
(2004) 03 GAU CK 0054
In the Gauhati High Court
Case No : Civil Rule No. 472 of 1994

Samarendra Kishore Endow

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 GLR 36 : (2004) 1 GLT 449 : (2004) 2 LLJ 1122

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : B. Das, D.K. Biswas and S. Lodh, for the Appellant; S. Deb and A. Datta, for the Respondent

Judgement

I.A. Ansari, J.—Following a disciplinary proceeding drawn against the petitioner, while he was serving as a Branch Manager of the respondent Bank, on as many charges as 5 (five) in number, the petitioner was found guilty of all the 5 charges by the inquiring officer, but the disciplinary authority did not, on perusal of the materials, agree with the finding of the inquiring officer on charge No. 4 and imposed, in consequence of the conclusions so reached, the penalty of removal of the petitioner from service. An appeal was preferred by the petitioner, which was dismissed by the appellate authority. The petitioner then, approached this Court by way of a writ petition and the same gave rise to Civil Rule No. 3 of 1986. By the judgment and order, dated February 7, 1991, passed therein, the findings of guilt as well as the penalty imposed on the petitioner were quashed. The respondent Bank preferred an SLP before the Supreme Court and the same, on leave being granted, was registered as Civil Appeal No. 392/1994. By the judgment and order, dated January 18, 1994, the Supreme Court allowed the appeal of the respondent Bank with the observation that the appellate authority shall consider whether any lesser punishment is not called for in the facts and circumstances of the case as indicated in Civil Appeal No. 392/1994. The petitioner, then, submitted, on March 18, 1994, an appeal before the appellate authority i.e. the respondent No. 3. Upon considering the matter in the appeal,

the appellate authority, vide its order, dated May 10, 1994, rejected the appeal and maintained the penalty of removal from service on the ground that the same was justified and there was no ground for modifying the same. Aggrieved by the order, dated May 10, 1994, aforementioned, the petitioner has, once again, approached this Court with the help of the present application.

2. I have perused the materials on record. I have heard Mr. B. Das, learned senior counsel along with Mr. D.K. Biswas, learned senior counsel, for the petitioner, and Mr. S. Deb, learned senior counsel, appearing on behalf of the respondents.

3. Assailing the impugned order, dated May 10, 1994, aforementioned dismissing the petitioner's appeal, Mr. Das, learned senior counsel, has submitted that the respondent No. 3 had acted with great impropriety in dismissing the appeal and in not modifying the penalty of removal from service imposed on the petitioner to some other reasonable and justifiable penalty, though the order in Civil Appeal No. 329/1994 shows, contends Mr. Das, that the Apex Court was of the view that in the facts and circumstances of the present case, punishment other than the punishment of removal from service needed to be imposed on the petitioner. The respondent No. 3, according to Mr. Das, ignored the observations so made by the Apex Court. The impugned order, therefore, contends Mr. Das, deserves to be interfered with and set aside.

4. Elaborating his above submissions, Mr. Das has pointed out that though the Apex Court in its order, dated January 18, 1994, aforementioned did not categorically direct the appellate authority i.e. the respondent No. 3 to impose a punishment other than the punishment of dismissal from service, the fact remains that though the words used in the order were courteous, yet it was suggestive that some punishment other than the punishment of removal from service was warranted in the present case. In support of his submission, reliance is placed by Spencer and Company Ltd. and Another Vs. Vishwadarshan Distributors Pvt. Ltd. and Others,

5. It is further submitted by Mr. Das that in the facts and circumstances of the present case, the charges against the petitioner cannot be said to be of very serious nature and in the face of such charges, particularly, when the charge No. 3, was not proved, it was highly improper on the part of the respondent No. 4, not to impose a penalty other than the penalty of removal from service. While considering this aspect of the matter, contends Mr. Das, the respondent No. 3 ought to have borne in mind the fact that the Apex Court had clearly held in its order, dated January 18, 1994, aforementioned that so far the charge No. 5 was concerned, there was no finding that the account, in question, had become irregular or that any loss had been incurred by the Bank on account of irregularity committed by the petitioner, hence, it was, further contends Mr. Das, bounden duty of the respondent No. 3 to impose on the petitioner a punishment far lesser in magnitude than what has been imposed on him.

6. It is pointed out by Mr. Das that the petitioner has already undergone severe mental strain and harassment for the last almost two decades on account of the disciplinary proceeding pending against him and he has suffered more than what he could have been made to suffer by way of penalty for the charges found proved against him and, hence, in such a situation, the order of removal from service imposed on the petitioner cannot, submits Mr. Das, be considered justified.

7. Lending support to the above submissions made on behalf of the petitioner, Mr. D.K. Biswas, learned senior counsel, has submitted that since the petitioner has already undergone sufficient mental strain for a long period of time and since the Apex Court had, on considering that the appellate order was not maintainable, remanded the matter to the appellate authority for further consideration, the logical conclusion will be that even this Court, while sitting as a writ Court, can interfere with the penalty imposed on the petitioner inasmuch as the same is grossly disproportionate to the nature of the misconduct proved against the petitioner and in such a situation, the writ petition may be allowed taking a lenient view of the matter. It is also submitted by Mr. Biswas that the High Court can, in an appropriate case, interfere with the penalty if the same is found to be disproportionate to the gravity of the misconduct and pass appropriate order imposing penalty assigning reasons therefor. In the case at hand, contends Mr. Biswas, the petitioner deserves a much lenient punishment than what has been imposed by the respondent No. 3 and the present one is a case in which the High Court needs to interfere and pass appropriate order imposing a lenient penalty.

