

(1999) 08 MAD CK 0050
In the Madras High Court
Case No : Writ Petition No. 18462 of 1990

Periyasamy R.

APPELLANT

Vs

General Manager (Operations), State Bank of India and
Another

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 32
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 32(4), 41, 51,
51(1), 51(2)

Citation : (2000) 3 LLJ 1408

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the orders of the first respondent, dated July 31, 1987, as well as the second respondent, dated May 16,

1990 the petitioner has filed the above writ petition on various grounds.

2. The case of the petitioner is briefly stated hereunder:

According to him he was a head cashier of the State Bank of India at Dharmapuri in the year 1986. While he was returning home on April 5,

1986, he was involved in a road accident and he was hospitalised till May and also he was under treatment for three months thereafter. His

belongings including office and strong room keys were obtained by the Branch Manager on the same night and one Swaminathan took charge of

the affairs of the bank. He functioned from April 7, 1986 to April 9, 1986 and again from April 12, 1986 and April 17, 1986 and later one

Krishnan functioned on April 10, 1986 and April 11, 1986. Being cashier post, his successors in office took charge after verification. While so, on

April 15 and 16 1986, cash shortage of Rs. 1,25,000.00 was found and the bank officers took the advantage of his hospitalisation and practically raided his house and seized Rs. 62,000.00 from his house. In or about October 1987 he was chargesheeted and placed under suspension. There was an enquiry by the bank official, ultimately the enquiry officer found him guilty as charged. It is further stated that, a full fledged inspection of cash section including the strong room was done in February 1986 and they had certified that everything was in order. In such a situation, 10 days after charge was taken from him due to hospitalisation, by the Branch Manager and his successor one Krishnan was incharge something wrong was found, the proper course was to handover investigation to an independent body like CBI, The entire proceedings adopted is a suppression of truth which vitiates all the proceedings taken subsequently. The findings of the enquiry officer are perverse and cannot be the basis for any quasi-judicial determination regarding the service tenure of an officer of the State Bank of India. The punishing authority performed his task by even endorsing the findings without bringing to bear his separate thinking on the important aspects of the matter by his order, dated July 31, 1989. The appellate authority similarly endorsed the above order and dismissed his appeal by order, dated May 14, 1990. In such circumstance, having no other remedy, the petitioner has filed the above writ petition.

3. On behalf of respondents, the General Manager (Development and Personnel Banking) has filed a counter-affidavit disputing various averments made by the petitioner. After narrating the procedure for operating the strong room, cash section, etc., it is stated that the petitioner and one C.M. Ganesan were the joint custodian during the chest of Dharmapuri Branch was, checked and tallied on November 7, 1985. During subsequent inspection certain irregularities were noticed in the operation of the currency chest and inspection concluded on April 5, 1986. On the night of April 5, 1986, while returning home on his motor cycle the petitioner met with an accident. On noticing of currency in the currency chest by the officiating cash officer a detailed cash verification of the entire currency chest was conducted which revealed a total shortage of Rs. 1,25,000. On October 9, 1981 a chargesheet was issued to the petitioner holding accountable along with joint custodian C.M. Ganesan for cash shortage of Rs.

1,25,000.00 in the currency chest for his failure to adhere to the laid down instructions regarding currency chest transaction. He was given an

opportunity before the enquiry officer. The enquiry officer gave his findings holding the petitioner guilty of all the charges. On a consideration of a

report the Chief General Manager passed orders on July 31, 1989 dismissing the petitioner from service. Similarly another joint custodian Sri C.M.

Ganesan was also dismissed. Against the order of dismissal petitioner preferred an appeal to the Deputy Managing Director on May 14, 1990.

The appellate authority passed orders confirming the order of dismissal and dismissing the appeal preferred by the petitioner. Both the order of

dismissal as well as the order of the appellate authority is perfectly valid and justified and the same should not be interfered with for all or any of the

reasons urged in the affidavit. Further, it is also stated that, in exercise of its jurisdiction under Article 226 of the Constitution of India does not sit

as a Court of appeal against the findings of the enquiry officer. There is no violation of principles of natural justice or infraction of the statutory

provisions. As the enquiry was conducted as per the principles of natural justice and fair play and since findings of the enquiry officer are supported

by sufficient materials, the writ petition is liable to be dismissed.

4. In the light of the above pleadings, I have heard Ms.R.Vaigai, learned counsel for the petitioner and Sri S. Ravindran, learned counsel for the respondents.

