required to be conducted jointly. In default thereof, the petitioner submitted that the proceedings stood vitiated.

(v) The proceedings were also conducted in violation of Regulation 5, (10-A) of the Discipline and Appeal Regulations, which required the IO to provide, to the charged officer, a list of documents and list of witnesses by which the Articles of Charge were proposed to be proved. In the present case, it is pointed out, no such list of documents or list of witnesses had been supplied to the petitioner.

(vi) The findings of the IO were not based on evidence and were perverse, inasmuch as

(a) no evidence was led, defining the service area of the Branch,

(b) no evidence was led, for the allegation that the petitioner had passed any cheques/debits or authorised the same,

(c) no evidence was led, that corrective steps were not taken by the Branch,

(d) no instances were quoted, by the petitioner defaulted or allowed authorised any debit in accounts which did not submit inventories and,

(e) the fact that the generator set available with the Bank was faulty, was ignored.

(vii) The General Manager, who had disposed of the petitioner's appeal, was not competent to do so, as he himself had initiated disciplinary proceedings against the petitioner as Zonal Manager, and was in the same scale as the Disciplinary Authority. This argument, though raised, had been ignored by the Reviewing Authority.

(viii) No Show Cause Notice, requiring the petitioner to show cause against the proposed punishment, was issued to him.

64. Mr. Pranav Sharma contends, per contra, on behalf of the Bank, as under:

(i) With respect to Article-I of the Articles of Charge against him, the petitioner had admitted that he had sanctioned the loans forming subject matter of the said article of Charge. His argument was that he was not familiar with the concept of allied/associate concerns, and that the transactions had been allowed/passed by the dealing officer (s) concerned. Even so, in his capacity as Head of the Branch, the petitioner did not seek to deny his overall responsibility, for which he

expressed his regret.

(ii) Ex. ME-14/a, filed before the IO, was the loan power Chart which, read with Ex. ME-14/b, indicated that officers, upto the level of Zonal Manager/Deputy Manager, could sanction credit facilities subject to the condition that the aggregate amount in respect of each facility to be allowed to the parties and their allied associate concerns did not exceed the overall powers vested in them for a particular facility/aggregate limit, and the incumbent in charge of a medium could extend credit facility, under hypothecation, for an amount of upto Rs. 3 lakhs. This indicated that, in all the five accounts constituting the subject matter of Article of Charge-I against him, the petitioner could have extended credit facility only to the extent of Rs. 3 lakhs.

(iii) The degree of care and circumspection, required to be exercised by an officer of a Bank, was higher than that of employees in other organisations, as Bank officers dealt with public monies. Reliance has been placed by the respondent, in this context, on Regional Manager, U.P.S.R.T.C. v. Hoti Lal (2003) 3 SCC 605 and Chairman and Managing Director, United Commercial Bank v. P. C. Kakkar (2003) 4 SCC 364.

(iv) No violation of the principles of natural justice could be said to have offered, at any stage of the proceedings.

(v) Holding of common proceedings, in respect of officers who were charged with regard to the same transaction, was not mandatory.

(vii) In any event, the petitioner had failed to establish that any prejudice had been caused to him, as a result of the impugned proceedings. Absent any proof of prejudice, no occasion, for interference with the proceedings, or the consequent imposition of punishment, the petitioner, arose, in view of the law laid down by the Supreme Court in State Bank of Patiala v. S. K. Sharma(1996) 3 SCC 364.

(viii) Predictably, the well settled principle of circumspection, being required to be exercised by a writ court, while interfering with disciplinary proceedings, has also been pressed into service, for which purpose reliance has been placed on U.O.I. v. R. K. Sharma (2001) 9 SCC 592 and State Bank of Mysore v. M. C. Krishnappa (2011) 7 SCC 325.

For these reasons, the respondent would contend that the writ petition merits dismissal.

Analysis

65. The principles governing the scope of interference, by writ courts, with disciplinary proceedings, and punishments meted out as a result thereof, are, by now, legally fossilised, and hardly require reiteration. Nevertheless, there can be no vacuum in a judgment; ergo, these principles may briefly be enumerated thus:

(i) The writ court does not sit in appeal, either over the disciplinary proceeding

itself, or the verdict of the Disciplinary Authority, that ensues on its culmination.

