

(2008) 02 GAU CK 0081

In the Gauhati High Court

Case No : Civil Rule No's. 3411 and 4716 of 1997, 1553, 1721 and 6465 of 1998 and 5586 of 2001

Kajal Kumar Banik

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 33C(2), 7
Penal Code, 1860 (IPC) — Section 34, 379, 500

Citation : (2009) 1 GLR 644

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : M. Choudhury and S. Sarma, in Civil Rule No. 4716 of 1997, K.N. Choudhury and R. Dubey, for the Appellant; K.N. Choudhury and R. Dubey, in Civil Rule No. 4716 of 1997, M. Choudhury and S. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—All the writ petitions having been ordered to be heard analogously were considered together and are being disposed of by this common judgment and order.

2. Before advertng to the facts of each of the cases under consideration, certain common facts, which the writ petitioner asserts had led to the passing of the orders impugned in the writ petitions, will have to be noticed.

3. At the relevant point of time, i.e., in the year 1994 the Petitioner was working as a Cashier-cum-Clerk in the Tinsukia Branch of the State Bank of India ("the Bank"). He was transferred to the Hijuguri branch on 28.9.1994. The Petitioner did not join in the post to which he was transferred and instead took leave. Thereafter, on 5.10.1994, the Petitioner was transferred to Gargaon ADB Branch in supersession of the earlier transfer order dated 28.9.1994. The said transfer was without prejudice to the rights of the Bank to take further action after

completion of investigation into the special report submitted by the inspecting officials of the Bank. Aggrieved by the order dated 5.10.1994, the Petitioner moved this Court by instituting a writ proceeding registered and numbered as Civil Rule No. 4292/94. The said writ petition was closed by this Court on 25.10.1994 by refusing interference with the transfer made. However, the court directed that the Petitioner's representation seeking revocation of the transfer order should be disposed of by the Bank within fifteen days and till the same is so done, the transfer of the Petitioner should not be given effect to. Not satisfied with the order of the court dated 25.10.1994, the Petitioner filed a Writ Appeal, i.e., WA No. 462/94. While the said Writ Appeal was pending, on 11.11.1994, the Petitioner was placed under suspension. The aforesaid development was brought to the notice of the court hearing WA No. 462/94. Accordingly, by order dated 17.12.1994, the Division Bench disposed of the Writ Appeal by directing that as the Petitioner has been suspended and a departmental proceeding was in the offing, he should remain attached to the Tinsukia Branch. The Division Bench by its order dated 17.12.1994 further held that if the departmental proceeding against the Petitioner is to end favourably, the Bank would be at liberty to pass necessary orders for the posting of the Petitioner.

4. While the matter was so situated, the Petitioner filed another writ petition, i.e., Civil Rule No. 2229/95 challenging the suspension order dated 11.11.1994. The said writ petition was dismissed on 4.2.1997 where after the Petitioner filed an appeal being WA No. 253/97. The said Writ Appeal was allowed by this Court by its order dated 8.8.2000 by setting aside the suspension order. On 10.11.2000, an order was passed by the Bank to the effect that the question of entitlement of the Petitioner to the benefits during the suspension period will be decided at the conclusion of the departmental proceeding initiated against him. It is the contention of the Petitioner that on account of the aforesaid litigation and the interventions made by the court in favour of the Petitioner, the Bank had become annoyed with the Petitioner and had indulged in a series of actions, specifically impugned in the writ petitions under consideration, with a view to remove the Petitioner from the Bank at any cost. In the light of the facts highlighted above, it is the contention of the Petitioner that all such actions reflect malice on the part of the Bank requiring appropriate interference of the court.

5. After enumeration of the common facts that have preceded the challenge made in each of the writ petitions under consideration, the relevant facts of each of the writ petitions may now be noted:

Civil Rule No. 1721 of 1998:

The challenge in the writ petition is against a chargesheet dated 19.5.1995 containing as many as five charges against the Petitioner. The first charge relates to the Petitioner's actions in standing as a guarantor for a loan made available by the Bank, whereas the third and fourth charge relate to two loans obtained by the Petitioner's husband and brother from the Bank. Certain norms prevailing in the Bank which made the conduct of the Petitioner in standing as a guarantor

and in not disclosing his identity before the loans were availed of by his wife and brother, have been recited in the chargesheet as making the conduct of the Petitioner improper. The loans in question, it must be noticed, were availed of in the year 1990 and 1992. It is the specific case of the Petitioner that all such loans stood liquidated and that there are no outstanding in any of the loan accounts.