5. After taking me through the charges, enquiry proceedings, ultimate order of the disciplinary authority as well as the order of the appellate

authority, Ms R. Vaigai, learned counsel for the petitioner, has raised the following contentions:

(i) Failure to supply required documents at the appropriate stage, i.e., before the commencement of enquiry, the enquiry report and ultimate order

dismissing the petitioner from service cannot be sustained;

(ii) In the absence of any acceptable legal evidence before the enquiry officer and the findings which are based on conjectures and surmises, the

ultimate conclusion of the Disciplinary Authority based on the ""perverse finding"" of the enquiry officer is liable to be set aside;

(iii) The appellate authority has failed to follow Rules 51(1) and 51(2) of the State Bank of India (Supervising Staff) Service Rules (hereinafter

referred to as the Rules) while disposing of the appeal.

6. On the other hand, Sri S. Ravindran, learned counsel for the respondent-State Bank of India would contend that:

(i) All the required documents have been furnished before the commencement of the enquiry.

(ii) Since the findings of the enquiry officer are based on oral and documentary evidence, it cannot be termed as perverse.

(iii) Appellate authority after considering the case of the petitioner, report of the enquiry officer as well as order of the disciplinary authority and

after satisfying himself dismissed the appeal and fully complied with Rules 51(1) and 51(2) of the Rules.

7. I have carefully considered the rival submissions.

8. Before considering the rival contentions, I shall refer the charges levelled against the petitioner:

(i) A cash shortage of Rs. 1,25,000.00 was detected in the currency chest of our Dharmapuri Branch when the officiating cash officer Sri K.

Krishnan was operating the currency chest in the presence of the joint custodian Sri C.M. Ganesan on April 15, 1986. On a detailed verification of

the currency chest, conducted by the Branch Manager immediately, when the shortage was brought to his notice, one section each of Rs. 100

denomination notes was found short in 5 bundles for an aggregate value of Rs. 25,000. As the operation in the currency chest was being done in

the presence of the permanent joint custodian Sri C.M. Ganesan you are also accountable for the shortage detected in the currency chest as joint

custodian.

(ii) You have not adhered to the laid down instructions regarding currency chest transactions and committed lapses in the maintenance of currency

chest register, head cashiers jotting book and vault register.

(iii) You had resorted to excessive outside borrowings in violation of Rule 41(i) of State Bank of India (Supervising Staff) Service Rules.

(iv) You had monetary transactions with the Bank's staff in violation of Rule 41(i) of State Bank of India (Supervising Staff) Service Rules.

(v) You have by your above misconducts violated Rule 32(4) of State Bank of India (Supervising Staff) Service Rules and failed to discharge your

duties with utmost integrity, honesty, devotion and diligence and conducted

yourself in a manner unbecoming of a bank officer.

Along with the said charges the respondents have furnished statement of mutations on which the charges were framed against the petitioner. The

perusal of the chargesheet shows that the same does not contain documents referred to by the management. Even though the petitioner had

participated in the enquiry and also examined defence witness, according to him he was not given relevant documents at the appropriate time, viz.,

along with the charge memo. It is evident even from the communication of the officer in charge of the disciplinary proceedings department of the

State Bank of India, dated December 2, 1987, wherein it is stated that the delinquent (petitioner herein) has requested them to permit him to

peruse the note of the relative books/registers at the Branch Office to enable him to submit his statement of defence to the charges levelled against

him. The following statement in that letter is very relevant, wherein it is stated:

..... You may therefore permit the above named official and his defence representative, if any, to peruse the document/registers which are relevant

to the charges levelled against him, under your close and unremitting supervision. While the official may be permitted to take notes from such

records, he should not be allowed to take or be furnished with copies of any records from the branch.

The direction in the last Para. of the said letter shows, how the management was vindictive and not fulfilling the principles of natural justice while

conducting domestic enquiry. In Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, , the Hon"ble

Supreme Court has observed that the respondent who was given a chargesheet, at the earliest sought for inspection of the documents mentioned

therein and submitted his reply to the chargesheet. The enquiry officer replied that since the respondent had already given the reply to the

chargesheet item wise, he was at liberty to inspect the documents at the time of final arguments. As a result of the enquiry, the respondent was

dismissed from service. In the light of the said factual position their Lordships have held:

Postponement of the opportunity to inspect the documents to the time of final hearing was obviously an erroneous procedure. In the first instance,

the delinquent should be given the opportunity; for inspection and thereafter the

enquiry should be conducted and then the delinquent should be heard at the time of conclusion of the enquiry. In this case the procedure was not adopted. Therefore, the procedure in conducting the enquiry adopted was clearly in violation of the principles of natural justice. Hence, the order of dismissal was liable to be set aside. However, it would be open to the appellant-employer to conduct an enquiry afresh after supplying the documents and to give an opportunity to the respondent to inspect the documents and then take appropriate action according to law".

