

(2005) 03 GUJ CK 0033

In the Gujarat High Court

Case No : Special Civil Application No. 8422 of 2003

Mahendrasinh Dolatsinh Thakor

APPELLANT

Vs

Chairman and Managing Director

RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Army Act, 1950 — Section 13

Constitution of India, 1950 — Article 136

Dena Bank Officer Employees (Conduct) Regulations, 1976 — Regulation 24, 3, 3(1)

PEC Employees (Conduct, Discipline and Appeal) Rules, 1975 — Rule 5

Prevention of Corruption Act, 1988 — Section 13(1), 5(1)

Railway Services (Conduct) Rules, 1966 — Rule 3(1)

Citation : (2005) 03 GUJ CK 0033

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : Hardik C. Rawal and M.H. Rawal, for the Appellant; Varun K. Patel, for K.M. Patel, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—In this petition, the petitioner has challenged the order dated 4.4.02 by which the Disciplinary Authority dismissed the petitioner from service. The petitioner has also challenged the order dated 30th September 2002 by which his appeal against the order of dismissal came to be rejected as also the order dated 26.4.03 by which the Review Application filed by the petitioner also came to be rejected.

2. Short facts leading to the present petition can be noted at this stage.

2.1 The petitioner was appointed as Personnel Officer Scale II by the Dena Bank (Hereinafter referred to as the Bank) by the order dated 30.6.86. The petitioner was thereafter promoted as Deputy Regional Manager Scale-III in July 1993. He was once again promoted as Chief Manager Scale-IV in August 2000.

2.2 On 8.6.2001, the respondents issued a show cause notice to the petitioner

stating, inter alia, that he has suppressed material fact of his employment with the Indian Bank and his subsequent dismissal while obtaining employment with the respondent Bank in the year 1986. The petitioner requested for being supplied certain documents and demanded inspection of original documents to enable him to reply to the show cause notice. It is the case of the petitioner that without supplying the said documents demanded by the petitioner, the respondents issued a chargesheet dated 6.8.2001.

2.3 In the chargesheet dated 6.8.2001, it was alleged that the petitioner was appointed as a Personnel Officer Scale-II by order dated 30.6.86 and he joined the service on 11.8.86. It was alleged that while applying for the post and at the time of his appointment, the bio-data submitted by the petitioner mentioned the details regarding his previous employment as follows:-

Sr.No. Name of the Position held employer		Duration	From	To
1.	Ruby Communication Ind. Asstt. Administration Co. Ltd. Vadodara	Officer	11.3.1974	9.5.1979
2.	-do Personnel Officer			
3.	Panchmahal Cement Co. Ltd., Dahod	Sr.Personnel Officer	10.5.1979	30.9.1985
			1.10.1985	7.8.1986

In the said chargesheet, it was further alleged that it has come to light that the petitioner was employed with the Indian Bank in Clerical cadre during the period between 11.3.77 to 27.4.85 and he was dismissed from service on account of fraud committed by him while working in the Term Deposit Section of Baroda Branch of the Bank. It is further alleged that a case was filed against the petitioner by the Indian Bank and a decree was passed in favour of the Indian Bank whereby the Civil Judge, (Senior Division), Vadodara, has passed order dated 29th January 2001 against Dena Bank for withholding a sum of Rs.9 lacs from the payment under the Voluntary Retirement Scheme if the petitioner has opted for the same.

On the basis of the above allegations, it was stated that the petitioner has wilfully suppressed/concealed the details of his previous employment and has furnished wrong information regarding his work experience in the bio-data submitted to the Bank at the time of his appointment with the sole intention of getting employment in the Bank by resorting to wrongful means.

