

(2023) 05 CAL CK 0008
In the Calcutta High Court
Case No : W.P.A No. 11532 Of 2017

Rajat Kumar Varshney

APPELLANT

Vs

Central Bank Of India And Ors.

RESPONDENT

Date of Decision : 03-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Indian Penal Code, 1860 — Section 120B, 405, 406, 420, 465, 467, 468, 506

Central Bank of India Officer Employees? (Conduct) Regulations, 1976 — Regulation 3, 3(3), 24

Citation : (2023) 05 CAL CK 0008

Hon'ble Judges : Sarathi Sen, J

Bench : Single Bench

Advocate : Indranil Chakraborty, Apurba Ghosh, Bishwambhar Jha

Final Decision : Partly Allowed

Judgement

Partha Sarathi Sen, J

1. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner has challenged the order of dismissal dated April 7, 2016 as passed by the Disciplinary Authority of the Respondent No.1 Bank who is the Respondent No.3 in this writ petition and which has been affirmed by the Appellate Authority (Respondent No.4 herein) by his order dated November 3, 2016.

2. Before the Inquiry Authority, the present writ petitioner being the delinquent has faced the following four charges :

Charge No.1 : The petitioner misappropriated bank's fund of Rs.25,000/- for benefiting his family members by debiting Account No.2355713311 to the credit of Savings Bank Account No.3108810402 of Smt. Sikha Varshney, the wife of the petitioner.

Charge No. 2 : The petitioner created two loan accounts favouring himself against

time deposits without creating underlying security and loan documents violating the laid down procedure of the bank for getting undue personal benefit utilizing his post and incumbency..

Charge No. 3 : The petitioner sanctioned loan (Account No.3239035497) to credit his own savings bank Account (no.3110051051) with loan proceeds without any security, abusing his delegated lending power and violating norms for sanctioning loan/staff loan and enjoyed bank's funds unauthorizedly.

Charge No. 4 : The petitioner has sanctioned and disbursed loans on different dates without ensuring end use of fund as per scheme and allowed the beneficiary to divert fund and put bank's interest in stake. Under Charge no. 4, allegation has been raised in respect of six term loans.

3. The delinquent/writ petitioner has submitted his statement of defence and thereafter the inquiry proceedings proceeded against him and on conclusion of the same, the inquiry officer found that the Charge No.1 has been partially proved and the remaining charges have not been proved against the delinquent/writ petitioner.

4. Before the Disciplinary Authority (the respondent No.3), the respondent No.1 Bank did not proceed with the Charge Nos. 2 & 3. However the Disciplinary Authority in its findings dated February 18, 2016 did not agree with the findings of the inquiry authority and thus held that Charge No. 1 has been fully proved and Charge No. 4 with all its sub-parts have been partially proved and accordingly the present writ petitioner by an Administrative Order dated April 7, 2016 was awarded with the punishment of Dismissal which shall ordinarily be a disqualification for future employment under regulation 4(j) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulation, 1976.

5. The matter was thereafter taken to the Appellate Authority at the instance of the delinquent/writ petitioner. The Appellate authority vide its decision dated November 3, 2016 affirmed the finding of the Disciplinary Authority in respect of Charge Nos.1 and 4 and also affirmed the consolidated punishment as imposed by the Disciplinary Authority.

6. Feeling aggrieved with the decisions of the Disciplinary Authority and Appellate Authority and the punishment as imposed upon him, the petitioner has filed this writ petition.

7. Mr. Indranil Chakraborty, Learned Advocate duly assisted by Mr. Apurba Ghosh Learned Advocate appearing on behalf of the writ petitioner inter alia submitted :

(i) In absence of any proof that any benefit accrued either in favour of the writ petitioner or his wife, the aforementioned three authorities ought to have held that the Charge No.1 has not been proved against the writ petitioner.

(ii) Prior to imposition of penalty, the respondent authorities ought to have visualize that on account of alleged misconduct on the part of the writ petitioner,

the respondent/Bank has not suffered any loss or harm.

(iii) In absence of any further evidence, either oral or documentary, there cannot be any basis on the part of the Disciplinary Authority and/or the Appellate Authority to come to a conclusion that the Charge Nos. 1 and 4 have been fully proved.

(iv) The punishment as awarded upon the writ petitioner is not commensurate with the Articles of Charges claimed to have been proved.