(ii) All the same, the writ court does exercise the authority to judicially review the disciplinary proceedings, as well as the order of punishment.

(iii) Stopping short, as it does, of appellate character, the power of judicial review, exercised by a writ court, cannot justify substitution, by the court, of the decision of the disciplinary appellate authority, by a re-appreciation, either complete or partial, of the evidence that has led to the disciplinary, or appellate, authority, to arrive at their conclusion.

(iv) The writ court is completely proscribed, therefore, from stepping into the shoes of the disciplinary, or appellate authority, and at arriving at its own conclusion, on an appreciation of the evidence. Insofar as the merits of the decision of the disciplinary, or appellate, authorities is concerned, the writ court is required to examine whether the conclusion arrived at, by the disciplinary or appellate authority, is vitiated by manifest illegality or perversity. If the answer to either of these queries is in the affirmative, the decision of the disciplinary, or appellate, authority, would become pervious to interference.

(v) The considerations of "manifest illegality" and "perversity" set a very high bar. Manifest illegality can be said to colour the decision of the disciplinary, or appellate, authority only when, applying Wednesbury principles, the decision cannot sustain the scrutiny. The Wednesbury principle, first enunciated in *Associated Provincial Picture Houses Ltd. V. Wednesbury Corporation* (1948) 1 KB 223 : (1947) 2 All ER 680, per Lord Greene, MR, authoritatively sets out the standard of unreasonableness which would vitiate the decision of a public body. The following passage, from the decision, which classically explains the concept, merits reproduction in extenso:

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *Short v Poole Corporation* (1926) Ch. 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

The Supreme Court, speaking through M. Jagannadha Rao, J. in *Union Of India v.*

G. Ganayutham (1997) 7 SCC 463, explained the concept, with, arguably, an even greater degree of precision and clarity, thus:

"To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury⁶ test."

(vi) A perverse decision is, therefore, by very reason of its perversity, "Wednesbury unreasonable". *Kilasho Devi Burman v. C.I.T.* (1996) 7 SCC 613 holds that "a conclusion is perverse only if it is such that no person, duly instructed, could upon the record before him, have reasonably come to it".

(vii) Though the peripheries of jurisdiction, of a writ court, insofar as examination of the correctness of the finding, by the disciplinary/appellate authority, that the act, alleged to be misconduct, had been committed by the official concerned, stands circumscribed by the above tests, the court is, nevertheless, entitled to examine whether the act, even if committed, amounts to "misconduct", or not. Every deviation, from the expected, or even prescribed, code of conduct, may not tantamount to "misconduct", as understood in service jurisprudence. Paras 11 to 19 of the report, in *Ravi Yashwant Bhoir v. District Collector, Raigad and ors.* (2012) 4 SCC 407 contain an incisive analysis of the concept, thus:

"11. "Misconduct" has been defined in Black's Law Dictionary, 6th Edn. as:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offence, but not negligence or carelessness."

"Misconduct in office" has been defined as:

"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

12. P. Ramanatha Aiyar's Law Lexicon, Reprint Edn. 1987 at p. 821 defines "misconduct" thus:

"The term "misconduct" implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving

moral turpitude. The word 'misconduct' is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve...."

(emphasis supplied)

(See also *State of Punjab v. Ram Singh* (1992) 4 SCC 54.)

13. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office-bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds, etc. constitutes a serious misconduct, inviting severe punishment. (Vide *Disciplinary Authority- cum-Regl. Manager v. Nikunja Bihari Patnaik* (1996) 9 SCC 69, *Govt. of T.N. v. K.N. Ramamurthy* (1997) 7 SCC 101, *Inspector Prem Chand v. Govt. of NCT of Delhi* (2007) 4 SCC 566 and *SBI v. S.N. Goyal* (2008) 8 SCC 92.)

14. In *Govt. of A.P. v. P. Posetty* (2000) 2 SCC 220, this Court held that since acting in derogation to the prestige of the institution/body and placing his present position in any kind of embarrassment may amount to misconduct, for the reason, that such conduct may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an incumbent of the post.