It was, therefore, alleged that the aforesaid acts if proved would constitute the following acts of misconduct :

"i. Lack of integrity, honesty, devotion and diligence in discharge of your duties and/or

ii. Willfully suppressing/concealing the details of your previous employment and furnishing wrong information relating to your work experience in the bio data

form submitted to BSRB, Baroda and to Bank.

and/or

iii. Resorting to wrongful means with the sole intention of getting employment in the Bank.

and/or

iv. Committing the act/s prejudicial to the interest of the Bank.

and/or

v. Conduct unbecoming of a Bank Officer."

The above act/s of misconduct, if proved against you, will constitute contravention of Regulations 3(i) read with Regulation 24 of Dena Bank Officer Employees" (Conduct) Regulations, 1976 punishable under the Dena Bank Officer Employees" (Discipline & Appeal) Regulations, 1976."

2.4 Pursuant to the said chargesheet dated 6.8.2001, a departmental inquiry was conducted against the petitioner and the Inquiry Officer submitted his report on 21st December 2001. The petitioner represented against the said report of the Inquiry Officer vide his representation dated 10.1.02. Considering the material produced during the inquiry proceedings and the representation of the petitioner, the Disciplinary Authority passed the impugned order dated 4.4.02 by which the petitioner came to be dismissed from service.

2.5 The Disciplinary Authority observed that the Inquiry Officer found that the petitioner is guilty of all the charges levelled against him. The Disciplinary Authority found that a fair opportunity was given to the petitioner to defend his case and at no stage, principles of natural justice were violated. Having found the charges validly proved, the Disciplinary Authority observed that in terms of regulation 3(1) of the Dena Bank Officers Employees (Conduct) Regulations, 1976 (hereinafter referred to as "the Conduct Regulations") every officer is required at all times to take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank officer. The Disciplinary Authority also found that even after joining the Bank, at no time, the petitioner disclosed that prior to joining of the Dena Bank, he was employed with the Indian Bank in Clerical Cadre and was dismissed from service on account of fraud committed by him and that a case was filed against him by the Indian Bank. In view of these observations, the Disciplinary Authority found it proper to impose the penalty of dismissing the petitioner from service.

3. The petitioner challenged this order dated 4.4.02 passed by the Disciplinary Authority before the Appellate Authority. His appeal, however, came to be rejected by the order dated 30th September 2002. The Appellate Authority considered all the contentions raised by the petitioner in his appeal. The Appellate Authority observed that the petitioner had provided the details of his

previous employment, but details of his employment with the Indian Bank had not been mentioned. It was observed that it was required that the petitioner should furnish all details of previous employment whether temporary or permanent and it was, therefore, obligatory on the part of the petitioner to furnish details of his previous employment including his employment as a Clerk with Indian Bank which he did not furnish knowing that he was dismissed from the Indian Bank on account of involvement in fraud. The Appellate Authority found that the fact that the petitioner was dismissed from the Indian Bank is established through documentary evidence on record. The Appellate Authority also observed that had the petitioner disclosed his dismissal from service by the Indian Bank, Dena Bank would not have considered his case for employment. In view of the above observations, the Appellate Authority was pleased to uphold the dismissal order passed by the Disciplinary Authority and rejected the appeal of the petitioner.

4. The petitioner preferred a review petition against the order passed by the Disciplinary Authority as well as the Appellate Authority. His review petition, however, came to be rejected by the order dated 26.4.03.

5. The petitioner has, therefore, challenged the above mentioned orders passed by the Disciplinary Authority as well as by the Appellate and Reviewing Authorities in the present petition.

6. Appearing for the petitioner, learned counsel Shri Hardik Ravel has sought to assail the action of the respondent Bank. At the outset, it may be noted that no ground is made out regarding the procedure adopted by the respondents in holding the departmental inquiry. No contentions have been advanced on behalf of the petitioner that in conduct of the inquiry, the respondents breached any of the mandatory requirements of principles of natural justice or any of the provisions of the Discipline and Appeal Rules of the Bank. It may also be noted that there is no dispute raised about the fact that the petitioner was employed with the Indian Bank prior to his appointment in the respondent Bank and that he was dismissed from service by his previous employer by an order dated 27th April 1985. There is also no dispute about the fact that while seeking employment with the respondent Bank, the petitioner had supplied his bio-data which required him to disclose details about his previous employment. There is also no dispute about the fact that the petitioner did not give details about his employment with the Indian Bank nor did he disclose that he was dismissed from service by the Indian Bank on account of his involvement in fraud.