The second charge is in respect of a particular action on the part of the Petitioner in issuing a cheque of Rs. 25,000 to another individual from the bank account of the Petitioner without their being sufficient deposit in the said account. The further allegation against the Petitioner is that the said cheque issued by the Petitioner was negotiated in another branch of the Bank for obtaining a bank draft. Thereafter, on a subsequent date the shortfall in the account was made up by the Petitioner by a fresh deposit where after when the bank draft had come to the branch of the Petitioner the same was honoured. Such action on the part of the Petitioner took place at the end of December 1993 or in the beginning of January, 1994. In so far as the charge No. 2 is concerned, it is the specific case of the Petitioner that the cheque issued by him was as a customer of the Bank and not as an employee. The Petitioner has also alleged that if the cheque issued by him was without sufficient deposit in his account, the same should not have been accepted by the second branch for the purpose of issuing the bank draft. In any event, according to the Petitioner, at the relevant point of time, i.e., when the bank draft was presented to the Tinsukia branch, there was sufficient deposit in the account of the Petitioner. The Petitioner has also contended that the acts constituting charge No. 2 took place in the early part of January, 1994 whereas the chargesheet was issued on 19.5.1995.

Under the fifth charge contained in the chargesheet dated 19.5.1995, it has been alleged that a complaint dated 8.12.1994 was lodged by one M/s. Madhu Milan, New Market, Tinsukia before the Chairman, SBI Central Office, Bombay alleging that one Sri P.R. Chakraborty, Central Office Inspecting Official and one Sri V.B. Pandey, Assistant (Inspection) had not paid a bill dated 8.12.1994 for Rs. 419 being the cost of sweets, etc., Supplied by M/s. Madhu Milan to the said officials during the period of inspection of Tinsukia Bazar Branch carried out by the aforesaid two officials from 12.7.1994 to 30.7.1994. In the chargesheet dated 19.5.1995, it was further alleged that investigations had revealed that no such orders were placed with M/s. Madhu Milan by the officials in question and that on a query being made, M/s. Madhu Milan had confirmed, by letter dated 29.1.1995, that the bill was not genuine. It was further alleged that it had been stated by M/s. Madhu Milan that the Petitioner obtained a blank letter head of the firm duly signed by the owner, which was subsequently used for preparation of the false bill as stated above and further that the Petitioner had also obtained the signature of the Manager of the said firm on a letter addressed to the Bombay office taking advantage of the poor knowledge of English of the said Manager.

Insofar as the aforesaid charge is concerned, it is the case of the Petitioner that

as the allegation levelled under the said charge was false, he had instituted a criminal proceeding, i.e., Complaint Case No. 133c/95 u/s 500/34, IPC in the court of Judicial Magistrate, Tinsukia. In the said proceeding a joint petition dated 21.3.1997 was filed before the court by the complainant as well as the accused for compounding of the offence. In the said application, the owner of Madhu Milan had mentioned that the letter of Madhu Milan dated 29th January 1995 referred to in charge No. 5 of the chargesheet dated 19.5.1995 alleging preparation of the false bill and the letter of the firm dated 8.12.1994 addressed to the Bombay office, both by the Petitioner, by fraudulently obtaining the signatures of the firm, is not correct and, in fact, the said letter dated 8.12.1994 was drafted and prepared by the then Branch Manager Sri Niharendu Bhattacharjee who had actually obtained the signature of M/s. Madhu Milan on the said document(s). The aforesaid person, i.e., Sri Niharendu Bhattacharjee was impleaded as the Respondent No. 4 in Civil Rule No. 1721/98.

Civil Rule No. 3441 of 1997:

In the above writ petition, a chargesheet dated 16.5.1996 levelling another charge against the Petitioner has been challenged. The aforesaid charge is to the effect that on 17.1.1995, while one Sri H.N. Saikia, a Messenger of the Bench was proceeding to the post office along with thirteen registered envelopes containing cheques, instruments and other important documents, at about 1.30 p.m. on the ground floor of the bank premises, the Petitioner had forcibly snatched the envelopes from the Messenger. It was further alleged that the envelopes were returned to the Messenger after half an hour and, thereafter, the Messenger, Sri Saikia, delivered the same to the post office. However, 4/5 days after the said incident, complaints were received from three different branches that they had received the registered envelopes without the instruments. At this stage, an enquiry was conducted by the Bank in the course of which the Messenger, Sri Saikia, confirmed the incident that had taken place on 17.1.1995. According to the Bank, after a few days, the Tinsukia Branch received four instruments through ordinary post. In these circumstances, it was alleged that the Petitioner during the intervening half an hour, when he had remained in unauthorized custody of the registered envelopes, had removed some instruments with the ill motive of putting the Bank to serious financial loss.

The materials on record in the proceeding registered as Civil Rule No. 3441/97 indicates that in respect of the same incident a FIR dated 28.2.1995 along with a written report of the Messenger, Sri Saikia, dated 25.1.1995, was submitted to the Tinsukia Police Station, on the basis of which Tinsukia P.S. Case No. 104 u/s 379, IPC was registered. On completion of the investigation, the Petitioner was chargesheeted for commission of the offence u/s 379, IPC in respect of the envelopes in question. However, by the judgment and order dated 25.11.2004 passed in GR Case No. 368/95, the Petitioner was acquitted of the charge levelled though on benefit of doubt. Aggrieved by the said acquittal on benefit of doubt, the Petitioner filed a revision application in the court of the learned

Sessions Judge, Tinsukia which was allowed on 6.8.2005 by converting the acquittal on benefit of doubt to one of clear honourable acquittal. Against the aforesaid order of the Sessions Judge, the matter is pending before this Court in Criminal Revision No. 653/05.