8. In course of his submission, Mr. Chakraborty, Learned Advocate for the writ petitioner places his reliance upon the following reported decisions :

(a) Yoginath D. Bagde vs. State of Maharashtra and Anr. reported in (1999)7 SCC 739;

(b) Sawai Singh vs. State of Rajasthan reported in (1986) 3 SCC 454; and

(c) Narinder Mohan Arya vs. United India Insurance Co. Ltd. and Ors. reported in (2006) 4 SCC 713.

Mr. Chakraborty, Learned Advocate for the writ petitioner thus submits that it is a fit case for allowing the instant writ petition by setting aside the punishment as imposed by the respondent/Bank.

9. Per contra, Mr. Bishwambhar Jha, Learned Advocate for the respondent/Bank and its officials submitted the followings :

(i) The findings of the Disciplinary Authority and the Appellate Authority with regard to Charge No.1 is absolutely justified and the said charge has been proved not only from the exhibited documents of the management side but also from the affidavit of one Manoj Kumar Nareri, a witness of the delinquent.

(ii) If the Article of Charge No.4 is read with the statement of imputations, it would reveal that there were serious intentional lapses on the part of the delinquent which have also been proved in the disciplinary proceedings and thus there cannot be any justification to alter the findings of the Disciplinary Authority and the Appellate Authority.

(iii) It is not proper for a writ Court to interfere with the factual findings of the departmental authorities since reappreciation of evidence like an appellate Court is not permissible in a writ proceeding.

(iv) Being a writ Court, it would not be proper to go into the question of imposition of punishment.

In course of his submissions, Mr. Jha, Learned Advocate for the respondent/Bank cited the following reported decisions :

(a) Bank of India and Anr. vs. Degala Suryanarayana reported in AIR 1999 SC 2407;

(b) State of U.P and Ors. vs. Nand Kishore Shukla and Anr. reported in AIR 1996 SC 1561.

10. This Court has meticulously gone through the entire materials as placed before this Court. This Court has also perused the provisions of the Central Bank of India Officer Employees' (Discipline & Appeal) Regulation, 1976 hereinafter referred to as the 'said regulation' of 1976. This Court has also given its due consideration over the submissions of the Learned Advocates for the contending parties. This Court has also gone through the reported decisions as cited from the Bar.

11. In order to reach at a logical conclusion of the instant writ petition, this Court feels it obligatory to look to some of the celebrated reported decisions of the Hon'ble Supreme Court of India which deals with scope of a writ Court while dealing with decisions of the departmental authorities in departmental proceedings.

12. In the reported decision of 'High Court of Judicature at Bombay - vs- Sashikant S Patil' reported in (2000) 1 SCC 416 the Hon'ble Supreme Court of India has expressed the following view :

"16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

17. In State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25] this Court has stated so and further observed thus:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which

evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

18. The above position has been reiterated by this Court in subsequent decisions. One of them is B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] ."

13. Keeping in mind the above principles of Law as enunciated in the reported decisions of High Court of Judicature at Bombay(supra),if the factual and circumstantial aspects as involved in the instant lis are considered, it would reveal that practically there is no scope for this Court to interfere with the concurrent factual findings of facts in respect of Charge No.1as against the present writ petitioner. It appears to this Court all the three authorities of the respondent bank have come to concurrent findings that a sum of Rs. 25,000/- was credited to the account of the wife of the delinquent by debiting the same from the internal account of the bank which tantamounts to misappropriation of fund.

14. The argument of the Learned Advocate for the writ petitioner that in absence of any proof of benefit either of the writ petitioner or of his wife, the writ petitioner cannot held guilty of the Charge No.1 does not seem to be convincing since credit of an unaccounted sum in a person's account itself is a benefit for that very person unless contrary is proved by the said person himself.

15. In view of the discussion made hereinabove, this Court thus finds no reason to interfere with the findings of the Disciplinary Authority and the Appellate Authority with regard to Charge No.1 and those are hereby affirmed.

16. In order to decide as to whether any interference of this Court is at all warranted or not with regard to the findings of the Disciplinary Authority and the Appellate Authority in respect of Charge No.4, the imputation of misconducts with regard to the said charge are required to be looked into :

"1. Term Loan (SVSKP) a/c 3419017612 of Ms. Pramila Barman (Roy). Project cost- Rs. 5,00,000/-.(Margin money Rs.25,000/-, Govt. subsidy Rs.1,50,000/- and Bank loan Rs.3,25,000/-). On 23.12.2014 total of Margin money, Subsidy and Bank loan i.e., Rs.3,25,000/- was transferred to SB a/c no.23556777508 of third party Mr. Parimal Chandra Roy, Bank's BF . Thus entire amount was diverted and borrower is not pursuing the business as per scheme and no assets are created with the loan amount and benefiting third party.