7. Thus there is no serious dispute raised on behalf of the petitioner with respect to the legality of the conduct of the inquiry and with respect to the proof of the charges levelled against the petitioner.

8. The main contention raised on behalf of the petitioner, however, is that for the set of allegations levelled against the petitioner in the chargesheet dated 6.8.2001, departmental inquiry could not have been initiated nor could the

Disciplinary Authority impose any penalty on the petitioner. It is contended by the learned advocate for the petitioner that the allegations against the petitioner would not amount to misconduct under regulation 3(1) or regulation 24 of the Dena Bank Officers Employees (Conduct) Regulations, 1976. It is, therefore, his case that it was not open for the respondents at all to hold a departmental inquiry against the petitioner nor was it open for the respondents to impose any penalty upon the petitioner since the petitioner had not committed any misconduct as defined under the Conduct Regulations. Learned advocate for the petitioner submitted that the misconduct is defined under the Conduct Regulations and since none of the regulations of the Conduct Regulations cover the conduct of the petitioner, he cannot be said to have committed any misconduct and it was, therefore, not possible for the respondents to hold departmental inquiry to inquire into these allegations.

8.1 In support of his contention, learned advocate for the petitioner has placed reliance on a decision of the Hon"ble Supreme Court in the case of Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, Counsel for the petitioner relies on the observations of the Hon"ble Supreme Court in the said decision wherein the Hon"ble Supreme Court observed that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts. Counsel for the petitioner submits that the Hon"ble Supreme Court further found in the said decision that the High Court fell in error in observing that the conduct of the petitioner in suppressing the material facts and misrepresenting his past on the material aspect cannot be said to be a good conduct.

8.2 Counsel for the petitioner also placed reliance on the decision of the Hon"ble Supreme Court in the case of T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre In the said decision, in the special facts and circumstances of the case, the Hon"ble Supreme Court felt that the appellant should not have been denied employment on the sole ground that he had not disclosed that during emergency he had been convicted under the Defence of India rules for having shouted slogan on one occasion.

8.3 Counsel for the petitioner also placed reliance on the decision of the Hon"ble Supreme Court in the case of Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, wherein the Hon"ble Supreme Court found that penalty of removal from service imposed on the Accountant of the Bank for certain procedural irregularities was excessive. The matter was, therefore, remanded for reconsideration of quantum of punishment. On the basis of the above decision, by way of an alternative argument, counsel for the petitioner submitted that in any case the respondents should not have passed the extreme penalty of dismissal from service.

9. On the other hand, learned counsel appearing for the respondents supported

the action of the respondents. He submitted that the petitioner had committed gross misconduct and departmental inquiry was conducted against the petitioner. He submitted that through proper departmental inquiry, charges were proved against the petitioner and after giving the petitioner sufficient opportunity to represent his case, the Disciplinary Authority imposed the punishment which was just, proper and warranted under the circumstances. He further submits that the petitioner had committed serious misconduct when he secured employment with the Bank by misleading the authorities by suppressing the relevant material of his employment with Indian Bank and his dismissal from service on account of involvement in fraud.

9.1 He further submitted that the petitioner not only secured his employment, but also continued with the Bank on the basis of the appointment order obtained through misrepresentation and concealment. He submits that when the charges are validly proved which are serious in nature, the order passed by the Disciplinary Authority as upheld by the Higher Authorities cannot be interfered with.