Civil Rule No. 1553 of 1998:

Another chargesheet dated 1.9.1995 issued against the Petitioner has been assailed in this writ petition. The charge levelled against the Petitioner is that on 2.8.1997 at about 11.40 a.m. he had entered the bank premises to collect the subsistence allowance for the month of July, 1997. As the said allowance did not include the annual increment of the Petitioner, the Petitioner had misbehaved with one U.C. Goswami, Head Clerk of the Establishment Section by using abusive language in a loud voice and had similarly misbehaved with one P. Dutta, Unit Secretary of the SBI Staff Association and other staff members who had tried to intervene in the matter.

The defence of the Petitioner in respect of the aforesaid charge appears to be that it is the concerned employees who had misbehaved with the Petitioner when he had enquired about the annual increment by telling Him that, in any event, such annual increments were meaningless as he was going to be dismissed from service. The Petitioner contends that the chargesheet dated 1.9.1997 had been issued to him on account of the vindictive attitude of the bank management who wanted the Petitioner to be removed from the Bank at any cost.

Civil Rule No. 6465 of 1998:

Another charge memo dated 7.12.1998 has been put to challenge in this writ petition. The charge levelled is that on 2.2.1993, the Petitioner had issued a bank draft of Rs. 25,000 against cash deposit of Rs. 5,000 only by the customer. It is the allegation of the Bank that subsequently, on 26.2.1993, receipt of a cheque; of Rs. 20,000 was shown against the particular transaction with the explanation that though the cheque was received on 2.2.1993 the same was misplaced.

The defence of the Petitioner against the aforesaid chargesheet dated 7.12.1998 is that the Petitioner had received a notice asking him to show cause in respect of the same allegation as far back as on 13.6.1995. According to the Petitioner, he submitted his reply on 23.6.1995 seeking certain documents which was allowed by the Bank to be verified by the Petitioner on 4.12.1996. According to the Petitioner, he received the said letter of the Bank dated 4.12.1996 on 6.12.1997 where after he submitted his reply on 8.12.1997. Thereafter, the matter remained virtually closed until it was re-opened by the chargesheet dated 7.12.1998. According to the Petitioner, the chargesheet dated 7.12.1998 constitutes yet another mala fide attempt of the Bank to wreck its vengeance on the Petitioner and to remove him from the Bank at any cost.

Writ Petition (C) No. 5586/2001:

In this writ petition, the Petitioner seeks a direction from the court for payment of his full pay and allowances during the period he had remained under suspension, i.e., 11.11.1994 to 10.11.2000 (the date of reinstatement following the order of the court dated 8.8.2000 passed in WA No. 253/97).

The Petitioner contends that under the Shastri Award as retained by the Desai Award, suspension is permissible only when a disciplinary proceeding is pending. As, on the date of suspension of the Petitioner no disciplinary proceeding against the Petitioner was pending, as evident from, the letter of the Bank dated 10.5.1995 (Annexure-III to the writ petition) and further as the said suspension had been interfered with by this Court, the stand taken by the Bank in its letter dated 10.11.2000 (Annexure-IV) that the manner in which the period of suspension is to be treated will be decided only on the conclusion of the departmental proceeding, cannot be sustained in law.

Civil Rule No. 4716 of 1997:

An award dated 13.2.1997 passed by the learned Presiding Officer, Labour Court, Dibrugarh in a proceeding (Misc. Case 4/96) u/s 33C(2) of the Industrial Disputes Act, 1947 has been assailed by the management of the Bank in this writ petition. By the said award the learned Industrial court had directed that a sum of Rs. 850 should be paid to the Respondent in the writ petition being the computation of his entitlements on account of medical reimbursement.

The writ Petitioner Bank has contended the said award to be a nullity as the learned Labour court, Assam was not competent in law to entertain the application filed u/s 33C(2) of the Act of 1947. This, according to the Bank, is on account of the fact that the appropriate Government in so far as the Respondent is concerned is the Central Government and not the State Government and the Labour court, Dibrugarh has not been specified by the Central Government. The Petitioner Bank has also assailed the award by contending that the medical bill of the Petitioner, not having been cleared by the Bank, there was no pre-existing right to receive the amount covered by the award.

In reply, the Respondent in the writ petition has contended that the writ petition itself is not bona fide, inasmuch as, the amount covered by the award is a paltry sum of Rs. 850. It is yet another act of victimization exposing the mala fide attitude of the Bank towards the Respondent. That apart, it has been contended that the objection with regard to the jurisdiction of the learned Labour court was not raised before the learned court below and, therefore, the same cannot be legitimately raised in the present proceeding under Article 226 of the Constitution. It is the further case of the Respondent that the amount having been directed to be paid by the award subject to realization on a later date if the bill of the Respondent is found to be not genuine, there is no good reason for exercise of the high prerogative power vested in this Court by Article 226 of the Constitution at the instance of the Bank.

