
(2011) 01 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12800 of 1992

Kishori Lal

APPELLANT

Vs

Chairman Board of Directors

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Advocates Act, 1961 — Section 31
Aligarh Gramin Bank (Staff and Officers) Service Regulation, 1981 — Regulation 31
Aligarh Gramin Bank Employees Conduct Regulations, 1981 — Regulation 19, 30
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2011) 3 AWC 2960 : (2011) 2 UPLBEC 1445

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—The writ petition having been restored to its original number, learned Counsel for the parties requested to hear the matter finally and decide since it is pending for the last more than 18 years. Hence, I proceed accordingly.

2. The writ petition is directed against order dated 3.3.1992, (Annexure-11 to the writ petition), whereby the Petitioner has been dismissed from service by Chairman, Aligarh Gramin Bank.

3. A brief factual matrix giving rise to the present dispute is as under:

4. The Petitioner was initially appointed as "Messenger" in Aligarh Gramin Bank (hereinafter referred to as the "Bank") on 27.5.1981 on daily wage basis. Later on he was made permanent w.e.f. 13.5.1986. In the year 1987, Petitioner was posted at Ladpur Branch of Bank. One Sukhviri Singh, resident of village and post Ladpur made a complaint on 1/10.8.1988 that Petitioner had received Rs. 1310/- from him towards payment of installment of loan, which was to be deposited in Bank's loan account of Sukhviri Singh, but was not deposited. On 31.8.1998, another complaint was made to the same effect. On 16.8.1988, Petitioner is alleged to have executed a receipt to Sukhviri Singh assuring that he shall pay

Rs. 1310/- to him.

5. The complaint was addressed to Chairman of the Bank. In the meantime, Petitioner was transferred from Ladpur to Shahganj Branch on 11.8.1998. Under instructions of Chairman of Bank, one Shri G.K. Dixit, an officer posted at Head Office of the Bank at Aligarh, made a preliminary inquiry by visiting Branch at Ladpur on 28.10.1988. He met Shri Sukhvir Singh, collected his statement in writing, and submitted report on 1.11.1988. Thereafter, a show-cause notice was issued to Petitioner on 3.11.1988. The Petitioner submitted reply on 20.12.1988, denying receipt of any such amount.

6. Thereafter, a charge-sheet was issued to Petitioner on 5th July 1989. Reply was given by him on 6.9.1989 denying the charge leveled against him. He also requested to supply copies of the statement of witnesses, if any, recorded during preliminary inquiry as also the copy of preliminary inquiry report and complaint. One Shri Aditya Sharma was appointed Inquiry Officer, who commenced oral inquiry on 20.10.1989 and concluded on 4.10.1991. The Petitioner complained that relied upon documents were not supplied to him. The Petitioner also requested to be represented by Shri V.S. Jain, Assistant Secretary of U.P. Bank Employees Union but it was not accepted. The Inquiry Officer submitted report on 6.12.1991 holding Petitioner guilty of misappropriation of Rs. 1310/- from Bank's client Sukhvir Singh. A show-cause notice was issued on 1.2.1992. Thereafter, impugned order of punishment was passed by Chairman of the Bank on 3.3.1992 dismissing Petitioner from service.

7. On behalf of Respondent No. 2 a counter-affidavit has been filed, sworn by Shri A.K. Srivastava, General Manager. It is said that Petitioner is a workman and therefore, has an alternative remedy under Industrial Disputes Act, 1947. Further, under Regulation 31 of Aligarh Gramin Bank (Staff & Officers) Service Regulation, 1981, (hereinafter referred to as the "Regulation 1981") Petitioner has remedy of appeal before the Board of Directors, and, therefore, also this Court may not entertain the writ petition on the ground of alternative remedy. On merits it is said that Petitioner was initially employed as a part-time Messenger on daily wage basis. Later on he was regularised. Shri Sukhvir Singh, a neighbour of Petitioner in village Ladpur handed over Rs. 1310/- to get it deposited in his loan account so that he may not incur any inconvenience of visiting Bank. The Petitioner however committed breach of trust and defrauded borrower by not depositing the said amount in Bank. In the preliminary investigation, Petitioner was found prima facie guilty in report dated 1.11.1988. Thereafter, he was issued a show-cause notice and thereafter regular inquiry was conducted.