9.2 In support of his contentions, learned advocate for the respondents has placed reliance on a decision of the Hon"ble Supreme Court in the case of M. Bhaskaran v. Union of India and Ors. . In the said decision, the Hon"ble Supreme Court was pleased to uphold the action of the employer in removing the employees from service since the employment was obtained by workmen on the basis of bogus and forged casual labour service cards.

9.3 Counsel for the respondents also relied on the decision of the Hon"ble Supreme Court in the case of B.R. Chowdhury Vs. Indian Oil Corporation Ltd. and Others, In the said decision, the Hon"ble Supreme Court upheld the action of the Indian Oil Corporation in terminating the dealership obtained by suppression of material information by the applicant.

10. In view of the above controversies involved in the matter, it would be necessary to note regulations 3 and 24 of the Conduct Regulations of the Bank. Regulation 3 of the Conduct Regulations reads as follows:-

"3.(1) Every officer employee shall at all times take all possible steps to ensure and protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred to him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

(4) Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and

authority."

Regulation 24 of Conduct Regulations reads as follows:-

"24. A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Dena Bank Officer Employees" (Discipline & Appeal), 1976."

In view of the above rule position, it is necessary to decide the legality of the action of the respondents.

11. As noted earlier, it is the case of the petitioner that the respondents could not have initiated any departmental proceedings against the petitioner since the allegations contained in the chargesheet even if accepted on the face value would not be covered under any of the defined misconducts under the Conduct Regulations.

12. Before deliberating further on the above issue, it would be useful to consider the decisions of the Hon''ble Supreme Court, reliance upon which has been placed by the learned advocate for the petitioner.

13. In the decision of *Rasiklal Patel v. Ahmedabad Municipal Corporation* (supra), in the very first paragraph, the Hon''ble Supreme Court was pleased to observe that the petitioner is shown to be guilty of suppression of material fact which would weigh with any employer in giving him employment and therefore, the case of the petitioner does not merit consideration under Article 136 of the Constitution. The Hon''ble Supreme Court, however, found it necessary to pass further order since the Hon''ble Court found that the statement of law appearing in the judgment of the High Court if permitted to go uncorrected some innocent person may suffer in future. It was in this light that the Hon''ble Supreme Court observed that unless either in the Certified Standing Orders or in the Service Regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts. This decision of the Hon''ble Supreme Court, therefore, would not be useful to the petitioner to contend that the impugned orders are bad in law.

13.1 In the case of *T.S. Vasudevan Nair* (supra), the Hon''ble Supreme court found that in the special facts of the case, the appellant should not have been denied the employment on the sole ground that he had not disclosed that during emergency he had been convicted under the Defence of India Rules for having shouted slogans on one occasion. The decision of the Hon''ble Supreme Court in the case of *T.S. Vasudevan Nair* (supra) has no application to the facts of the present case.

13.2 In the decision of *Kailash Nath Gupta* (supra) as noted earlier, the Hon''ble Supreme Court found that the Accountant of the Bank was found to have committed procedural irregularity and such allegations would not warrant

extreme punishment of dismissal from service. In view of the fact that there was no evidence to show that the employee had either misappropriated any money or had committed any fraud and that in the long past service, there was no other misconduct committed by the employee, the Hon''ble Supreme Court remanded the matter for reconsideration of quantum of punishment. The facts of the present case being entirely different, I see no application of the above mentioned decision in the facts of the present case.

14. Having thus noted that none of the decisions relied upon by the petitioner would conclude the issues arising in the present petition, one may notice some of the decisions of the Hon''ble Supreme Court which would have bearing on the issues arising in the present petition.