9. In *State of U.P. Vs. Shatrughan Lal and Another*, , their Lordships have observed, in : (1998)IILLJ799SC :

6. Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the

chargesheet, before a person is, therefore, called upon to submit his reply to the chargesheet, he must, on a request made by him in that behalf, be

supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be

examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita Vs. Union of India (UOI) and Others*, , wherein it was laid

down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those

documents had not caused any prejudice to the delinquent in his defence.

7. Applying the above principles to the instant case, it will be seen that the copies of the documents which were indicated in the chargesheet to be

relied upon as proof in support of articles of charges were not supplied to the respondent nor was any offer made to him to inspect those

documents.

The correspondence between the delinquent on the one side and the officers of the bank on the other side (included in the typed set of papers No.

4 by the bank) and in the light of the legal position referred above, the copies of the documents referred to in the charge memo are to be furnished

to the delinquent before the commencement of the enquiry, otherwise the enquiry is vitiated. No doubt, learned counsel for the respondent-bank

submitted that the required documents were furnished to the delinquent and he was in no way prejudiced. He also contended that non-filing of

documents in domestic enquiry would not vitiate the enquiry. He also relied on

State Bank of Patiala and others Vs. S.K. Sharma, ; State of Tamil

Nadu Vs. Thiru K.V. Perumal and others, ; and Secretary to Government and Others Vs. A.C.J. Britto, . In State Bank of Patiala and Ors. v.

S.K. Sharma (supra), it is stated that, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things or not.

In that case it was contended on the side of the delinquent that copies of the statement of witnesses were furnished to him. In such circumstance,

after holding that no prejudice had resulted to the delinquent on account of non-furnishing him the copies of the statement of witnesses their

Lordships have concluded that, there was a fair hearing, accordingly accepted the case of the management. Here we are concerned with the non-

supply of copies of the statement of witnesses.

10. In State of Tamil Nadu v. K.V. Perumal (supra), their Lordships have observed, that:

..... The Tribunal seems to be under the impression that the enquiry officer/disciplinary authority is bound to supply each and every document that

may be asked for by the delinquent officer/employee. It is wrong theory. Their duty is only to supply relevant documents and not each and every

document asked for by the delinquent officer/employee...

Here in our case I have already referred to the internal note, dated February 21, 1987, from the disciplinary proceedings officer to Branch

Manager, Dharmapuri, wherein it is specifically denied to have copies of even the required documents, hence the said decision is not helpful to the

bank. The decision referred to, viz., Secretary to Government and Ors. v. A. C.J. Britto (supra), is also not helpful to the respondent's case, since

their Lordships have held that non-furnishing of enquiry report would not nullify the order of dismissal, because order of dismissal is passed on

May 24, 1984 before the law laid down in Mohamed Ramzaan Khan case. Even on December 30, 1987, the petitioner had requested the Branch

Manager SBI-Dharmapuri, to produce certain books, registers and other documents which are relevant to the chargememo for perusal and taking

notes by him and by his representative V. Subramaniam; JMG, Field Officer at SBI to enable him to submit a defence statement. The documents

called for are:

(a) Telegram Sent Register from January 1, 1986 to April 15, 1986.

(b) Key Register and Acting Chances Given Book from September 1984 to April 5, 1986.

(c) Acting Allowance Period- Establishment Register for the period January 1, 1986 to April 5, 1986.

(d) Dead Stock Register 1984 to April 5, 1986.

(e) Cash Department, Error Book.

(f) Correspondence file relating to reporting incidents of cash shortage excess for the period from 1983.

(g) Verification and Audit Report since September 1984.

(h) Small Coin Depot Register since September 1984.

It is established that even after his specific request the respondent-bank has not produced the said documents for his perusal. In view of non-

production of required documents, the petitioner was greatly prejudiced and handicapped in preparing his defence and to effectively participate in

the enquiry. The particulars placed by the respondent-bank show that the petitioner had been given only the documents which were relied on by

them and not the documents asked for by him. It is clear that even though the petitioner was given opportunity to participate in the enquiry, the fact

remains that the required and relevant documents which were referred to in the chargememo were not furnished along with it, hence I sustain the

first contention of the learned counsel for petitioner.