15. In *M.M. Malhotra v. Union of India* (2005) 8 SCC 351, this Court explained as under: (SCC p. 362, para 17)

"17. ... It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve."

A similar view has been reiterated in *Baldev Singh Gandhi v. State of Punjab* (2002) 3 SCC 67.

16. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment. (See *Union of India v. J. Ahme* (1979) 2 SCC 286.)

17. It is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct and the court must examine as to whether misconduct has been detrimental to the public interest. (Vide *Bank of India v. Mohd. Nizamuddin* (2006) 7 SCC 410.)

18. The expression "misconduct" has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

19. Further, the expression "misconduct" has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest."

(viii) While the boundaries, to which judicial examination and interdiction can extend, on the merits of the decision of the competent disciplinary or appellate authorities, consequent on disciplinary proceedings, stand authoritatively delineated by the aforesaid tests, the writ court is not proscribed from interfering with disciplinary proceedings, or the outcome thereof, even on procedural issues. Mere irregularity in procedure may not, however, justify interference in every case; the irregularity must necessarily extrapolate to illegality and procedural impropriety, to the extent that, it results in prejudice to the charged officer.

While, theoretically, the onus, to establish such prejudice, rests on the claimant officer, the Court may, legitimately, infer the existence of such prejudice in certain extreme cases. One such instance is where a chargesheet is issued after an inordinate delay, from the date of commission of the alleged misdemeanour or misconduct, and there is no reasonable explanation for such delay. Courts have held that, in such cases, the delay itself may be so gross as to discharge the initial onus, on the charged officer, to establish prejudice. In other words, inordinate delay itself, ipso facto, results in prejudice. Equally, disciplinary proceedings conducted in violation of the principles of natural justice would also justify interference, by a writ court, even in the absence of any other disabling circumstance. (Refer Allahabad Bank v. Krishna Narayan Tewari (2017) 2 SCC 308.)

(ix) Where procedural impropriety is found to vitiate the proceedings, the course of action which the writ court normally expected to adopt, is not to eviscerate the proceedings wholesale and ab initio, but to remit the matter for reconsideration from the point where the procedural impropriety occurred. In cases where the officer stands removed, or dismissed, from service, as a consequence of the disciplinary proceedings which are, in judicial review, found to be vitiated on the ground of procedural impropriety or illegality, the Court is required to reinstate him, but treat him as on suspension, from the date from the procedural impropriety occurred. [Managing Director ECIL v. B. Karunakar, 1994 Supp (2) SCC 391] This is for the obvious reason that, where procedural impropriety vitiates the proceedings, no authoritative decision, one way or the other, on the culpability of the officer, qua the charge, on charges against him, is available, and it is no part of the duty of the court to don the mantle of Disciplinary Authority.

(x) The writ court is also empowered to examine the proportionality of the punishment awarded, vis-à-vis the misconduct proved. Whether punishment awarded is grossly disproportionate to the proved misconduct, and shocks the conscience of the court, the court is empowered to interfere. In such cases, though, ordinarily, the consequent order which would follow, on a finding that the punishment awarded was shockingly disproportionate to the misconduct proved, would be a remand of the matter to the Disciplinary/Appellate Authority, to reconsider the quantum of punishment, the court is also empowered, in rare cases, to substitute an appropriate punishment, in order to bring a quietus to the dispute and avoid multiplicity of litigation.

66. It would be appropriate to apply the above principles, to the present case, Article of Charge-wise. While doing so, it has to be borne in mind that the IO has not found the petitioner to have acted with corrupt or ulterior motives, or with the intention of favouring any particular client. There is always a difference between imprudence and impropriety. Especially in the case of officers employed in Banks, this Court has found, in many cases, that disciplinary action is initiated, and punishment imposed, on Bank officers, on the ground that their actions were