8. Shri P.K. Singh, learned Counsel for the Petitioner has challenged the proceedings contending that relied upon documents were not supplied to Petitioner till inquiry report was submitted and even thereafter. Therefore, Petitioner was not afforded adequate opportunity of defence. He further contended that Petitioner was a petty Class IV employee working as Messenger,

therefore, not allowing defence assistant of his choice also affects his defence which, vitiate the proceedings. The money said to have been received by Petitioner did not belong to Bank since was not handed over by Bank to the Petitioner. The Petitioner was a neighbour of Shri Sukhvir Singh. Whatever transaction took place between Sukhvir Singh and Petitioner, was of private nature. The intention of Sukhvir Singh might have been anything but it cannot be said to constitute Bank's money unless it reaches the Bank. Therefore, the allegation that Petitioner misappropriated money of Bank is clearly unfounded. Assuming that Petitioner received an amount from a person residing in his neighbourhood and did not repay it and breached a promise of onward transaction with such private person, this would not come within the realm of "misconduct" under Regulation 1981. The Petitioner never represented to Sukhvir Singh nor it has come on record that he ever so represented that he was entitled to receive money from a borrower of the Bank for depositing in loan account. The discretion was solely of Sukhvir Singh on account of neighbourly relations and not on account of the fact that Petitioner was an employee of the Bank. At the best it could be said that Petitioner committed breach of trust so far as Sukhvir Singh is concerned but so far as the Bank is concerned, Petitioner has not committed any misconduct whatsoever. Sri Singh submits that, in any case, amount of loan installment had already been deposited with the Bank, it did not suffer any loss. Lastly, it is contended that in the facts and circumstances of the case, punishment imposed upon Petitioner, the extreme one is highly disproportionate to the gravity of charges leveled against Petitioner and, therefore, arbitrary, violative of Articles 14 and 16 of the Constitution of India.

9. On the contrary Shri Jayant Banerjee, learned Counsel for the Bank contended that conduct of Petitioner by not depositing Rs. 1310/- in Bank, which he had received from Sukhvir Singh amounts to misappropriation. He also contended that Regulation 26 of Conduct and Discipline Rules restrain an employee of Bank from borrowing money from anyone having relations with Bank and Petitioner was guilty of violating said regulation. He also submitted that inquiry was conducted giving due opportunity of defence to Petitioner and once the charges are proved, this Court shall not interfere with the punishment imposed upon an employee.

10. I have heard the learned Counsel for the parties and perused the record.

11. First, I come to the question of alternative remedy. This writ petition was admitted on 13.4.1992. 18 years have elapsed. Counter and Rejoinder-affidavits have been exchanged. The learned Counsel for Respondents could not point out any seriously disputed question of facts involved in this matter which may not be gone into by this Court and it appears that issues raised are basically legal and can be decided on the basis of materials available on record. I, therefore, do not find any reason to relegate Petitioner to avail alternative remedy at this stage.

12. The charge-sheet shows that Petitioner was alleged to be guilty of violating Regulation 30 read with Regulation 19, Chapter 4 of Aligarh Gramin Bank

Employees Conduct Regulations, 1981 (hereinafter referred to as "Regulation 1981").

13. The solitary charge leveled upon the Petitioner reads as under:

14. The Inquiry Officer has recorded a finding of fact that Petitioner received Rs. 1310/- from Sukhvir Singh on 8.1.1988, so as to deposit in the loan Account No. S.C.P. 2/1987 of Sukhvir Singh but neither the said amount was deposited in the above loan account nor receipt of bank was given to Shri Sukhvir Singh. The Petitioner misappropriated the said amount and, therefore, deliberately caused loss to the property of Bank's customer. He also recorded a finding of fact that Petitioner executed a receipt to Shri Sukhvir Singh assuring that he shall repay Rs. 1310/- to him. It is in this background he held that entire charge leveled against Petitioner stood proved. The disciplinary authority agreeing with the aforesaid findings of Inquiry Officer, has, thus imposed punishment of dismissal.