11. Now, I shall consider the second contention raised by the learned counsel for the petitioner, viz., whether the enquiry was conducted in

accordance with law and finding -is based on acceptable evidence or not. Before going into the report of the enquiry officer, it is to be noted that

on April 5, 1986 the petitioner met with an accident while riding on a motor cycle and suffered multiple fractures and injuries in the leg and hands.

Immediately after the accident he was admitted in the nursing home at Salem. After the accident, i.e., from April 7, 1986, the charge of cash officer

was passed on to one Swaminathan. From April 7, 1986, the joint custody has been vested in the joint cash officer of the other custodian. It is also

stated that only on April 17, 1986, i.e., 10 days after, full and effective charge had passed out of his hands while he was actually in hospital.

Among the other charges the first charge is shortage of cash of Rs. 1,25,000 which was detected in the currency chest of Dharmapuri Branch

when the officiating cash officer K. Krishnan was operating currency chest along with the permanent joint custodian C.M. Ganesan on April 15,

1986. The petitioner Periyasamy as a permanent cash officer having joint custody with C.M. Ganesan, Accountant is accountable for the shortage

detected in the currency chest. It is stated that initially a cash shortage of Rs. 40,000 was detected in the Branch currency chest on April 15, 1986,

by Krishnan who was officiating cash officer while arranging currency note bundle inside the currency chest along with C.M. Ganesan, Accountant

and Joint Custodian. He made a complaint to the shortage and it was reported to the Branch Manager. It is further seen that details of cash

verification was conducted thereafter and according to the first respondent total cash shortage was ascertained as Rs. 1,25,000. It is true that the

said Krishnan was examined as P.W. 4. It is the case of the bank that cash verification was last carried out on the branch on November 16, 1985.

The delinquent had been the permanent cash officer at the branch during the period between November 16, 1985 to the date of discovery of the

cash shortage on April 15, 1986. Branch Inspector's report is marked as Exhibit 5. On the basis of the said report that dual locking arrangements

of the storage bins and dividing doors inside the branch strong room were regularised only during the course of inspection and were kept in order

only at the close of inspection on April 5, 1986. Therefore it is stated on the side of the bank that the shortage could have occurred only during the

period between November 16, 1985 and April 5, 1986 when the dual locking system of all storage bins and dividing doors inside the branch

strong room were not implemented properly, as a result of which the joint custodians had independent access to the note bundles during this

period. Based on the said conclusion the enquiry officer has concluded that the said pilferage could not have occurred during the period between

April 5, 1986 and the date of discovery of shortage on April 15, 1986, when other employees held temporary joint charge. On this aspect as

rightly pointed out by the learned counsel for the petitioner except Branch inspector's report, no witness had specifically explained the above

position It is the definite case of the petitioner that the shortage was due to theft or due to the fault of others who had the opportunity to handle the

cash in between the night of April 5, 1986 and April 15, 1986 and this was conveniently side tracked. Admittedly, from April 5, 1986 and till the

shortage was noticed on April 15, 1986, the petitioner was in the hospital taking treatment due to the accident which occurred on April 5, 1986.

Branch Manager at the relevant time was examined as P.W. 1. He deposed that the shortage was informed to him at about 10.15 A.M. in the

morning of April 6, 1986. Though this Court may not go into the defect in the enquiry proceedings, in view of the stand of the petitioner that there

is no acceptable evidence much less legal evidence, in the interest of justice and in order to find the truth, I will consider the report of the enquiry

officer in detail. As stated earlier, the then Branch Manager was examined as P.W. 1 and the following questions and answers are relevant:

DR to P.W. 1: Whether the other Joint Custodian Sri C.M. Ganesan was available at that time?

P.W. 7: Yes.

DR to P.W. 1: What did he do in that situation as a joint custodian?

P. W. 1; He did not do anything.

DR to P.W. 1: Did you give any instructions to him on that date at that time?

P. W. 1: No.

DR to P.W. 1: According to your own report I put it to you that there was no cash shortage on April 5, 1986?

P.W. 1: "I cannot confirm".

DR to P.W. 1: You said the chest slip April 15, 1986 reflect, the correct cash position in the chest. As such I put it to you that there was no cash

shortage on April 5, 1986.

P. W. 1: "I cannot confirm".

It is clear that the reply given by P.W. 1 both in the chief as well as in the cross-examination are only evasive. In other words at no point of time he

asserted and supported Charge No. 1 as claimed by the bank.

12. Another witness examined on the side of the management is P.W. 2, retired officer of the bank. The perusal of evidence of P.W. 2 shows that

he was also not quite clear with regard to the charges made against the petitioner. The following questions put by representative of delinquent and

answers of P.W. 2 support the above stand.