not financially prudent. The disciplinary, or appellate authorities, in such cases, are required to tread a very thin line and, in the very nature of things, it is not possible to draw any authoritative guidelines, which would govern such cases. The Disciplinary Authority, dealing with such matters, has to carefully balance two competing, but not conflicting, considerations. On the one hand, disciplinary action should not follow on every decision, by a Bank officer which, in the estimation of the higher authorities, was not entirely prudent, or could have been different. A simple example, and one which is of relevance to the present case, is the discretion, vested in officials of the Bank, to extend credit facilities, or overdrafts. While exercising such discretion, the Bank official has to keep, in mind, several diverse considerations, including, but not limited to, the financial worth and reputation of the client, the length of time for which the client has been dealing with the Bank, the client's credit-worthiness, the amount involved, the possibility of non-liquidation of the credit, or extent of overdraft, and the consequent possible risk to the Bank and the extent to which the client is in need of additional funds. A Bank official cannot, in such a case, be expected to act as an automaton. Each and every case has to be examined on its own individual merits, and this fact has to be borne in mind, while assessing whether the manner of exercise, by the concerned Bank official, qua a particular client, merits disciplinary action, against the official, or not. Disciplinary action cannot be recklessly initiated, against Bank officials, merely because it is felt that they could have acted differently; else, it would result in completely stultifying the discretion which is vested, in such officials, to deal with public monies, even while preserving the faith of the customers in the Bank. At the same time, if it is found that the discretion has been exercised in violation of any binding guidelines, or norms authoritatively laid down in that regard, or in a manner which smacks of financial impropriety, or a possible interest in accommodating a particular client for reasons recondite, undoubtedly, the Bank official may be put to answer therefor. There is no doubt that the general principle, enunciated in *Ravi Yashwant Bhoir*¹⁰, that mere negligence in exercise of discretion cannot invite disciplinary action, may not be applicable, in the case of exercise of discretion by Bank officials, with the same latitude, as would apply to the principle when invoked in the case of other officers or employees. It cannot be denied that a Bank official, exercising, as he does, fiduciary control, over the monies of the entrusting - and trusting - public, has to maintain a higher degree of probity, and to exercise greater degree of care and circumspection, while taking decisions. At the end of the day, this is a delicate balance, which has to be borne in mind, and maintained, by Disciplinary and Appellate Authorities, dealing with charge-sheeted officers, while examining the merits of the charges against them. This shall not, however, preclude the petitioner from challenging the said findings before the Disciplinary Authority or any other forum or authority in accordance with law.

67. Viewed thus, the following position emerges, qua the individual Articles of Charge against the petitioner:

(i) Insofar as sub-Article 1a of Article I is concerned, a reading of the findings of the IO, as contained in his Inquiry Report dated 28th April, 1997, reveals that the IO has not returned any observations or findings regarding the submissions of the petitioner, in defence to the allegations against him. The IO has chosen merely to reiterate the elements of the article of charge, as his observations and findings. This, quite obviously, is impermissible. The findings of the IO, qua sub-Article 1a of Article I of the Articles of Charge against the petitioner cannot, therefore, sustain.

(ii) Sub-Article 1b of Article I has been confirmed, by the IO, only to the extent of the charge that the unit of GNBW was situated outside the service area of the branch. In my view, this finding, even if accepted, does not disclose any "misconduct", on the part of the petitioner.

(iii) Sub-Article 1c of Article I alleges extending of unauthorised accommodation, by the petitioner, to JDIU and JGIU, without forwarding the proposal for temporary enhancement, to the regional office and without executing documents therefor. It further alleged that the conduct of the said firms did not warrant such accommodation. The petitioner responded that the overdrawing allowed to these firms was within the discretionary power of the branch, and was covered by the value of security furnished by the firms. Irregularity, in the accounts of JDIU and JGIU, it was submitted, was on account of charging of interest, excluding which the outstanding in the accounts would be within limits. The IO rejected the defence of the petitioner, as the account of the JDIU and JGIU had been allowed to be overdrawn by more than 10% of the sanctioned limit, to which alone the discretionary power of the branch extended. The sub-Article of charge was, therefore, found to have been proved. In my opinion, these findings of the IO, do not merit interference by this Court, as they are essentially factual in nature. This shall not, however, preclude the petitioner from challenging the said findings before the Disciplinary Authority or any other forum or authority in accordance with law.