15. The first question is whether inquiry has been conducted giving due opportunity of hearing to Petitioner or not. In this respect learned Counsel for the Petitioner vehemently contended that relied upon documents were not made available to the Petitioner and hence, adequate opportunity of defence was denied. The averments contained in paras 9 and 10 of the writ petition, in this regard read as under:

9. That Petitioner was again served a charge-sheet dated 5.7.1989, however, with the said charge-sheet relied upon documents on the basis of which the said charge-sheet was framed were not provided to the Petitioner. However, handicapped the Petitioner submitted his reply to the charge-sheet on 6.9.1989....

10. That on Sri Aditya Sharma Officer was appointed as Enquiry Officer to conduct disciplinary proceedings in pursuance of charge-sheet dated 5.7.1989 that the disciplinary proceedings before the enquiry officer commenced on 20.10.1989 and concluded to 4.2.1991 and during this period the Petitioner even after repeated request were not provided to relied upon documents by enquiry officer. Further the request of the Petitioner to be represented in the enquiry proceedings, through Sri V.S. Jain, Assistant Secretary of U.P. Bank Employees Union was also not granted by enquiry officer and the defence of the Petitioner was prejudiciously effected on account of inadequate representation.

16. Reply to above averments is contained in paras 16 and 17 of counter-affidavit which read as under:

para-16- That the contents of paragraph Nos. 8 and 9 of the writ petition in so far as they are matters of record, may be verified there from. But the rest of the contents of paragraph under reply are strongly denied as incorrect and misleading, and in reply the deponent craves leave of this Hon'ble Court to refer to the show-cause notice dated 3.11.1988, already annexed as Annexure-4 to the petition and also the charge-sheet dated 5.7.1989 also annexed as

Annexure-6 to the writ petition for a clear and complete appraisal thereof.

Para-17-That the contents of paragraph No. 10 of the writ petition are strongly denied as incorrect and misleading and in reply it is stated that during the course of enquiry proceedings, all possible opportunity were afforded to the Petitioner including access to all the relevant documents being relied upon by the Respondent- Bank.

.... Furthermore the Petitioner had also been provided ample opportunity to defend himself. As per norms of the Staff Service Regulation (also upheld by the Civil Court at Aligarh in the case of Narendra Kumar v. Aligarh Gramin Bank) the charge-sheeted employee can only requisition the services of an employee/officer of the Bank and is not permitted the services of anyone else much less an outsider.

17. In the above reply as also in the entire counter affidavit, which I have gone through very carefully, I do not find even a whisper of pleadings that Petitioner was ever supplied with relied upon document or was allowed to inspect the same and to take notes there from. A general but vague averment has been made in para 17 that all possible opportunity were afforded to Petitioner including access to all the relevant documents relied upon by Respondent. Para 17 of counter affidavit has been sworn on the basis of record. Annexure-CA-1, which is referred to in para 17, shows that only copy of inquiry report of Shri Gyanendra Kumar Dixit was made available to delinquent employee but it neither refers to any other document nor show that enclosures of such report were also given. The documents relied upon by Bank for the purpose of inquiry have been detailed in inquiry report which are 11 in number and as follow:

18. There is no material on record to show that relied upon documents were made available to Petitioner at any point of time either by supplying copies thereof or even by permitting him inspection thereof.

19. The inquiry report also shows that alongwith preliminary inquiry report of Gyanendra Kumar Dixit, all the enclosures also form part of relied upon documents, which included statement of Sukhvir Singh, Laxmi Chand and Kalyan Singh. Shri Sukhvir Singh was produced as MW-3 but nothing to show that there enclosures were made available to Petitioner.

19A. The Petitioner would have required statement of Sukhvir Singh and other persons recorded during preliminary inquiry for the purpose of confronting witnesses. Non supply thereof deny proper cross-examination. The complaint of non-furnishing of relied upon documents was made by Petitioner before the disciplinary authority, as is evident from reply dated 14.2.1992, (Annexure-10 to the writ petition), but impugned order dated 3.3.1992 nowhere shows that this aspect of the matter was considered by disciplinary authority while passing the impugned order. Thus apparently it shows a total non-application of mind on his part.