DR to P.W. 2:

Please tell me whether the cash account is expected to sign in all sections of Rs. 50's and Rs. 100's.

P.W. 2:

Now I am not quite clear about it.

P.W. 2:

A team as instructed by the Reg. Office assisted me in the verification.

It was stated that you found some irregularities during the time of your investigation in the cash department. Don't you feel that the irregularities

could have been checked even before had there been an element of control by the BM in his periodical checking of system in the branch?

P.W. 2:

If the control had been effective by the concerned people this would have been avoided.

DRDP to P.W. 2:

I now show you PEX? Please confirm whether the same prepared by you on your arrival at Dharmapuri Branch? or do you know who has

prepared the same.

There is no evidence to show that the particular list was prepared by me.

I do not know who has prepared it.

DR (P) to P.W.2:

Did you ask any clarifications from the joint custodians about the shortage and get any statements from them?

P.W. 2:

No.

Re-examination:

You have stated that short bundles were all kept in an Almirah. Did you enquire where the short bundles were originally found.

Yes. I have enquired I do not remember. The exact..... where they were located.""

It is clear that in respect of pertinent questions, P.W. 2 has either deposed"" No ""I do not remember. "" In such circumstances, his evidence is also

not helpful to the management's claim.

13. One K. Kolandaivelu, Accountant, Karur Branch, was examined as PW. 3. The

following question and answers of P.W. 3 are relevant.

PO to P.W. 3:

Can you say whether the movement of cash between the strong room and cash department was always in closed boxes?

P.W. 3:

I have no knowledge.

DRRP to P.W. 3:

When you were inside the strong room of cash on April 16, 1986 where did you notice the shortage found on the previous day?

P.W. 3:

No knowledge of the shortage of the previous day.

DRRP to P.W.3:

Whether any specific number of bins were allotted for verifying the cash?

DRRP

No.

Did you verify the cash in the operational cupboard and found at shortage?

I cannot be specific.

Where there any steel cupboard in the strong room when the notices were kept?
If so did you verify the cupboard?

Yes, cupboard ""A"" marked in DEx.P 19.

Yes,

Did you come across any shortage in it?

I do not recollect.

It is clear that the answers given by P.W. 3 are also not specific and not in support of the imputations made against the delinquent.

14. Another witness examined on the side of the bank is one K. Krishnan (P.W. 4), Deputy Head Quarters, Krishnagiri Branch formerly of

Dharmapuri Branch.

PO to P.W. 4:

Did you draw cash from those bins where shortage was noticed for daily transactions while you were acting?

P.W. 4:

No.

PO to P.W. 4:

Were you always accompanied by the Acctt. while operating the strong room during your acting as Cash Officer?

P.W. 4:

Yes.

PO to P.W.4:

During your service at the Branch had you occasion to notice either the HC or the Acctt. being, present in the strong room alone.

P.W. 4:

No. I have not noticed.

DR to CMG:

May cross examine the witness.

DRCM to P.W. 4:

When you took over the safe keys from Swaminathan on the evening of April 11, 1986 you told that there were some transfer of bundles from the operating cupboard to the other bins?

Why did you not notice any shortage on that day?

P.W. 4:

(Vernacular matter Omitted)

DRCM to P.W. 4:

Did you refer anybody in the branch such as BM or other senior officers as to how to takeover permanent charge? And what do you actually

mean by ""no time""?

P.W. 4:

(Vernacular matter Omitted).

DRCM to P.W. 4:

Did you atleast count the sections in the bundles in all the bins on April 11, 1986 or at least in the operations cupboard.

P.W. 4:

(Vernacular matter Omitted),

DRCM to P.W.4:

Had you not failed in your duty in bundling the loose sections? The shortage would have surfaced on April 12, 1986 itself? Do you agree.

Yes. "I agree.

DRCM to P.W.4:

Did you take over on April 11, 1986 by giving any letter to the management that you are taking over on an emergency nature?

DRRP to P.W.4:

Whether the manner you received the keys and handed back the keys is the "emergency take over"- you mean. Please explain further what is meant by emergency take over.

P.W. 4:

To my knowledge that is all.

DRRP to P.W. 4:

Now, I put it to you that you used to take charge after verification of chest on the two occasions referred to you. There was no shortage on those occasions. Please explain as you were the CO on those two occasions.

P.W. 4:

On those two occasions there was no shortage in the bundles in my random verification.