14.1 In the decision of the Hon''ble Supreme Court in the case of District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, the Hon''ble Supreme Court upheld the action of the employer in not permitting the employee to join duties to a person who was appointed to the post of Teacher since upon the production of original certificates and scrutiny thereof, it was found that the appointee did not possess the necessary qualifications observing that no Court should be a party to perpetuation of the fraudulent practice. In para 6 of the judgment, the Hon''ble Supreme Court made the following observations:

"6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

14.2 In the case of M. Bhaskaran v. Union of India and Ors. reliance upon of which is also placed by the learned counsel for the respondents, the facts arising were that certain employees had obtained employment in Railway Service on the basis of bogus and forged casual labour service cards. The order of removal passed by the Union of India against the said employees was set aside by the Central Administrative Tribunal, Ernakulam Bench taking a view that the said misconduct of the employees does not fall within the four corners of rule 3(1)(i) and (iii) of the Railway Service (Conduct) Rules, 1966. In this regard, the Hon''ble Supreme Court made the following observations

"5. The aforesaid view of the Tribunal can be better appreciated in the light of the relevant provisions of the Rule itself. Rule 3(1) reads as under:

"3. General.- (1) Every railway servant shall at all times(i) maintain absolute

integrity; (ii) maintain devotion to duty; and (iii) do nothing which is subversion of law and order and is unbecoming of a railway government Servant."

Now it is no doubt true that on the express language of the Rule the concerned Railway servant has to maintain absolute integrity and has not to do any thing which is subversion of law and order and which is unbecoming of a railway or a government servant. That would certainly apply to a railway servant who is alleged to have misconducted himself while in Railway service. However, learned senior counsel for appellants vehemently submitted that the misconduct alleged in the present case, of snatching railway employment in the basis of bogus certificates or casual labourer cards, would indeed show that the concerned employee had exhibited a conduct which was unbecoming of a railway servant.

6. It is not necessary for us to express any opinion on the applicability of Rule 3(1)(i) and (iii) on the facts of the present cases for the simple reason that in our view the concerned railway employees, respondents herein have admittedly snatched employment in Railway service, may be of a casual nature, by relying upon forged or bogus casual labourer cards. The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the concerned employees. Consequently, it has to be held that respondents were guilty of misrepresentation and fraud perpetrated on the appellant employer while getting employed in Railway service and had Snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer cards. Learned counsel for the respondents submitted that for getting service in Railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual service cards. If that was so there was no occasion for them to produce such bogus certificates service cards for getting employed in Railway service. Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in Railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for number of years on the basis of such

fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer."

14.3 In the case of Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, the Hon"ble Supreme Court upheld the action of the Kendriya Vidyalaya Sangathan in terminating the services of an employee on the ground of suppression of material information relating to the character and antecedents. In the attestation form which was submitted by the employee, there were questions to the effect that if he had ever been prosecuted or convicted by the court of any offence and if any case was pending against him in any court at the time of filling up the attestation form. The employee then a candidate replied to this question in the negative also certifying that the information given by him was correct though there was a criminal case pending against him at the relevant time. The Hon"ble Supreme Court found that this amounted to suppression of material information and making false statement which had a clear bearing on the character and antecedents of the employee. The Hon"ble Supreme Court made the following observations in this regard :

"11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of BA, BEd and MEd degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filing and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

12. The object of requiring information in columns 12 and 13 of the attestation

form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of a serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted."

14.4 In the case of *B.C. Chaturvedi v. Union of India* (1995) 6 SC 749, the Hon'ble Supreme Court considered the question whether the charge of being in possession of assets disproportionate to the known source of income is a misconduct. The Hon'ble Supreme Court observed that if the public servant fails to account for his property and the same is found to be disproportionate to his known source of income, he commits misconduct and he would be liable to be prosecuted u/s 5(1)(e) of the Prevention of Corruption Act. It was, therefore found that the need to make this misconduct expressly a part of enumerated items of misconducts under the Central Civil Services CCA Rules is obviated. The