(iv) Sub-Article 1d of Article I alleged unjustified purchase, by the petitioner, of two demand drafts of JSBF, though the account of JSBF already showed an outstanding of Rs. 3,29,996/-, as a result whereof, the DDs were returned unpaid. It also alleged non-reporting of the purchase of DDs, or return thereto, to the regional office and that the petitioner had misled the regional office by sending a "nil" statement of daily return/weekly certificates of unauthorized DDs purchased/received back unpaid for the month of August, 1991. Delay in debiting the amount of the returned DD, to the account of JSBF, was also alleged. It was further alleged that the petitioner had debited the amount to the wrong category. The petitioner submitted, in defence, that the fact of return of the DDs was never brought to his notice, and that the debiting of the amount, to the Protested Advance Category was in order. The "nil" statement, it was submitted, had been prepared by another officer. The IO has found, with respect of this Article of Charge, the petitioner to have been remiss in not reporting the fact of purchase

of the two DDs and the fact of receipt of the DDs, back, unpaid. It was also found that the petitioner could not disown responsibility for submission of "nil" statements, as he was the incumbent incharge, and could easily have sent revised statements, disclosing the correct position. These findings, too, in my opinion do not merit interference by this Court, under Article 226 of the Constitution of India, as any such interference would amount to exercise of appellate jurisdiction by the Court. This shall not, however, preclude the petitioner from challenging the said findings before the Disciplinary Authority or any other forum or authority in accordance with law.

(v) As in the case of sub-Article 1e, the only allegation, in sub-Article 1e of Article I, was that the petitioner had sanctioned cash credit limits to JGIU, though the office of JGIU was situated beyond the service area of the branch. The IO has rejected this defence on the ground that inspection was required to be conducted, not of the office of the unit but of the unit itself. As I have already held in the case of sub-Article 1b of Article I, extending of cash credit limit to a bank, the unit of which was situated at a distance, could not, by itself, be treated as "misconduct".

(vi) In respect of sub-Article 2a of Article I, while holding, against the petitioner, that ISBS, SIB, JBW and RSBW were associated/allied concerns, as they had common partners, with interlinked payments, so that the petitioner had extended accommodation, to these four firms, in excess of his powers, and had also left the column, meant for "facilities sanctioned to associated/allied concerns" in the statement of limit sanctioned for March, May and June, 1991, the IO returned no findings on the submission, of the petitioner, that the accounts had been collaterally secured by way mortgage of immoveable property, covering double the amount of finance extended, and that transactions in the said accounts, which were running regular, were being allowed even till the date of filing of reply by the petitioner. Without examining these submissions of the petitioner, advanced in his defence, the IO has held sub-Article 2a of Article I of the Articles of Charge to stand proved against the petitioner. In my view, this finding of the IO cannot sustain, as the submissions of the petitioner have not been examined in their entirety. Though the findings of the IO, or the decision of the DA, with respect thereto, may not be amenable to interference, by a writ court, as though it were sitting in appeal over the said findings or decision, it is fundamental that the defence, put forward by a charged officer, has to be examined in its entirety. Failure, on the part of the IO to do so, would vitiate the findings returned by the IO as a consequence thereof. The findings of the IO, qua sub-Article 2a of Article I cannot, therefore, sustain.

(vii) In respect of sub-Article 2b of Article I, the IO has found the petitioner to be remiss in having extended accommodation, to JBW, to the tune of Rs. 3,30,488/-, on 10th December, 1991, against a limit of Rs. 3 lakhs. This is a pure finding of fact, and does not merit interference, under Article 226 of the Constitution of India. This shall not, however, preclude the petitioner from

challenging the said findings before the Disciplinary Authority or any other forum or authority in accordance with law.

(viii) Insofar as sub-Article 3 of Article I is concerned, the IO has, clearly erroneously, and with manifest non-application of mind, held that the petitioner had not put up any point in his defence to the said sub-Article of charge, ignoring, in the process, the submissions of the petitioner. The finding of the IO, qua sub-Article 3 of Article I cannot, therefore, sustain.