15. The analysis of evidence adduced on the side of the management clearly shows that there is no direct evidence to blame the petitioner. Further,

there was no attribution of mala fides against the petitioner. He was made accountable when he was in the hospital bed unable to move about

because he was the permanent custodian. As rightly stated, the chargesheet did not suggest that he had surreptitiously removed any cash from the

currency chest. After April 5, 1986, the cash was in the custody of one Swaminathan, another officiating joint custodian till the custody was once

again taken over by K. Krishnan. It is also clear from the report of the enquiry officer, in the absence of any clinching evidence he adopted the

theory of preponderance of probabilities. Here again, as rightly contended that, concept of preponderance of probability is alien to the domestic

enquiries wherein the chargesheeted employee can be held guilty only on the basis of conclusive evidence which must also be legal evidence. I have

already demonstrated that there is no clinching evidence in support of the charges mentioned in the chargesheet. In such circumstance, the learned

counsel for the petitioner is right in contending that preponderance probability referred to by the disciplinary authority is based on ""surmises"" and

conjectures."" It is also clear that the findings of the enquiry officer that shortage of Rs. 1,25,000 should have occurred only between November

16, 1985 and April 5, 1986 are based on mere ""surmises"" and ""conjectures."" On the other hand, petitioner herein has clearly set out the fact that

the shortage was found after 10 days of the accident. Absolutely there are no details regarding the two cash officers, who had handled the cash in

the meanwhile. It is also the definite case of the petitioner herein that the shortage had occurred only when the cash was under their operation and

control of the two officiating cash officers. There are no clear details nor specific denial regarding the said claim of the delinquent.

16. From the evidence of P.W.4 it is clear that random checking of the cash were done at the time of remitting the cash to the Reserve Bank of

India, at the time of handing over keys and at the time of yearly closing. It could never be said that there was any pilferage prior to April 5, 1986

and it could have been only after April 5, 1986. P.W. 1 has stated that the currency chest slips from April 2, 1986 to April 5, 1986 were sent on

May 3, 1986 after duly amending the figures only as on April 16, 1986. Hence, the case of the petitioner that there was no pilferage prior to April

5, 1986 remains established. The evidence of P.W. 4 clearly shows that he was not specific as to how much of the cash accumulated and how

much of it was in operation cupboard to the bins. No oral and documentary evidence was adduced as to who has found the particular shortage in

the bundles and from which bins and from which row. Krishnan, who was examined as P.W.4 in his cross-examination has confirmed the above

aspect. It is also clear that no one has found out the shortage and has verified the currency statement and reported about the balance in the

currency chest prior to April 5, 1986. It is further clear that the currency chest was operated by more than one person for a period of 10 days and

there is no specific report or evidence from Branch Manager as to how and from where the shortages were located. As rightly contended that the

enquiry officer failed to note that there was a cash verification on November 16, 1985 by one Jagmohan Singh, V.A.O., who verified and

recorded that there was no shortage in the branch. Likewise, annual closing of accounts was also done on December 31, 1985 and no shortage

was found on that date nor any shortage was ever reported. It is also admitted that, when remittances were made to Reserve Bank of India,

Bangalore on March 24, 1986 there was no shortage reported either in the remittance or in the contents of the currency chest. It is also clear that

the enquiry officer did not consider the claim of the petitioner that there was a lapse on the part of P.W. 1 in running the administration of the

Branch as well as on the part of the two officiating cash officials. The statement made against P.W. 1 and other two officiating cash officers have

been conveniently ignored by the enquiry officer. In the light of the factual position, I am unable to concur with the conclusion arrived by the

enquiry officer.

17. No doubt, learned counsel appearing for the respondent Bank vehemently contended that, it is not open to this Court to reappraise the

evidence and arrive at a conclusion in a writ jurisdiction. However, I am reminded of the fact that when there is no acceptable evidence much less

legal evidence and the finding of the enquiry officer is based on conjectures, surmises and probabilities, it is open to this Court to verify the same in

order to render justice to the aggrieved person. I have already demonstrated the infirmity in the evidence let in on the side of the management.

18. It is stated that the petitioner had not followed Bank's instructions while he was functioning as a joint custodian of cash. In this regard, learned

counsel for the petitioner by drawing my attention to the statements made by witnesses examined on the side of the management contended that,

first of all there was no lapse on the part of the petitioner, secondly none of the officers have followed Bank's instructions fully. It is clear from the

evidence of P.W. 1 that, even though he had reported that a cash shortage of Rs. 1,25,000 at 7.30 P.M. on April 16, 1986 P.Ex. I was signed

and attested by officers only on April 25, 1986. For this P.W. 1 has explained:

I completed the physical verification of cash late in the night and I got the signature of the officials/staff who are available at the time on the same

day and I got the signatures later on of those who were not available at the time of completing the verifications. The time lag is due to my

preoccupation with the recovery work.