Hon"ble Supreme Court made the following observations in this regard :-

"9. The next question is whether the charge of being in possession of assets disproportionate to his known source of income is a misconduct. Section 5(1)(e) of the Act (which is equivalent to Section 13(1)(e) of the Prevention of Corruption Act, 1988) defines "criminal misconduct". A public servant is said to commit the offences of criminal misconduct if he or any person of his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account for. Thus, pecuniary resources or property disproportionate to his known source of income is a criminal misconduct. In the 1988 Act an explanation has been added to Section 13(1)(e) to explain that "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provision of any law, rules or orders for the time being applicable to a public servant. The charged officer must be a public servant. He must be found to be in possession of, by himself, or through any person on his behalf, at any time during the period of his office, pecuniary resources or property disproportionate to his known source of income. If he cannot satisfactorily account thereof, he is said to have committed criminal misconduct. No doubt it is a presumptive finding but that finding is based on three facts. Being a public servant, if at any time, during the period of his office, he is proved to have been in possession, by himself or through any person on his behalf, of pecuniary resources or property disproportionate to his known source of income, he is enjoined to satisfactorily account for the same. If he fails to account for, he commits misconduct. Therefore, as in a prosecution laid u/s 5(1)(e) of the Act (equivalent to Section 13(1)(e) of 1988 Act), a public servant is liable to punishment. The need to make this misconduct expressly a part of enumerated items of misconduct under Central Civil Services, CCA Rules is obviated.

10. The ratio in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., has no application to the facts in this case. Therein, the misconduct alleged was failure of the appellant to refund the advance taken from the Corporation. His omission was charged to be a misconduct. The question therein was that when Rule 5 of the PEC Employees (Conduct, Discipline and Appeal) Rules, 1975, defined "specific misconduct", whether in the general norm of behaviour the omission to return advance amount, which was not specifically defined, would constitute a misconduct. This Court held that in the gray area it is not amenable to disciplinary action unless the act is constituted to be misconduct under Rule 5 of the said Rules. We, therefore, hold that a public servant in possession of assets disproportionate to his known source of income, when he had not satisfactorily accounted for, commits a misconduct amenable to disciplinary action under the CSCCA Rules and the Conduct Rules."

14.5 In the decision of Sanjay Kumar Bajpai Vs. Union of India (UOI) and Others, the Hon"ble Supreme Court upheld the action of the Union of India in terminating the services of an employee on the ground that at the time of

recruitment the employee had furnished wrong information and had suppressed the information about the criminal case pending against him. In para 7 of the judgment, following observations were made :-

"7. Having regard to the aforesaid provision contained in Section 13 of the Army Act and the answers that have been recorded in the enrolment form as well as the declaration at the end of the form under signatures of the appellant that the answers made by him to the questions are true, we are unable to uphold the contention of the appellant that the answers recorded against the questions in the enrolment form were not based on the answers given by him at the time when the said form was filled and that his signatures were obtained on a blank form which was filled by the authorities without the appellant being required to give answers to the questions. Having appended his signatures at the end of the form it is not open to the appellant to disown the same. The filling of enrolment form was an official act required to be performed u/s 13 of the Army Act and a presumption about regularity of such official act can be drawn. There is no reason to assume that the enrolment form was not filled in the manner as required. We must, therefore, proceed on the basis that the answers that are recorded against the questions contained in the said enrolment form are based on the statement made by the appellant at the time of enrolment. Since as per the enrolment form Question No.8 was answered in the negative, it must be held that at the time of enrolment the appellant did not disclose that the criminal case was pending against him and made a false statement that no case was pending against him at the time."

15. In light of the above judicial pronouncements, it is necessary to examine the action taken by the respondents against the petitioner. Regulations 3 and 24 of the Conduct Regulations of the respondent Bank have already been reproduced hereinabove. The sub-regulation (1) of regulation 3 provides that every officer-employee shall at all times take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank officer. The language used in the said provision is very wide and would cover variety of conducts under the term misconduct since regulation 24 makes breach of any of the provisions of the said regulations to be constituting a misconduct punishable under the Discipline and Appeal Regulations.