2. Term loan (SVSKP) a/c no. 3419101538 of MR. Santosh Adhikari . Project cost Rs.5,00,000/- . (Margin money Rs.25,000/- , Govt., subsidy Rs.1,50,000/- and Bank loan Rs.3,25,000/-). Entire amount was disbursed on 23.12.2014 through SB a/c 2355667272. Borrower is not pursuing the business as per scheme (Goatery). Mr. Varsheney allowed the borrower to repay Rs.2,27,812/- towards

his CKCC loan a/c 2355702149 and Rs.33,378/- towards his vehicle loan by transfer from the SVSKP Term loan on the same day 23.12.2014 . No assets were created with Bank's fund and old loans were adjusted out of the fresh loan.

3. Term Loan (SVSKP) a/c 3416974573 of Mr. Bhushan Roy.

Project cost Rs.5,00,000/- for Dairy firm,. (Margin money Rs.25,000/-, Govt. subsidy Rs.1,50,000/- and Bank Loan Rs.3,25,000/-). Loan Rs.1,30,000/-was disbursed on 19.12.2014 through SB a/c 2977373477 . No assets created out of Bank loan. End use of fund was not ascertained by carrying out periodical post inspection. There is Lapses in monitoring.

4. Term Loan (SVSKP) a/c 3442516747 of Mr. Debendra Nath Roy.

Project cost Rs.5,00,000/- for Husking mill. (Margin money Rs.25,000/- , Govt subsidy Rs. 1,50,000/- and Bank loan Rs.3,25,000/-).

The borrower had an existing husking mil. Disbursement made on 12.03.2015 through Savings a/c. Almost entire Bank loan and subsidy was allowed to be withdrawn form Savings a/c within 7 days. Balance in SB a/c 2355710706 as on 18.03.2015 is Rs. 12,006=85. No new assets were created out of Bank loan and Irregular disbursement violation monitoring norms.

5. Term loan (SVSKP) a/c 3422986933 of Mr. Sambhu Kirtania.

Project cost Rs.5,00,000/- for Ring & Pillar manufacturing. (Margin money Rs.25,000/-Govt. subsidy Rs.1,50,000/- , Bank Loan Rs.3,25,000/-). Entire loan & subsidy was disbursed on 05.01.2015 through Savings a/c 3420576632. Entire amount was also withdrawn from Savings account on 05.01.2012 . Closing balance in SB a/c as on 05.01.2015 is Rs.1000/-.

No assets created out of Bank loan for the applied activity or any new activity. There is irregularity in disbursement by violating the norms & procedures of monitoring rules.

6. Term Loan (SVSKP) a/c 3441700237 of Madhu Sudhan Roy.

Project cost Rs.2,00,000/- for Hardware business. (Margin money Rs.10,000/- Govt. subsidy Rs. 60,000/- and Bank loan Rs.1,30,000/-).

Entire subsidy and Bank loan was disbursed through Savings a/c 3397914862 on 10.03.2015 . Unit not found. There is Gross violation of maintaining due diligence to the detrimental to the interest of the Bank.

7. Term Loan (SVSKP) a/c 3417663691 of Uttam Kumar Roy.

Project cost Rs.2,00,000/-. Margin money Rs.10,000/- Govt subsidy Rs.60,000/- and Bank loan Rs.1,30,000/- disbursed through Savings a/c no. 2355673367 on 19.12.2014 . End use of fund was not ascertained by carrying out periodical post inspection repeatedly violating standard rules of Bank. Unit /shop is not found."

17. It is to be kept into mind that sub-charges of Charge No.4 have not been proved fully before the inquiry authority. However the said sub-charges of Charge No.4 have been proved before the disciplinary authority and before the appellate authority in partial manner. The effect of not accepting the inquiry report by the Disciplinary Authority and Appellate Authority has also been discussed in the reported decision of High Court of Judicature at Bombay(supra) in the following manner :-

" 19. The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the enquiry officer it is imperative to discuss the materials in detail and contest the conclusion of the enquiry officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the enquiry officer's report. It must be borne in mind that the enquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such enquiry as well as the views expressed by the enquiry officer thereon. The findings of the enquiry officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision-making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the enquiry officer. But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the enquiry officer". Otherwise the position of the disciplinary authority would get relegated to a subordinate level."