6. The arguments advanced by Mr. K.N. Choudhury, learned Counsel for the

Petitioner in all the cases (except in Civil Rule No. 4716/97 where the Petitioner in the other cases is the Respondent) has been primarily to the effect that the chargesheets drawn up against the Petitioner proposing departmental enquiries into the charges levelled are vindictive and mala fide acts flowing from the failure of the Respondent Bank to sustain the transfer and suspension of the Petitioner before this Court in the proceedings, the details of which have already been noted. Mr. Choudhury has submitted that to wreck vengeance on the Petitioner for his success in the aforesaid court proceedings which had placed the Bank in a very poor plight, one chargesheet after the other had been drawn up against the Petitioner with a view to cause harassment and intimidation to the Petitioner. Some of the charges, according to Mr. Choudhury, pertain to alleged acts committed more than five years before the charges were brought without there being any explanation for the inordinate delay. At least one charge, i.e., in the case of Madhu Milan in Civil Rule No. 1721/98 has been demonstrated to be patently mala fide and in bad faith which conduct of the Bank should affect the credibility of all the other charges levelled. The institution of the writ proceeding numbered as Civil Rule No. 4716/97 in respect of an industrial award for a paltry sum of Rs. 850, according to Mr. Choudhury, is a further pointer to the vindictive attitude of the Bank. Insofar as the proceeding registered as Civil Rule No. 3441/97 is concerned, Mr. Choudhury has argued that the acquittal of the Petitioner in the criminal charge on the same set of facts debars any further departmental proceeding, as has been contemplated by the chargesheet dated 16.5.1996. Relying on a decision of the Apex Court reported in G.M. Tank Vs. State of Gujarat and Another, Mr. Choudhury has argued that it will be unjust, unfair and oppressive to allow the disciplinary proceeding contemplated by the Bank to continue after verdict has been rendered by the criminal court acquitting the Petitioner on the same facts. Insofar as the proceeding registered as Civil Rule No. 4716/97 is concerned, Mr. Choudhury has submitted that the Bank not having raised the question of jurisdiction of the labour court to entertain the matter at any earlier point of time, on the authority of the decision of the Apex Court in the case of Sohan Singh and Others Vs. General Manager, Ordnance Factory, Khamaria, Jabalpur and Others, this Court should hold that the issue of jurisdiction as raised by the Bank in the said proceeding ought not be gone into by this Court.

Insofar as Civil Rule No. 1553/98 is concerned, Mr. Choudhury has pointed out that in any event, the charge of misbehaviour and use of abusive language even if accepted, amounts to commission of a minor offence for which a minor penalty, as prescribed, can be imposed on the Petitioner. Coming to the charges levelled in Civil Rule No. 1721/98, it is the argument of Mr. Choudhury that the charge Nos. 1, 3 and 4, i.e., in respect of loans availed of by the relatives of the Petitioner, the said loans were granted in the year 1990 and 1992 respectively. Apart from the fact that the Bank had derived benefit from the said loans by earning interest on the outstandings, there is no explanation forthcoming as to why the alleged conduct of the Petitioner in respect of the said loans should form

the subject matter of a chargesheet issued in the year 1995. In so far as the charge No. 2, i.e., issuance of cheque without adequate cover by the Petitioner is concerned, Mr. Choudhury has submitted that the said conduct of the Petitioner was as a customer of the Bank and not as an employee. That apart, no pecuniary loss was caused to the Bank by the conduct alleged. In so far as the charge No. 5 is concerned, Mr. Choudhury has vehemently contended, on the detailed facts already noticed, that the Branch Manager of the bank had gone to the extent of obtaining documents in a fraudulent manner from M/s. Madhu Milan to frame the Petitioner. The mala fide and bad faith in which the Bank had acted, according to Mr. Choudhury, should be taken into account by the court, to judge the validity of all the charges issued against the Petitioner.

Insofar as Civil Rule No. 6465/98 is concerned, Mr. Choudhury apart from asserting that the allegations made against the Petitioner are a part of the same process of victimization and intimidation, has asserted that any event the said matter had been enquired into in the year 1995 and the reply of the Petitioner was submitted as far back as on 8.2.1997. Thereafter, the matter has been raised once again by issuing the chargesheet dated 7.12.1998. Mr. Choudhury has further contended that the acts alleged against the Petitioner are all of the year 1993. Relying on the law laid down by the Apex Court in the decision reported in State of Punjab and Others Vs. Chaman Lal Goyal, Mr. Choudhury has submitted that the long delay in issuing the chargesheet without their being any cogent explanation for the same, must be construed by the court to be a bar for proceeding against the Petitioner.