(ix) In respect of Sub-Article 4 of Article I of the Articles of Charge, the IO found the petitioner to have sanctioned, without justification, cash credit limit of Rs. 50,000/- in favour of M/s Rahul Brothers, though it was not recommended by the Second Man or the Loans Officer. This extension, which resulted in the outstanding in the account adding up to Rs. 70,335/-, was found to be irregular. To this extent, the charge against the petitioner was found to be proved. This finding, being a pure finding of fact, would not merit interference by this Court, in exercise of its writ jurisdiction. This shall not, however, preclude the petitioner from challenging the said findings before the Disciplinary Authority or any other forum or authority in accordance with law.

(x) Sub-Article 5 of Article I dealt with the relationship with the Bank vis-à-vis SAI. It was alleged that the petitioner had sanctioned and released cash credit limit of Rs. 25,000/- in favour of SAI, which was enhanced to Rs. 50,000/- on 27th April, 1992, without following proper procedure and securing adequate reliable surety. Even though the account was in the red, it was alleged that the petitioner had allowed debiting of a cheque for Rs. 10,000/-, favouring self. As a result of these acts, the bank dues with effect from 1st January, 1994 were to the tune of Rs. 73,629.50. The IO found against the petitioner, holding, that, even after enhancement of the limit to Rs. 50,000/-, defects in the guarantee were not removed. It was further observed that the material terms and conditions of the sanction, dated 25th April, 1992, were not complied with and no collateral security was obtained. Erroneous sanction of enhancement of credit limit, even though the account was running irregular, was also found to have been proved. These findings, being pure findings of fact, cannot be disturbed by this Court in exercise of its writ jurisdiction. This shall not, however, preclude the petitioner from challenging the said findings before the Disciplinary Authority or any other forum or authority in accordance with law.

(xi) Article II, of the Articles of Charge, against the petitioner were found to be proved, by the IO, only in respect of the allegations regarding non-receipt of stock statements from seven units, and default, on the part of the petitioner, in taking appropriate corrective steps. Though, this finding of the IO does not merit interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, it merits notice that the IO dropped all other allegations in Article II of the Articles of Charge.

(xii) Qua Article III of the Articles of Charge, the IO again held, erroneously, that

the petitioner had not put up any defence against the allegations contained in the said Article of Charge. As is apparent from the discussion hereinabove, and as also from the record, the petitioner had categorically denied the allegation, against him, in Article III of the Articles of Charge, and had also submitted his defence thereto, which stands paraphrased in para 50 supra. Inasmuch as the IO has proceeded on the erroneous premise that the petitioner did not put up any defence to Article III, of the Articles of Charge, his finding, qua this article of charge, is also unsustainable.

(xiii) In respect of Article IV of the Articles of Charge against the petitioner, the IO has found the Article of Charge to be proved only to the extent that the rent paid by the petitioner, for hiring a generator set, was on the higher side, and that he had debited the said amount of rent to the "expenditure - rent, taxes and lighting" account instead of the "miscellaneous expenditure" account. In the absence of any allegation, against the petitioner, of malafides or corrupt motives, the finding of the IO, qua Article IV, of the Articles of Charge, in my opinion, do not make out any case of commission of "misconduct" by the petitioner, as could visit him with disciplinary action.

68. In view of the above discussion, the observations/findings of the IO fall into the following three categories:

(i) The findings of the IO, qua sub-Articles 1a, 2a and 3 of Article I and Article III, of the Articles of Charge against the petitioner, cannot sustain.

(ii) The findings of the IO, in respect of sub-Articles 1b and 1e of Article I and Article IV, do not make out commission of any "misconduct" by the petitioner.

(iii) I do not deem it appropriate to interfere with the observations/findings of the IO, qua sub-Articles 1c, 1d, 2b, 4 and 5 of Article I and Article II of the Articles of Charge against the petitioner. While so observing, I hasten to add that it would remain open to the disciplinary authority to examine whether, despite the said findings on facts, they could justify a conclusion of "misconduct", having been committed by the petitioner, in the light of the principles enunciated earlier in the course of this judgment. In examining the matter, the disciplinary authority would be required to keep, in mind, the distinction between financial imprudence and financial impropriety, and the fact that the degree of culpability, in the case of the latter, is far higher than in the case of the former.