18. At this juncture, if the reported is decision of 'Pravin Kumar -vs-Union of India' reported in (2020) 9 SCC 471 is looked into, it would reveal that the Hon'ble Apex Court held thus :

"26. These principles are succinctly elucidated by a three judge Bench of this Court in BC Chaturvedi v. Union of India reported in (1995) 6 SCC 749 in the following extract (SCC pp. 759-60, paras 12-13

.....: 13. The disciplinary authority is the sole judge of facts.

Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

19. From the materials as placed before this Court, it reveals that the inquiry authority while recording its findings in respect of the sub-charges of Charge No.4 came to a conclusion that the borrowers' unit(s) is/are in existence and in working condition and it also came to a finding that verification of the disbursement of loan was done by 'Prakalpa Sahahayak' and use of funds verifying the units was also ensured by the 'Prakalpa Sahahayak'. On the basis of the above finding, the inquiry officer held that though in most of the cases SVSKP loans was disbursed in one shot but all other formalities as per laid down policies of the bank was scrupulously observed.

20. The Disciplinary Authority however did not fully agree with the findings of the Inquiry Authority. It found that in most of the cases the loan was transferred to borrowers savings accounts instead of direct payment to the supplier and in some cases borrowers were allowed to divert fund.

In its finding the Appellate Authority however held thus :

"I fail to understand the point in conducting post sanction inspection within two or three days of disbursement of entire bank loan in one shot and that too directly to the borrowers in case of Mini Rice/Chira Mills, Husking Mills, Diary Farm Projects and certifying in the inspection report that funds have been utilized in business as per the project submitted.

I also find from above that the Presenting Officer has not come prepared in the inquiry to present the Bank's case in a proper manner. He has failed to adduce documents in the inquiry based on which the charge sheet was framed, like the screen shots of relevant accounts where the transaction details could clearly be perceived.

Nonetheless, in conformity at places with the findings of DA in respect of Charge no.4 along with its segments (4.1 to 4.17 limiting in places where the imputations have been found not proved by the DA), I confirm the punishment imposed by him."

21. In considered view of this Court, if the Appellate Authority himself is of the view that in the inquiry proceedings the presenting officer of the respondent Bank did not come prepared to present the case of the management in a proper manner and had failed to adduce documents in the inquiry proceedings to substantiate charges, then what basis he took a contrary view to the findings of inquiry officer especially when no materials have been placed before this Court that either before the Disciplinary or before the Appellate Authority fresh evidence was taken either oral or documentary and the decisions of the Disciplinary and the Appellate Authority are the outcome of such fresh evidence .

22. In view of the discussion made herein above, this Court has got no hesitation to hold that the findings of the Appellate Authority suffers from patent error which is apparent on the face of the record and thus the findings of the Disciplinary Authority and the Appellate Authority with regard to Charge No.4 are

hereby quashed and set aside.

23. At this juncture, a crucial question arises as to whether in view of the changed situation as discussed above, this Writ Court can interfere with the quantum of punishment as imposed upon the writ petitioner. In the reported decision of 'S.R.Tiwari -vs- Union of India' reported in (2013) 6 SCC 602, the Hon'ble while dealing with a similar situation held thus :

"24. The question of interference on the quantum of punishment has been considered by this Court in a catena of judgments and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. In *Ranjit Thakur v. Union of India* [*Ranjit Thakur v. Union of India*, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113 : AIR 1987 SC 2386] , this Court observed as under : (SCC pp. 620-21, paras 25 & 27)

"25. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction.

27. In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review."

(emphasis supplied)

(See also *Union of India v. G. Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806 : AIR 1997 SC 3387] , *State of U.P. v. J.P. Saraswat* [(2011) 4 SCC 545 : (2011) 1 SCC (L&S) 718] , *Chandra Kumar Chopra v. Union of India* [(2012) 6 SCC 369 : (2012) 2 SCC (L&S) 152] and *High Court of Patna v. Pandey Gajendra Prasad* [(2012) 6 SCC 357 : (2012) 2 SCC (L&S) 140 : AIR 2012 SC 2319] .)