20. A procedure of giving show-cause notice and reply after submission of inquiry report is not a mere empty formality. The object is, if some flaw has occurred during the course of inquiry or that the inquiry has been conducted in utter defiance of principles of natural justice, if such a complaint is made by delinquent employee, and relevant facts are brought to the notice of disciplinary authority, he shall look into that complaint and after examining the records shall pass appropriate order on those complaints. It is always open to disciplinary authority to record a finding that observations made and findings recorded by Inquiry Officer is/are incorrect or contrary to record. In case, he finds that complaint is correct and the proceedings have been held in a manner which resulted in denial of adequate opportunity of defence to the delinquent employee, he can always remand the matter for further or fresh inquiry, but non-consideration of reply received after show-cause notice amounts to a total non-application of mind on the points raised by delinquent employee about the manner of holding inquiry. This flaw is serious and would vitiate the order of punishment. It amounts to a passing a non-speaking, un-reasoned order. This is nothing but non-application of mind by disciplinary authority. The complaint raised by Petitioner before disciplinary authority also shows that this is not an afterthought.

21. Supply of relied upon documents is integrally connected with the concept of affording adequate opportunity of defence to an employee under inquiry.

22. In *Trilok Nath v. Union of India*, 1967 SLR 759 (SC), it was held, if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. The Apex Court further said:

The documents would have been useful to the Appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the Appellant he might, after perusing them, well have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish to the Appellant with copies of the documents such as the FIR and statements recorded at Shidhipura house and during the investigation must be held to have caused prejudice to the Appellant in making his defence at the inquiry.

23. In *The State of Punjab Vs. Bhagat Ram*, again considering the question of supply of documents to delinquent Government Servant, the Apex Court held:

The State contended that the Respondent was not entitled to get copies of statements. The reasoning of the State was that the Respondent was given an opportunity to cross-examine the witnesses during the cross-examination the Respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the Respondent with the gist of evidence.

The meaning of a reasonable opportunity of showing cause against proposed to be taken is that the Government Servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The Government

Servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government Servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government Servant. Unless the statements are given to the Government Servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the Government servant copies of witnesses examined during investigation and produced at the inquiry in support of the charges leveled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken.

24. In *Kashinath Dikshita Vs. Union of India (UOI) and Others*, the Court considered this aspect of the matter at great length. Following earlier decisions in *Trilok Nath (Supra)* and *Bhagat Ram (Supra)*, the Apex Court held:

When a Government Servant is facing a disciplinary proceedings, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defense, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible?

25. An attempt was made to suggest that no prejudice has caused but even this aspect was rejected in *Kashi Nath Dikshita (Supra)* observing:

... The Appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents.... It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt to consider that the Appellant been denied a reasonable opportunity of exonerating himself....

26. In *High Court of Punjab and Haryana v. Amrik Singh*, 1995 (XI) LLJ 656 (SC), the Court said that delinquent employee must be supplied with copies of documents relied upon in support of the charges. However, if the documents are voluminous and copies may not be supplied, then the official must be given an opportunity to inspect the same.

27. In *State of U.P. Vs. Shatrughan Lal and Another*, following *Kashi Nath Dikshita (Supra)* the Apex Court held:

One of the Principle of Natural Justice is that a person against whom action is

proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but, copies thereof are not supplied to him inspite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defence was provided to him.

28. Following the above, recently the Apex Court in State of U.P. and Others Vs. Saroj Kumar Sinha, has held:

Non-disclosure of documents having a potential to cause prejudice to a Government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the Government servant.

29. In the entire counter affidavit nothing has been said nor anything is placed on record to show that relied upon documents as detailed in inquiry report were made available to the Petitioner either by supplying copies thereof or by permitting inspection of these documents, if so, to take notes thereof during the course of inquiry. This is a serious flaw and vitiates the entire proceedings.

30. Now I proceed to second aspect of the matter, whether charge leveled against Petitioner amounts to misconduct or not.

31. In the charge-sheet Petitioner has been alleged guilty of Regulation 30 read with 19 of Chapter 4 of Aligarh Gramin Bank (Staff) Service Regulations, 1981. But in the counter affidavit the Respondents have relied and referred to Regulation 26. These regulations read as under:

Regulation-19: Obligation to Promote the Bank's interest

Every officer or employee shall serve the Bank honestly and faithfully, and shall use his utmost Endeavour to promote the interests of the Bank and shall show Courtesy and attention in all transactions and dealings with officers of Government, the Bank's constituents and customers.