Insofar as the entitlement of the Petitioner to payment of full backwages during the period of suspension is concerned, Mr. Choudhury, undeterred by the amended provisions of the Shastri Award permitting suspension even when a disciplinary proceeding is contemplated, as placed before the court by the learned Counsel for the Bank, has submitted that in any event the suspension being interfered with by this Court and the disciplinary proceeding against the Petitioner being actuated by malice, the Petitioner is entitled to his pay and allowances during the suspension period and further that the suspension period should be taken to be as on duty.

7. The contentions advanced by Mr. K.N. Choudhury, learned Counsel for the Petitioner have been sought to be controverted by Mr. M. Choudhury, learned Counsel for the Respondent Bank. Mr. Choudhury has submitted that the power to initiate a departmental proceeding against a recalcitrant employee is with the employer and once a departmental proceeding is initiated, the same must be allowed to reach its logical conclusion without being interdicted by the court. Mr. Choudhury has submitted that all the charges levelled against the Petitioner stem from positive acts of mis-conduct or indiscretion committed by the Petitioner and merely because several charges have been framed against the Petitioner for enquiry, the same cannot be construed as acts of victimization or as expressions of malice. Mr. Choudhury has further argued that the charges levelled in a

disciplinary proceeding ought not to be interfered with by the court merely on account of delay that may have occurred in bringing the said charges against the delinquent employee. That apart, it has been argued that the allegation made against the Respondent No. 4, the Branch Manager, in Civil Rule No. 1721/98 has been denied by the said Respondent in the affidavit filed. In so far as the proceeding registered as Civil Rule No. 4716/98 is concerned, it has been argued by Mr. Choudhury that the question of jurisdiction of the (Labour court to pass the impugned award is a pure question of law and that there is no bar for the court exercising power under Article 226 to go into the same even if not raised earlier. Mr. Choudhury has further submitted that no specific amount could have been computed to be due as the medical bill in question was yet to be passed. Therefore, the Respondent Bank is entitled to raise its objections with regard to the validity of the award by instituting the proceeding in question.

8. Having noted the facts of each of the cases and the stand of the contesting parties, the court must now proceed to analyze the situation before recording its views in the cases under consideration.

9. Like corruption and fraud, malice or bad faith is a strong and compelling factor that would vitiate the actions of a public authority. A public authority under the Constitution and the laws framed thereunder is a repository of public trust and faith. Exercise of power by such an authority must not only be for the public good and in public interest, it must also be in a fair and unbiased manner free from all prejudices. The above is the essence of governance by a system of laws as opposed to governance by whims and caprices, arbitrariness and nepotism. The principles of natural justice, evolved over a long period of time, prohibit prejudged actions in any sphere of determination of legal rights. Equally, law refuses to ascribe any role to fraud or corruption either in the domain of relationships between the individuals or in the realm of public law. Likewise, a vindictive or malicious action taken in bad faith has no room for acceptance in our legal system. In such a case, no further probe is considered necessary; the core of the decision gets tainted rendering both the decision as well as the decision making process legally unacceptable. It is in the above backdrop that the legality of the various charges levelled against the Petitioner will have to be examined by the court, a course of action that has been necessitated by the allegations of mala fide levelled against the Respondents in bringing the charges in question against the Petitioner.

10. While it will be difficult for the court to attribute any malice in all the charges levelled against the Petitioner merely because the Respondent Bank was unsuccessful in the litigations that had erupted over the question of transfer and suspension of the Petitioner, the charge No. 5 in the chargesheet dated 19.5.1995 which has been assailed in Civil Rule No. 1721/98 and the facts surrounding the said charge must be looked into a little more closely. The joint compromise petition dated 21.3.1995 filed in the complaint case No. 133C/95 initiated by the Petitioner as the complainant against the owner of M/s. Madhu

Milan, the details of which have already been noted, clearly establishes that not only the allegations levelled against the Petitioner under the said charge No. 5 are incorrect but also that it is the then Branch Manager of the Tinsukia Branch of the bank who was responsible for obtaining the signature of the owner of M/s. Madhu Milan on a blank letter head and a false bill which was subsequently sent to the Central Office of the Bank at Bombay. Yet, it was alleged by the Respondent Bank that the Petitioner had obtained the said signatures of the owner of M/s. Madhu Milan on the bill as well as the blank letter head which was later on used by him to dis-credit the officials who had conducted the inspection of the Bank. The facts evident from the joint compromise petition dated 21.3.1995 make it abundantly clear that there was a mala fide and deliberate attempt on the part of the Bank authorities to "book" the Petitioner on an absolutely trumped up charge concocted by the Bank officials on the basis of the documents fabricated by them. Such a course of action clearly spells out the pre-conceived mind and malicious intent of the Bank authorities to implicate the Petitioner at any cost. All other actions of the Bank authorities in seeking to attribute other acts of mis-conduct to the Petitioner is capable of being judged by reference to the demonstrated ill will and motive on their part in bringing the aforesaid Charge No. 5 against the Petitioner. However, since it is possible that some of such other acts of alleged mis-conduct on the part of the Petitioner may not be similarly tainted, the court is of the view that the Madhu Milan episode should not be allowed to cloud the vision of the court and it will be more reasonable to proceed on the basis that the said question by itself may not vitiate the other charges though the established ill motive and malice on the part of the Bank arising out of the particular incident would be a relevant factor to be kept in mind while considering the other charges.