Likewise, the question, viz., ""Did you ever sign letters in delegate putting the officiating cash officer to exercise the powers of cash officer as per the

instruction requested?"" He answered ""No."" Likewise, P.W.2 another officer for the question, viz. ""Do you consider the staggering arrangement that

prevailed at that time was correct?"" He answered, ""The staggering arrangement was correct."" He further said I cannot say how effectively

implemented. In another place P.W.2 had admitted that, if the control had been effective by the concerned people, this would have been avoided.

P. W.4 has also admitted that, without any verification he took over the safe keys from Swaminathan on the evening of April 11, 1986 which is

also contrary to the instructions issued. In respect of the question put to P.W.4, viz., ""Did you take over on April 11, 1986 by giving a letter to the

management that you are taking over on an emergency nature ? He replied ""No."" ""No letter was given by me."" The following answer of P. W.4

also amply show is that the procedure adopted by him is not in accordance with the Bank's instructions.

(Vernacular matter Omitted)

As stated above there is no positive evidence from the side of the Bank to the effect that all along they were following instructions issued by the

head office. Likewise, there is no evidence for maintenance of ""dual locking system."" Hence the contrary conclusion arrived against the petitioner

on this charge cannot be sustained.

19. In Anil Kumar Mohan v. Labour Court, Jullundur and Ors. 1985 LLJ 579, their Lordships have expressed how the enquiry officer has to

arrive at a conclusion, in Paras. 5 and 6, at pages 580 and 581:

5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the enquiry officer. It is well

settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a

duty to act judicially. The enquiry officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the

evidence. He merely recorded his ipse dixi that the charges are proved. He did not assign a single reason why the evidence produced by the

appellant did not appeal to him or was considered not creditworthy. He did not permit a peep into his mind as to why the evidence produced by

the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show

the reasons for the conclusion. It cannot be an ipse dixi of the enquiry officer. It has to be a speaking order in the sense that the conclusion is

supported by reasons. This is too well-settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others*

(UOI), , this Court observed that a speaking order will at best be a reasonable and its worst be atleast a plausible one. The public should not be

deprived of this only safeguard. Similarly in *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , this Court reiterated that

satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should

all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the

enquiry report is an order-sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of

mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of

the non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural

justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of

evidence. But where the evidence is annexed to an order-sheet and no correlation is established between the two showing application of mind, we

are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of the

termination based on such proceeding disclosing non-application of mind would be unsustainable.

In the light of the said legal position the order of dismissal passed by the Bank based on the enquiry report cannot be sustained.

20. Learned counsel for the respondents by relying on:

(i) *B.C. Chaturvedi Vs. Union of India and others*, ;

(ii) *High Court of Judicature at Bombay through its Registrar Vs. Udaysingh*

Nimbalkar and Others, ;

(iii) The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, ;

would contend that in a matter like this interference by this Court by way of judicial review is very limited and prayed for dismissal of the writ

petition. He also contended that, in a disciplinary enquiry the strict proof of legal evidence and finding on that evidence are not relevant. He further

contended that the adequacy of evidence or liability of evidence cannot be permitted to be canvassed before this Court. There is no dispute with

regard to the above proposition of law. I have already demonstrated how the management failed to substantiate their charges laid against the

petitioner. Apart from this, learned counsel for the respondents has also very much relied on Rae Bareilly Kshetriya Gramin Bank Vs. Bhola Nath

Singh and other, , to show that reappreciation of evidence in writ petition is not permissible. He also cited, State of Haryana and Another Vs.

Rattan Singh, , to show that what are all the evidence required in a domestic enquiry. He also very much relied on:

(i) State Bank of Patiala v. S.K Sharma (supra);

(ii) State of Tamil Nadu v. K. V. Perumal (supra); and

(iii) Secretary to Government v. A.C.J Brit to (supra),

In order to show that non-filing of document in a domestic enquiry would not vitiate the enquiry. I have already demonstrated how the management

failed to substantiate their charges against the petitioner and how enquiry officer committed error in holding against the delinquent.