Regulation-26: Restrictions on lending, borrowings and investment

(1) No officer or employee shall in his individual capacity:

(i) borrow or permit any member of his family to borrow or otherwise place himself or a member of his family under a pecuniary obligation to a broker or a money lender or a subordinate officer or employee or any person, association of persons, firms, company or institution whether incorporated or not having dealings.

(ii) buy or sell stocks, shares or securities of any description without funds to meet the full cost in the case of a purchase of scrips or delivery in the case of a sale;

(iii) incur a debt at a race meeting;

(iv) lend money in private capacity to a constituents of the Bank or have personal dealings with such constituent in the purchase or sale of bills of exchange, Government paper or any other securities; and

(v) guarantee in private capacity the pecuniary obligations of another person or agree to indemnify in such capacity another person from loss except with the previous permission of the Competent Authority:

Provided that an officer or employee may give to or accept from a relative or personal friend a purely temporary loan of a small amount free of interest or operate a credit account with a bona fide tradesman or make an advance of pay to his private employee:

Provided further that an officer or employee may obtain a loan from a cooperative credit society of which he is a member or stand as surety in respect of a loan taken by another member from a cooperative credit society of which he is a member.

(2) An officer or employee shall so manage his private affairs to avoid insolvency or habitual indebtedness. An officer or employee who is in debt shall furnish to the Competent Authority a signed statement of his position half yearly on the 30th June and 31st December and shall indicate in the statement the steps he is taking to rectify his position. An officer or employee who makes a false statement under this Rule or who fails to submit the prescribed statement or appears unable to liquidate his debts with a reasonable time or applies for the protection of an insolvency Court shall be liable to dismissal.

Regulation 30: Prohibition against participation in politics and contesting elections

No officer or employee shall take an active part in politics or in any political demonstration or contest election as member for a Municipal Council, Zila Parishad, District Board or any other local or Legislative Body.

32. There is no charge of violation of Regulation 26 in the charge-sheet. The charge has to be specific, clear and precise. Since violation of Regulation 26 was not a charge in the charge-sheet, such charge has not been found proved by Inquiry Officer. The fact there was no occasion to do so. The Petitioner has not been punished by referring to Regulation 26. Now, at this stage, the Respondents cannot be permitted to take recourse to a provision for violation thereof, Petitioner has not been charged and punished at all. Not only in the counter affidavit but in the written arguments also the Respondents have referred to only Regulation 26. If this Court accept their contention that Petitioner has violated Regulation 26, in order to find some justification of impugned order of punishment, it would amount to punishing the Petitioner on a charge which was not leveled against him. This would vitiate the impugned order of punishment as well as the entire proceedings. The contention of Respondents that Petitioner violated Regulation 26 thus cannot be accepted.

33. Now coming to Regulation 19, after reading it carefully, I find it difficult to accept that the said Regulation is attracted in the facts of the case. It is admitted case of Bank that Petitioner was not a person authorized to collect money from the customers of Bank. Moreover there was a caution notice in the Bank that money should not be given to the bank employees outside the Bank. Though the complainant expressed his ignorance of such notice but the fact remains that he did not enter into any transaction with Bank either in the premises of the Bank or with the Petitioner in the capacity of bank employee. It is true that Petitioner was an employee of Bank but only a Messenger. Since he happened to be a neighbour of complainant Sukhvir Singh, this Court is inclined to accept the stand of the Petitioner that on account of neighbourly relations, complainant gave money to Petitioner for which Petitioner may have assured him that he would deposit the said amount in Bank but he failed to do so. This failure on the part of Petitioner may amounts to a breach of trust qua Sri Sukhvir Singh. The Bank does not come into picture to bring the conduct of the Petitioner for scrutiny. The record shows that Petitioner has never represented himself that he is authorized to collect amount of loan installment from borrower. The complainant's handing over such amount installment to Petitioner, would not amount to discharge of liability to that extent on the part of borrower. It was not the legal responsibility of Petitioner to deposit the said amount in Bank. Neither it is the case of Respondents nor it is the case in the charge-sheet nor the finding recorded by the Inquiry Officer.