Viewed from the aforesaid perspective, what cannot escape the court's attention is that the charge Nos. 1, 2, 3 and 4 contained in the chargesheet dated 19.5.1995 have all been levelled after inordinate delay as the alleged occurrences took place in the year 1990, 1992 and 1993. That apart, insofar as the charge Nos. 1, 3 and 4 are concerned, there can be no escape from the conclusion that the Bank had derived benefit by way of interest on the loan amounts for which the Petitioner was sought to be made liable. Yet, after a lapse of sufficiently long time, the allegedly irregular grant of the said loans had been resurrected to hold the Petitioner responsible for the same without, however, their being any explanation for the delay that had occurred. In the aforesaid circumstances, the court is of the view that it would be correct to hold that the chargesheet dated 19.5.1995 should receive the court's interference. Civil Rule No. 1721/98, therefore, is allowed and the chargesheet dated 19.5.1995 is set aside and quashed.

11. The chargehseet dated 7.12.1998 impugned in Civil Rule No. 6465/98 alleges certain irregularities in issuing a bank draft for Rs. 25,000 which was so issued on 2.2.1993. According to the Bank authorities, the said bank draft was issued without sufficient cash deposit and the balance due was regularised by

adjustment of a cheque for the said balance on 26.2.1993. Even if the version of the Petitioner that the cheque for the balance amount was actually deposited on 2.2.1993 itself but the same was misplaced is to be dis-believed, what cannot be overlooked is the fact that the matter got regularised at least on 26.2.1993; and the said fact must have been known to the Bank at least from the said date. If that be so, what earthly reason could exist for the Bank to sleep over the matter for over five years and resurrect the said facts in the form of the chargesheet dated 7.12.1998. In the absence of any satisfactory explanation, the delay in bringing the chargesheet several years after the occurrence of the alleged irregularities/illegalities should make the court lean in favour of drawing an adverse presumption against the Bank, which presumption has not been rebutted by placing before the court the relevant facts which had occasioned the delay. In this regard, it must be noticed that the Apex Court in the case of Chaman Lal Goyal (supra) had laid down that the delay in bringing a chargesheet is a relevant factor that has to be considered by the court in determining the tenability of the charges levelled, though the Apex Court has been quick to emphasise that the reasons for such delay must be considered along with all other relevant circumstances of the case. In the present case, as evident from the facts already stated, in respect of the same subject matter a notice was issued to the Petitioner to show cause as far back as on 13.6.1995 and on account of delay attributable to the Bank, the Petitioner could file his reply only on 8.2.1997. Even thereafter the matter was kept pending for nearly two years until the chargesheet dated 7.12.1998 was issued. In the aforesaid facts, the court is of the view that it will be reasonable to presume that the reply of the Petitioner submitted on 8.2.1997 had satisfied the Bank authorities and that is the reason why the matter was not pursued any further until 7.12.1998 when the chargesheet in question was issued. Taking into account the delay that had occurred in levelling the charges against the Petitioner and the other relevant facts and circumstances, as noticed above, the court is of the view that the chargesheet dated 7.12.1998 impugned in Civil Rule No. 6465/98 should receive its interference; Accordingly, the said chargesheet dated 7.12.1998 is set aside and quashed. The writ petition, i.e., Civil Rule No. 6465/98 is, therefore, allowed.

12. This will bring the court to a consideration of the validity of the chargesheet dated 1.9.1997 wherein misbehaviour towards other employees of the Bank and use of abusive language has been alleged against the Petitioner when the Petitioner had gone to the Bank premises on 2.8.1997 to collect his subsistence allowance. Even if the defence of the Petitioner in this regard, i.e., that it is the other employees of the Bank who had misbehaved with the Petitioner, is to be dis-believed, there are two significant facts that must be noticed by the court in this connection. The first is that though the court by its interim order dated 30.7.1997 had permitted the Bank to complete the departmental proceeding on the said charges, no material has been laid before the court till date to show that the said proceeding has been concluded by the Bank though, by this time, a period of over 10 years have elapsed. The second significant fact that must be

noticed is that the alleged acts attributed to the Petitioner, even if assumed to be correct, makes out a case of commission of a minor offence which will attract any one of the following penalties:

- (i) warning or censure;
- (ii) entry of adverse remarks;
- (iii) stoppage of increments for a period not longer than six months.