69. As a result, the IO would necessarily have to re-examine article sub-Articles 1a, 2a and 3 of Article I and Article III, as the findings of the IO, qua these articles of charge, are unsustainable. In the absence of any examination, by the IO, of the defence, put up by the petitioner to these articles of charge, it is not proper for this Court to examine the merit of the said allegations. It is for the IO to re-examine these Articles of Charge, as well as the defence put up by the petitioner thereto. I am aware that the petitioner has, during the course of these proceedings, superannuated. Even so, in the very nature of the charges against the petitioner, which involved financial dealings by an official of a Bank, no final

adjudication, of the culpability of the petitioner, if at all, could take place, sans any finding, by the IO, on sub-Articles 1a, 2a and 3 of Article I and Article III of the Articles of Charge against the petitioner.

70. As I deem it appropriate to remit the matter to the IO, afresh, for reconsidering the aforesaid articles of charge, and the defence of the petitioner thereto, the consequent orders of the disciplinary authority, and the appellate authority would necessarily be required to be set aside. The disciplinary authority would have to reconsider the matter based on the findings of the IO.

71. The Disciplinary Authority would also be at liberty, should it so choose, to itself examine the merits of the aforesaid of the Articles of Charge against the petitioner, instead of putting up the case before an IO. I am inclined to so clarify in view of the time that has lapsed, since the matter was originally examined by the IO, which may probably necessitate the appointment of a fresh IO. In order to avoid multiplicity of proceedings, and shorten the determinative process, therefore, it is reiterated that the Disciplinary Authority is at liberty to itself examine the Articles of Charge against the petitioner, the culpability of the petitioner, and the punishment, if any, to be visited on the petitioner as a consequence thereof. In that event, needless to say, the disciplinary authority including those, in respect of which I have not chosen to interfere, as the findings of the IO are not final, and the charged official is always at liberty to challenge the findings before the disciplinary authority, or to plead that the findings, even if accepted, do not constitute actionable "misconduct", as would justify imposition, on him, of punishment.

Conclusion

72. In view of the above, this writ petition is disposed of in the following terms:

(i) The impugned orders dated 24th September, 1999, passed by the General Manager, as disciplinary authority, 30th March, 2000, passed by the Zonal Manager as appellate authority and 8th August, 2000, passed by the CMD, as reviewing authority are quashed and set aside.

(ii) Qua articles of charge sub-Articles 1b and 1e of Article I and Article IV, the allegations against the petitioner, as found proved by the IO, do not tantamount to "misconduct", as would justify disciplinary action against him.

(iii) The findings of the IO qua sub-Articles 1a, 2a and 3 of Article I and Article III of the Articles of Charge are set aside. The IO is directed to reconsider the aforesaid Articles of Charge, and the defence of the petitioner thereto and to grant an opportunity of hearing to the petitioner, should the petitioner so choose.

(iv) This Court is not interfering with the findings of the IO, qua the remaining Articles of Charge against the petitioner. This, however, would not preclude the petitioner from questioning the said findings, before the disciplinary authority, or from contesting the justifiability of taking disciplinary action against him, on the basis of the said findings.

(v) Compliance with the above directions may be ensured either by appointing an IO, for the said purpose, or by the disciplinary authority itself, as observed in para 71 supra.

(vi) The entire exercise, as above, would be completed within a period of eight weeks from the date of furnishing, before the disciplinary authority, of a copy of this judgment.

(vii) The legal position, as enunciated hereinabove, would be borne in mind by the IO/disciplinary authority, while complying with the above directions.

(viii) In view of the well settled principle that a litigant cannot be worse off for having chosen to appeal, it is clarified that the punishment, if any, imposed on the petitioner consequent on the above exercise shall not be greater than that imposed vide the impugned order dated 24th September, 1999.

(ix) Needless to say, in case the petitioner continues to be aggrieved by the decision of the disciplinary authority, all remedies available to him in law, thereagainst, would remain open.

73. The writ petition is disposed of in the above terms, with no order as to costs.