34. While discharging duties in the Bank, employees and officers are supposed to work in the best interest of Bank, Regulation 19. This obligation if extended beyond the premise of Bank, particularly when a person/employee is not authorized to do something and has also not represented so as to construe misrepresentation that he is so authorized though not authorized, I find it difficult to bring Regulation 19 for holding a misconduct on the part of Petitioner. Probably this difficulty is realised by Respondent bank also which impelled it to rely and refer Regulation 26 which was not a violation alleged either in the charge-sheet or in the findings recorded against Petitioner in the inquiry report. In fact, even punishment order nowhere shows that disciplinary authority found Petitioner guilty of violation of Regulation 26. At the stage of judicial review before this Court, it is not permissible to look into another provision to find out whether employee concerned is guilty thereof or not, when that was not a part of charge-sheet.

35. Moreover, the constituents of Regulation 26 are totally different. If the charge-sheet would have contained allegations of violation of Regulation 26, a different kind of defence etc. would have needed as also the evidence to prove that charge. It is nobody's case nor even of the complainant that he gave money to Petitioner as a debt, therefore, Regulation 26 even otherwise is not attracted. Regulation 30 apparently has nothing to do.

36. "Misconduct" when detailed in Regulations, cannot be extended beyond what

it is. In *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, the Court held:

...everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts or omission or commission nowhere found to be enumerated in the relevant standing or is nonetheless a misconduct not strictly failing within the enumerated in the relevant standing or is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing or is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty....

37. In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, the Apex Court held:

...if what is alleged as misconduct does not constitute misconduct not be analysis or appraisal of evidence, but per se under 1975 Rules the Respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct....

38. It is no doubt true that in some later authorities of Apex Court it has been observed that *A.L. Kalra (Supra)* does not lay down any inflexible rule. (See *Secretary to Government and Others Vs. A.C.J. Britto, and Noratanmal Chouraria Vs. M.R. Murli and Another, and Chairman and M.D., Bharat Pet. Corpn. Ltd. and Others Vs. T.K. Raju*, However, this would not mean, what is not provided to be a conduct, need be observed by an employee, yet by way of mere interpretation and that too not simple, such acts shall be brought in which do not otherwise fall within.

39. The conduct of the Petitioner may not be good normally, ethically or otherwise but that would not mean that he may be punished for something, which does not come within the purview of "misconduct" as provided under Regulations. Though the term of "misconduct" has not been defined anywhere, but the Conduct Regulations provides the conduct and the manner in which bank employees have to perform their duties and manage their activities. Hence, any breach thereof would constitute "misconduct".

40. "Misconduct" has been defined in Black's Law Dictionary, Sixth Edition at page 999:

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

41. "Misconduct in Office" has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful 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.

42. P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 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.

43. The meaning of "misconduct" came up for consideration before Apex Court in Union of India (UOI) and Others Vs. J. Ahmed, wherein, explaining the term "misconduct" the Hon"ble Court held:

It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the contest of disciplinary proceedings entailing penalty. (para 10)

"Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pearce v. Foster) (1988) 17 QBD 536 (at p. 542). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspaper)]. (1959) 1 WLR 698 . This view was adopted in Sharda Prasad Tiwari and Others Vs. Divisional Superintendent, Central Railway, Nagpur Division, and Satubha K. Vaghela v. Moosa Razaf, (1969) 10 Guj LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; act of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *Govinda Menon Vs. Union of India (UOI)*, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P.H. Kalyani Vs. Air France Calcutta*, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar (examples) instances of which (are) a railway cabinman signalling in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intraveinous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashing causing heavy loss of life. Misplaced sympathy can be a great evil (see *Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co.-op. Department Stores Ltd.*, (1978) 19 Guj LR 108 at p. 120). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty." (para 11)

44. Again in *State of Punjab and Others Vs. Ram Singh Ex. Constable*, the Hon"ble Apex Court held:

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, willful 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. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order. (para 6)

45. In *Baldev Singh Gandhi Vs. State of Punjab and Others*, with reference to the provisions of Punjab Municipal Act, the Apex Court, considering the term "misconduct" held:

"Misconduct" has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct." Thus, ordinarily the expression "misconduct" means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc.