21. Learned counsel has also very much relied on:

(i) The Management of the Catholic Syrian Bank Ltd. Vs. The Industrial Tribunal, Madras-104, and another, ;

(ii) Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, ; and

(iii) Union Bank of India Vs. Vishwa Mohan, ;

It is true that in all these decisions the Hon"ble Supreme Court has emphasised that, in the banking business absolute devotion, and integrity need

to be preserved by every bank employee and in particular by every bank officer. Their Lordships have also observed that, if this is not observed,

confidence of depositors would be impaired. While considering the interest of the bank it is also paramount to consider whether charges have been

proved by placing acceptable evidence and in the manner known to law. In our case, I am satisfied that the evidence let in on the side of the bank

before the enquiry officer are not sufficient to hold against the petitioner herein.

22. With regard to the other charges, viz., outside borrowings and monetary transactions with the Bank's staff in violation of Rule 41(i) of the

Service Rules, D.W. 1 one Anbalaghan partner of Ashok Trading Company, Salem, doing readymade garments at Salem was examined. He

explained before the enquiry officer that he used to give few thousands in order to get new currency notes and coins. He also deposed that, he

used to pay the amount in advance and after few days he would get coins and new currency notes from the petitioner. The following questions and

answers disprove the above referred charges.

(Vernacular matter Omitted)

It is clear from the evidence of DW 1 that he used to get coins and new currency notes from the petitioner herein for his day-to-day business, it is

also the case of the petitioner that though the Bank officers have seized certain letters from his drawer, they produced and marked certain letters

and suppressed the other letters. According to him those transactions relate to his agricultural operations and income thereon and has nothing to do

with his position in the Bank. The explanation offered by the petitioner is probable and acceptable.

23. Regarding, the contention that the appellate authority has not followed the Discipline and Appeal Rules, learned counsel for the petitioner has

very much relied on Rule 51 of the Rules. According to her even though the petitioner had raised several valid grounds before the appellate

authority, the same has not been considered by him. The appellate authority, after narrating the charges framed against the petitioner and after

stating the findings of the enquiry officer and the conclusion of the disciplinary authority has concluded.

I observe that enquiry officer has given good and sufficient reasons for holding the charges as proved and do not accept the contention, that

findings of enquiry officer, disciplinary authority has been justified.

Even though it is stated that the appellate authority need not give sufficient

reasons while affirming the conclusions of the disciplinary authority, the relevant rules clearly show that the appellate authority has to consider whether the findings are justified and whether the penalty is excessive or inadequate and pass appropriate orders. No doubt, learned counsel for the respondents has brought to my notice comments of the Chief General Manager, dated February 19, 1990, submitted to the Deputy Managing Director, Personnel and Systems (appellate authority). However, nothing has been mentioned in the ultimate order passed by the appellate authority. Here again, learned counsel for the respondent Bank by pointing out, *State Bank of India v. S. S. Koshal* and *Gopaljee Jha v. State of Bihar* 1995 Lab I C 748, would contend that, the order of the appellate authority cannot be faulted with. No doubt, it is settled law that, while affirming the order of the original authority, the appellate authority need not adduce reason/reasons for its conclusion. However, in a matter like this, more particularly, when the appellant (petitioner herein) raised various grounds attacking the findings of the enquiry officer and the ultimate order of the original authority as well as the penalty being dismissal from service, in the light of the Service Rules, I am of the view that the appellate authority, committed an error in dismissing the appeal by merely observing that: The enquiry officer has given good and sufficient reasons for holding the charges as proved and do not accept the contentions that findings of the enquiry officer/disciplinary authority were not justified.

24. In a matter like this, particularly with regard to power of this Court for interference under Article 226, the Hon'ble Supreme Court in *Kuldeep*

Singh Vs. The Commissioner of Police and Others, :

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by

an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

Again their Lordships have observed, in *Kuldeep Singh Vs. The Commissioner of Police and Others*, :

8. It was also laid down that where a quasi-judicial Tribunal records findings based on no legal evidence and the findings are its mere ipse dixi or

based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt"

is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived

at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there

is some evidence on record which is acceptable and which would be relied upon, howsoever compendious it may be, the conclusions would not

be treated as perverse and the findings would not be interfered "with.

In the light of the law laid down by the Apex Court in the recent decision referred above, I am satisfied that the enquiry officer has acted so

arbitrarily in the matter and found the petitioner guilty.

25. For the reasons stated above, the impugned order of the first respondent, dated July 31, 1987, and the order of the appellate authority-second

respondent herein, dated May 16, 1990, are quashed and the respondents are directed to reinstate the petitioner with all consequential benefits

including all the arrears of pay up to date which shall be paid within a period of two months from the date of receipt of a copy of this order. The

writ petition is allowed. No costs.