13. As two conflicting versions have emanated from the affirmations and denials made by the contesting parties with regard to the charge of alleged misbehaviour contained in the chargesheet dated 1.9.1997, it is not possible for the court to come to any conclusion as to which of the two versions is correct. However, as a period of over 10 years have elapsed in the meantime, the court is of the view that the Petitioner should be given an option of accepting the punishment of "warning" for the said alleged mis-conduct or in the alternative to participate in the proceedings in respect of the aforesaid chargesheet dated 1.9.1997. The Petitioner will be at liberty to adopt any of the aforesaid two course of actions by sending a suitable intimation to the Bank where after the Bank authorities will mould its further actions, as would be required. Civil Rule No. 1553/98 shall stand disposed of accordingly.

14. In WP(C) 5586/2001, the Petitioner has claimed that the period of suspension undergone by him from 11.11.1994 to 10.11.2000 be treated as on duty and all benefits due on that basis be granted to him. The Respondents by issuing the order dated 10.11.2000 has taken the stand that the decision on the said issue would be arrived at after conclusion of the departmental proceeding. The departmental proceeding referred to by the Bank in its order letter dated 10.11.2000 is the proceeding in terms of the chargesheet dated 19.5.1995. That apart, a reading of the order of suspension dated 11.11.1994 would also go to show that the suspension of the Petitioner was on grounds included in the chargesheet dated 19.5.1995. The said chargesheet dated 19.5.1995 has already been interfered with by this Court by the present order in Civil Rule No. 1721/98. In such circumstances, there will be hardly any justification to deny the relief sought for in WP(C) No. 5586/2001. The Respondent Bank is accordingly directed to treat the period of suspension undergone by the Petitioner as on duty and on that basis to grant him all consequential benefits.

15. The validity of the chargesheet dated 16.5.1996 has been challenged in Civil Rule No. 3441/97 in the light of certain subsequent facts, i.e., on the ground that the criminal case against the Petitioner on the same set of allegations has ended in acquittal. In this regard, reliance has been placed on the decision of the Apex Court in the case of G.M. Tank (supra).

The Apex Court in the aforesaid case took the view that as the charges in the criminal case as well as in the departmental proceeding were identical, the acquittal of the Petitioner in the case before it by the criminal court should result

in the conclusion that the dismissal order passed in the departmental proceeding on the same charges is not sustainable in law. In doing so, the Apex Court relied on a earlier judgment in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,

16. The ratio of the law laid down by the Apex Court in the aforesaid two cases would appear to be that in the event the charges in the criminal case which had ended in acquittal are the same as those involved in the departmental proceeding, the verdict of acquittal rendered in the criminal case should be determinative of the outcome of the departmental proceeding.

17. In the present case, the charge levelled against the Petitioner in the chargesheet dated 16.5.1996 has already been noted. By the said chargesheet it was alleged that on 17.1.2005 while a messenger of the Bank was going to the post office with some registered envelopes, the Petitioner snatched the same and after remaining in the custody of the said articles for about half an hour, returned the same to the messenger who thereafter went to the post office. The further charge levelled against the Petitioner is that after a few days complaints were received from some branches of the Bank to the effect that some registered envelopes received by them did not contain the cheques and instruments that the said envelopes were supposed to contain. The messenger of the Bank being confronted with the aforesaid facts affirmed the incident that had occurred on 17.1.2005. It was further mentioned in the chargesheet dated 16.5.1996 that after a few days the Tinsukia Branch of the Bank received the missing drafts, cheques, instruments etc. by ordinary post.

The charge brought against the Petitioner in the criminal proceeding, i.e., GR Case No. 368/95, which would be evident from the records of Criminal Revision No. 653/05 presently pending before this Court, which records have been called for, is substantially the same. A reading of the judgment dated 25.1.2004 passed by the learned trial court would go to show that the acquittal of the Petitioner in the said criminal proceeding was upon consideration of the evidence adduced by the prosecution, particularly, the oral evidence tendered by PW-1, Sri Nibarendu Bhattacharjee, the then Branch Manager of the Tinsukia Branch of the Bank and P.W.2 Sri H.N. Saikia, the messenger involved in the alleged incident. In the aforesaid judgment the learned trial court had clearly recorded that PW-1 was not in a position to mention about the drafts, cheques and other instruments which were alleged to be missing from the envelopes. No officer or employee of the branches to which the registered envelopes were sent were examined to establish the fact that the registered envelopes had reached those branches without the instruments. The learned, trial court while acquitting the Petitioner also took note of the fact that there is no contemporaneous complaint by the messenger (P.W.2) about the incident and further that in his evidence PW-1 had admitted the documents showing that the accused had been admitted in a Nursing Home from 17.1.1995 (the date of the incident) to 20.1.1995. The learned trial court also took into account the fact that the rest of the witnesses

examined, i.e., P.Ws. 3,4, 5, 6 and 7 had neither seen the incident in question nor were they aware of the fact that some envelopes on the way to the post office had been snatched by the Petitioner. The evidence of the Investigating Officer (P.W. 8) was also taken note of by the learned trial court while acquitting the Petitioner. In this regard P.W.8 had deposed that though he had asked PW-1 (Branch Manager) to submit details of the cheques and drafts that had been missing, no such details were forthcoming.