46. In the context of Section 31 of Advocates Act, 1961, the Apex Court in *Noratanmal Chouraria Vs. M.R. Murli and Another*, said:

Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour.

Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law.

47. If something is not within the realm of the Regulations and cannot be said to be a breach of Conduct Regulations applicable in a particular service, employee cannot be held guilty of misconduct for punishment under Regulations.

48. The difficulty faced by the Bank in bringing guilt of Petitioner within the conduct termed as "misconduct" under the conduct rules is writ large from the fact that on the one hand it is alleged that Petitioner was guilty of violating Regulations 19 and 30 and on this premise entire inquiry was held, but before this Court they realized mistake or difficulty and hence, reliance is placed on Regulation 26. The Respondents themselves are not very clear as to in what manner the conduct of Petitioner would amount to "misconduct" and hence a fluctuating stand has been taken.

49. Therefore, I am of the view that the fact that Petitioner received Rs. 1310/- from Sukhvir Singh, a private person and did not either repay the said amount to him or deposit the said amount in the Bank by itself would not constitute

violation of Conduct Regulation, and hence, does not constitute a "misconduct" on the part of Petitioner as defined under Regulations.

50. The last question is whether punishment imposed upon Petitioner commensurate to the gravity of charges or not.

51. The Petitioner received Rs. 1310/- from his neighbour Shri Sukhvir Singh and did not return it by the date he assured. He also did not deposit the said amount in the Bank. Can it be said that this failure on the part of the Petitioner to fulfill assurance made by Petitioner to his neighbour would justify extreme punishment of dismissal? To my mind, considering all the facts and circumstances of the case, punishment imposed upon Petitioner is highly excessive and does not commensurate to the gravity of charges. It shocks the conscience of any person of ordinary prudence on the basis of record available.

52. Time and again, the Apex Court has considered the scope of judicial review in the matter of quantum of punishment. Such power of judicial review is limited. It cannot be done in a routine manner. In *Chairman and M.D. Bharat Petroleum Corporation of India Ltd. v. T.K. Raju* (Supra) referring to earlier decisions in *V. Ramana Vs. APSRTC and others*, and *State of Rajasthan and Another Vs. Mohammed Ayub Naz*, the Apex Court said that interference with the quantum of punishment should not be done in a routine manner.

53. In *The Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad*, the Court held:

In the matter of imposing of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons there for. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the Court, cannot be subjected to judicial review.

(emphasis added)

54. In *Charanjit Lamba Vs. Commanding Officer, Southern Command and Others*, the Court held:

... the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith. What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee the Writ Court would not assume the role

of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step in to interfere with the same.

(emphasis added)

55. In the above caution, restriction and limitation, as also the expositions of law, it is clear that the Court can have judicial review on the quantum of punishment which it is so outrageous and so excessive as to shock the conscience of a person of ordinary prudence. I find that punishment in this case, considering the nature of allegations is highly excessive and does not commensurate to the gravity of charges.

56. The charge relates to non-fulfillment of promise to a neighbour by receiving some money from him and not depositing the same in the Bank. It is not in dispute that on account of non-payment of such dues, Petitioner's neighbour did not suffer any serious or irreparable loss. It is not the case that Bank has suffered any loss inasmuch as that amount was not ultimately paid by the person who had obtained loan from the Bank. It is also not the case that Petitioner was directed by the Bank authorities at any point of time to deposit the amount or repay the person concerned and Petitioner did not comply the same. It is a petty amount. The charge is not directly related with Petitioner's functioning in Bank or his relations with Bank officials or his employer directly. Even applicability of Conduct Regulations is doubtful. In these circumstances to my mind here is a fit case where it can be said that punishment imposed upon Petitioner is highly excessive and disproportionate to the gravity of charges.

57. However, since this writ petition can be allowed in view of various other serious infirmities and illegalities in inquiry proceedings, it is not necessary to embark upon this aspect any further. The writ petition deserves to be allowed for the reasons that the Petitioner has suffered on account of procedural and otherwise illegality committed by Respondents resulting in denial of adequate opportunity of defence.