25. In *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 : AIR 1996 SC 484] , this Court after examining its various earlier decisions observed that in exercise of the power of judicial review, the court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, the court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain

manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority.

26. In *V. Ramana v. A.P. SRTC* [(2005) 7 SCC 338 : 2006 SCC (L&S) 69 : AIR 2005 SC 3417] , this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the court itself can impose appropriate punishment by recording cogent reasons in support thereof."

24. At this juncture, this Court feels it obligatory to quote certain provisions of the 'Central Bank of India Officer Employees' (Conduct) Regulations, 1976' which are as under :

"Regulation 3:

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

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

Regulation 3(3) first amended vide CO: PRS:2002-2002:132 Dtd. 18/10/2002

Regulation 3(3) again amended vide CO;PRS:03-04:196 dtd.18/03/2004.

In both the amendment the contents are same. But effective date given as 28/04/2001 for Regulation 3(1) and the amended version is as under:

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. "Provided wherever such directions are oral in nature the same shall be confirmed in writing by his superior office" (Effective from 28.04.2001).

(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 : Act of misconduct.

"A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Central Bank of India Officer

Employees' (Discipline and Appeal) Regulations, 1976."

Clause 4 of the said Regulations of the year 1976 reads as under :

" 4. Penalties :-

The following are the penalties which may be imposed on an officer employee, for acts of misconduct or for any other good and sufficient reasons.

- a) Censure;
- b) Withholding of increments of pay with or without cumulative effect;
- c) Withholding of promotion;
- d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders;
- e) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the Officer's Pension.

Major Penalties:

- f) Save as Provided for in (e) above reduction to a lower stage in the time scale of pay for a specified period, with further direction as to whether or not the officer will earn increments of pay during the period do such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- g) Reduction to a lower grade or post;
- h) Compulsory retirement;
- i) Removal from service which shall not be disqualification for future employment;
- j) Dismissal which shall ordinarily be a disqualification for future employment.

Explanation- The following shall not amount to a penalty within the meaning of this regulation namely:-

- a) Withholding of one or more increments of an officer employee on account of his failure to pass a prescribed departmental test or examination in accordance with the terms of appointment to the post which he holds;
- b) Stoppage of pay of an officer employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;
- c) Non promotion , whether in an officiating capacity or otherwise, of an officer employee, to a higher grade or post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;
- d) Reversion to a lower grade or post, of an officer employee officiating in a

higher grade or post, on the ground that he is considered , after trial , to be unsuitable for such higher grade or post, or on administrative grounds, unconnected with his conduct;

e) Reversion to his previous grade or post, of an officer employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with the terms of his appointment or rules or orders governing such probation;

f) Reversion of an officer employee to his parent organization in case he had come on deputation;

g) Termination of the service:-

i. Of an officer employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment, or the rules or orders governing such probation;

ii. Of an officer employee appointed in a temporary capacity otherwise than under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;

iii. Of an officer employee appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and

iv. Of an officer employee on abolition of post;

h) Retirement of an officer employee on his attaining the age of superannuation in accordance with the rules and orders governing such such superannuation;

i) Termination of employment of a permanent officer employee by giving 3 months' notice or on payment of 3 months' pay and allowance in lieu of notice;"

25. Keeping in mind the provisions of the aforementioned regulations and the proved charge No.1 as against the writ petitioner as discussed above, the writ petitioner's honesty and integrity is found to be very much questionable since he had intentionally diverted Bank's fund (which is public Money) to his wife's account and thus mis-appropriated the said sum Rs. 25,000/-. However considering the fact that the amount of misappropriation is not hefty, justice would be subserved if the writ petitioner is awarded with the minor penalty as mentioned in clause 4 (e) of the said Regulations of the year 1976.

26. In view of such, the major penalty (the order of dismissal) as imposed by the Disciplinary Authority of the Respondent No.1 Bank and which has been affirmed by the Appellate Authority (Respondent No.4 herein) by his order dated November 3, 2016 is hereby set aside.

27. The respondent No.1 bank and its Disciplinary authority is hereby directed to impose the minor penalty of 'Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the pension of the present writ petitioner in terms of clause 4 (e) of the

said Regulations of the year 1976.

28. With the aforementioned observation, the instant writ petition is allowed in part and is disposed of.

29. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.