18. The facts stated above would go to show that the core issue that would be required to be determined in the departmental proceeding against the Petitioner on the basis of the chargesheet dated 16.5.1996 had already been decided by the criminal court in the judgment dated 25.1.2004 acquitting the Petitioner. Whether there was snatching of the registered envelopes by the Petitioner and whether any cheques, draft and instruments in the said envelopes were found to be missing upon receipt of the said envelopes in the concerned branches are material questions that would arise in the departmental proceeding. The said questions have already been answered in favour of the Petitioner by the criminal court on the basis of a reasoned judgment. In such a situation, this Court fails to see any cogent reason as to why the ratio of the judgment of the Apex Court in *M. Paul Anthony (supra)* and *G.M. Tank (supra)* should not apply to the present case. The court is of the further view that on due application of the ratio laid down by the Apex Court in the aforesaid two cases, interference with the departmental proceeding sought to be initiated against the Petitioner by the chargesheet dated 16.5.1996 would be justified in law. Accordingly, the chargesheet dated 16.5.1996 is set aside and quashed and Civil Rule No. 3441/97 is allowed.

19. That last question that will have to be addressed by the court is the validity of the award dated 13.2.1997 passed by the learned Labour court u/s 33C(2) of the Industrial Disputes Act which has been assailed in the proceeding registered as Civil Rule No. 4716/97.

The Petitioner Bank, in the aforesaid writ petition, contends the said award to be a nullity in law, inasmuch as, the labour court at Dibrugarh has been constituted by the Government of Assam u/s 7 of the Act whereas the application filed by the Petitioner u/s 33C(2) of the Act could have been adjudicated only by such labour court as may have been specified by the Central Government in view of the fact that the State Bank of India is a banking company as defined in Section 2(bb) of the Act in respect of which the appropriate Government is the Central Government. The power of the labour court to pass the impugned award dated 13.2.1997 in a situation where the entitlement of the Petitioner to receive any monetary benefit was yet to be decided by the Bank has also been questioned in the writ petition.

The learned Counsel for the Respondent (Petitioner in the other cases) in the aforesaid writ petition has strenuously contended that the question of jurisdiction of the labour court to pass the impugned award had not been raised by the Bank

before the learned labour court or at any stage prior to the present proceeding. Rather, according to the learned Counsel, the Bank had submitted to the jurisdiction of the labour court. Relying on the decision of the Apex Court in *Sohan Singh (supra)* and the decision of the Kerala High Court in *P. Sankara Wariyar v. Malabar Dist. Co-operative Supply and Marketing Society Ltd.* 1982 Lab IC 863, the learned Counsel has argued that the question of jurisdiction should not be gone into by this Court and the Petitioner Bank, on account of its own conduct, must be understood to be estopped from raising the said question in the present proceeding under Article 226 of the Constitution. In so far as the judgment of the Kerala High Court in *P. Sankara Wariyar (supra)* is concerned, the observations relied upon by the learned Counsel for the Petitioner Bank seems to have been made in the context of the question as to whether lack of jurisdiction is latent or patent. In the present case, if the contention of the Petitioner Bank is to be accepted, the lack of jurisdiction would be clearly patent and evident on the face of the records. In so far as the decision in *Sohan Singh (supra)* is concerned, on a reading of the judgment of the Apex Court it is not clear as to what is the precise nature of the objections that could have been raised with regard to the jurisdiction of the labour court but was not so done. The objections to the jurisdiction of a court can be visualized to be capable of being raised on different counts. In such circumstances, this Court is inclined to take the view that the ratio of law laid down in *Sohan Singh (supra)* should not be applied to the facts of the present case in the absence of the requisite facts indicating the precise grounds of lack of jurisdiction that was available in *Sohan Singh (supra)* but was not urged.

20. In the present case, the objections to the jurisdiction of the learned labour court at Dibrugarh are patent and goes to the root of the matter. Nothing more than a plain look at the provisions contained in Section 2(a) and 2(bb) of the Industrial Disputes Act, 1947, is necessary to arrive at the conclusion that the Respondent being an employee of the State Bank of India, it was only a Labour Court specified by the Central Government by a notification to be a Labour Court for the purpose of Section 33C(2) of the Act which could have entertained the application filed by the Respondent. The question of jurisdiction in the present case being fundamental and going to the root of the matter, the court is of the view that the learned labour court at Dibrugarh was not competent in law to hear and decide the Petitioner's application u/s 33C(2) of the Act. Civil Rule No. 4716/97, therefore, has to succeed. It is accordingly allowed. The award dated 13.2.1997 is consequentially set aside and quashed.

21. All the writ petitions shall stand disposed of in terms of the conclusions reached and recorded as above.