58. Now coming to another important aspect about relief. It is not the case of Respondents that Petitioner was gainfully employed elsewhere during the period he was out of job. On the contrary, as a result of illegal order of dismissal, Petitioner and his entire family must have suffered a social stigma as also financial hardships. It is quite conceivable that this ignominy is faced by the entire family of Petitioner. No amount of money can compensate this social humiliation, illegal torture an outclassed attribute of neighbour and other difficulties. It must have been faced by Petitioner and his entire family throughout. An attempt to provide consequential benefits to Petitioner by this Court is only a meager compensation for huge loss, which basically cannot be

compensated in terms of money. The departmental authorities, in fact must be much more careful and vigilant when they initiate disciplinary proceedings against an employee concerned on certain charges so that effective procedural requirement is observed in words and spirit. They must also ensure that a person should not be unnecessarily harassed as that affects not only individual bread earner but the entire family. This Court can take judicial cognizance of the fact that higher rank officials and employees, if face a small delay in payment of salary, become restless and even resort to observe strike etc. That being so, the severest punishment of dismissal compel the employee and his entire family to stand in a situation of starvation and also denuded the other facilities like health, education, clothing etc, which virtually, if not a death in terms of medical precision, something near to it. Normally the employers, to wriggle out such circumstances, try to invoke principle of "No work No Pay" ignoring the fact that work has not been performed by employee concerned not on account of himself but for the circumstances created by employer. Such a principle in a case like this, if applied would amount to confer a premium upon employer of a fault of his own. This would amount to allowing him(employer) to take advantage of his own wrong, which is not permissible in law particularly in a Court of equity and justice. It is against all canons of justice. It is always open to employer concerned to cover up loss, which it may sustain towards making of payment to such an employee by recovering such amount from those officials who defied statutory requirement as also the procedure and pass illegal order. Instead of penalizing a poor employee, who has no option but not to render service to employer pursuant to illegal order passed by employer the accountability should be shouldered by the responsible officer/authority.

59. Moreover the concept of gainful employment would be attracted provided employment is easily available. The Court cannot shut its eyes of extraordinary unemployment prevailing in the Country. The people having high qualifications are searching menial employment having limited employment avenues. In such circumstances to suggest that a dismissed employees could have got a gainful employment is nothing but a day dreaming.

60. This aspect can be looked into from another different angle. In these days of extraordinary unemployment it is inconceivable to think that dismissed or removed employee may get easily an alternative employment. Merely because he has been able to survive all through, it cannot be conceived that he was in gainful employment during all this periods. We do not know whether he survived at the charity or support extended by his relatives, friends, neighbour or by selling his household goods or spending his savings or losing ornaments of his wife or that he survive by incurring debt in the hope of getting success one day in the case challenging order of punishment and then to discharge debt liability.

61. It would not be proper on the part of this Court into enter in this arena of wild goose chase. Only this much is sufficient that he was not unwilling to work but the employer having created a situation where he was compelled not to

work, hence ought not be punished despite of winning the case by denying arrears of salary.

62. It is also well known that whenever an order of dismissal or removal is challenged, normally Courts do not grant interim orders and the reason behind is that it amounts to grant of final relief. That being so, in the end when incumbent is successful in demonstrating that order is illegal, if he is denied salary on the ground that he did not work for which judiciary is also responsible, it would be condemning a indefensible litigant for no fault of his own and also for certain reasons which are wholly beyond his control. If this would not be a travesty of justice then what else can be.

63. It is in these facts and circumstances and considering the various aspects of the matter, this Court is of considered view that dismissal of Petitioner from service having been found wholly illegal, and it is also having been seen that he was denied work on the post in question by employer in a wholly illegal manner, Petitioner should be given relief of reinstatement with benefit of continuity of service with all consequential benefits including arrears of salary. This would be in consonance with the principle that an employee has no right to work but only right to claim salary. In absence of anything to show that employee himself was unwilling to work, principle of "No Work No Pay" ought not to be applied in such a case.

64. In the result, the writ petition is allowed. The impugned order dated 3.3.1992, Annexure-11 to the writ petition, passed by Chairman, Aligarh Gramin Bank is hereby quashed. The Petitioner shall be entitled for all consequential benefits.

65. The Petitioner shall also be entitled for cost which is quantified to Rs. 5000/- .