16. From the proved facts it can be seen that the petitioner was earlier employed with Indian Bank and was dismissed from service on account of his involvement in fraud. Despite the requirement, the petitioner did not disclose this information to the respondent Bank at the time of seeking his employment. This appears to have come to light of the respondent-Bank when the Bank was served with a decree of the Civil Court upon which the Bank seems to have made inquiry with the previous employer of the petitioner. All these aspects of the matter have been proved during the course of the inquiry. Thus the petitioner not only secured employment through concealment and misrepresentation, he continued

in Bank's service for years together acutely conscious of the fact that he had withheld very vital and important information from the Bank at the time of seeking employment. Obviously, if the petitioner had made full and true disclosure about his previous employment and nature of termination of such employment, the respondent Bank would not have employed the petitioner at all. Thus the petitioner not only secured employment through concealment but continued in Bank's service on the basis of such misrepresentation and concealment. In this view of the matter, is it possible to accept the contention of the learned advocate for the petitioner that the acts and omission on the part of the petitioner were only prior to seeking of employment and that therefore, the same would not be covered by the defined misconducts under the Conduct Regulations of the Bank and that therefore no departmental proceedings could have been taken against the petitioner ? In my view, such a restricted and literal interpretation of the Regulations is neither permissible nor called for. As noted earlier, sub-regulation (1) of regulation 3 of the Conduct Regulations of the Bank is worded very widely and covers large number of conducts which could be termed as misconduct. The action of the petitioner in seeking, securing and continuing in Bank's employment on the basis of concealment of dismissal from the service by the Indian Bank would surely be covered under the term "misconduct" as defined under sub-regulation (1) of regulation 3. It is not possible to give literal and restricted interpretation to the language used in sub-regulation (1) of regulation 3 of the Conduct Regulations and the very act of the petitioner in continuing in the Bank employment on the basis of misrepresentation and concealment of relevant facts would be acts lacking in integrity, honesty and lacking in devotion to duties and acting in a manner unbecoming of a Bank officer.

As noted earlier, in the decision of B.C. Chaturvedi (supra), the Hon'ble Supreme Court held that a Government servant possessing assets disproportionate to his known source of income can be said to have committed misconduct though the said term is not specifically included in the definition of misconduct under the Conduct Rules.

17. In conclusion, I find that it is not possible to uphold the contention canvassed on behalf of the petitioner that the conduct for which the respondent held departmental inquiry against the petitioner was not covered under the Conduct Regulations of the Bank and therefore, no inquiry should have been held.

18. The alternative contention raised on behalf of the petitioner is to be noted only for rejection. In the decision of B.C. Chaturvedi (supra), the Hon'ble Supreme Court has held that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court while exercising power of judicial review, cannot normally substitute its own conclusion on penalty and impose

some other penalty. If, however, the punishment imposed shocks the conscience of the court, it may mould the relief. This view has been reiterated in number of decisions of the Supreme Court thereafter and it is not necessary to list the long line of such decisions. One may however take note of the decision of the Hon''ble Supreme Court in the case of Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, In the said decision when the High Court had set aside the punishment of dismissal imposed on the Bank officer, the Hon''ble Supreme Court made following observations :-

"11. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (*supra*), that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

13. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in *M.L. Keshwani's* case. As was observed by this Court in *Balbir Chand Vs. Food Corporation of India Ltd. and others*, even if a co-delinquent is given lesser punishment it cannot be a ground for interference. Even such a plea was not available to be given credence as the allegations were contextually different.

14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik*, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a

breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

Reverting to the facts of the case, it is clear that the petitioner had committed grave misconduct and it was not a case of mere irregularity in performance of his duty. The penalty imposed by the Competent Authority can in no way be termed as one that would shock the conscience of the Court. I find no justification to interfere with the quantum of punishment also.

19. In the result, the petition fails and is hereby rejected. Notice is discharged.