8. In support of the submissions made, on behalf of the petitioner, reliance has been placed by Mr. Biswas on B.C. Chaturvedi Vs. Union of India and others, Colour-Chem Limited Vs. A.L. Alaspurkar and Others, Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, Depot Manager, A.P.S.R.T.C. Vs. P. Basha and Another, and U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others,

9. Controverting the submissions made on behalf of the petitioner, Mr. S. Deb, learned senior counsel for the respondents, has submitted that the observations of the Apex Court made in its appellate order, dated January 18, 1994, aforementioned and the directions contained therein cannot be stretched to mean that the Apex Court had expressed any firm view that the punishment of removal from service imposed on the petitioner was harsh. What the Apex Court has, according to Mr. Deb, done in the present case is that it has directed the appellate authority to consider whether a lesser punishment is not called for in the facts and circumstances of the case, but the freedom and discretion to reach the conclusion, in this regard, has been left entirely with the appellate authority and the same cannot, in any way, be said to have been curtailed. In terms of the observations made by the Apex Court in the order, dated January 18, 1994, aforementioned and the directions contained therein, what the appellate

authority was, according to Mr. Deb, required to consider was the fact that so far as the charge No. 5 was concerned, since there was no finding that the account had become irregular or that any loss had been incurred by the Bank on account of the irregularity committed by the petitioner, whether a lesser punishment was not called for. This does not mean, reiterates Mr. Deb, that the Apex Court had finally arrived at the conclusion that the penalty of removal from service was not at all maintainable.

10. Referring to Chairman & Managing Director Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, it is contended by Mr. Deb that since the petitioner was an employee of a bank working as a cashier at the relevant time, when the misconduct was committed, and there were unimpeachable materials exhibiting his lack of integrity, the petitioner was justifiably found unfit to be retained in an institution like Bank, which is repository of public money, and, hence, in such a situation, when all the charges except the charge No. 4 stood proved against the petitioner and all these charges related to financial affairs giving the indication thereby that the petitioner was not a person fit to be entrusted with finance or money it would have been too dangerous to retain the petitioner in the service of the Bank. Viewed from this angle, the appellate authority was wholly justified, submits Mr. Deb, in maintaining the penalty of removal from service.

11. It is pointed out by Mr. Deb that the charge No. 5 indicates that the petitioner disbursed the loan in two instalments without taking into account the progress of construction of the building for which the loan had been obtained and that the loan, so obtained, was not utilised for construction and as a result thereof, the account became irregular. The Supreme Court has noticed in respect of this charge, contends Mr. Deb, that there is no finding on the record that the account became irregular and/or that the bank sustained any financial loss and, hence, the finding on charge No. 5 will show merely that what the petitioner had done was an irresponsible conduct as a banker. In other words, further contends Mr. Deb, the finding on charge No. 5 does not go to show any mala fide or dishonesty on the part of the petitioner, but so far as the charge Nos. 1, 2 and 3 are concerned, these three charges show a tendency, on the part of the petitioner, to obtain money from the bank by projecting things, which were found to be false inasmuch as in all these three charges, the petitioner claimed certain amounts of money, for shifting of his luggage on transfer under different heads, more than what he had actually spent. The quantum of amount, which the petitioner tried to obtain without being lawfully due to him, is, according to Mr. Deb, not material; what is material is the tendency of the petitioner and a conscious attempt made by him to enrich himself with money of the respondent Bank, which the petitioner was basically not entitled to receive. Such a conduct, on the part of the petitioner, points out Mr. Deb, reflects a tendency to deceive in matters involving finance, though the petitioner, as a banker, knows that the Bank is a repository of public trust and deals with public money. Apart from the fact that the person working in an institution like the Bank has to be alert,

vigilant and not careless as the petitioner has been, it is also indispensable, submits Mr. Deb, that the persons working in a bank have unimpeachable integrity, particularly, when they do not function as a mere Grade-IV employee, but deal with public money. Retention of a person, who is dishonest so far as money is concerned in an institution like Bank, is not contends Mr. Deb, desirable and if the appellate authority is of the view that such a person cannot be retained in the service of the Bank, such a conclusion cannot be faulted. Situated thus, the penalty imposed on the petitioner cannot be described, according to Mr. Deb, as shockingly disproportionate or irrational or perverse or biased or in defiance of logic.

12. It is also submitted by Mr. Deb that a High Court, while acting under writ jurisdiction under Article 226, does not discharge the same powers, which the Apex Court enjoys under Article 142. With this limitation, the question of penalty imposed on a delinquent needs to be appreciated; so contends Mr. Deb. He further points out that every organisation functions with its own independent and unique responsibilities as well as constraints and a penalty imposed by an authority of such an organisation cannot be lightly interfered with by the High Court, while exercising jurisdiction under Article 226, unless the penalty shows that the imposition of the same is biased, perverse, shocking, irrational and/or in defiance of logic. If two views on a penalty imposed are possible, the High Court will not, submits Mr. Deb, interfere with the penalty if the administrator has adopted one of such views. The powers of the Supreme Court, while acting under Article 142, are, according to Mr. Deb, far wider than what the High Court enjoys under Article 226 and with this limitation, the High Court, pleads Mr. Deb, may consider the penalty imposed upon the petitioner.

13. In the case at hand, according to Mr. Deb, the penalty cannot be described to be arbitrary and if it is not arbitrary, then, the role of the High Court is not primary and it will have, at the most, in such a situation, a secondary role to play. For ascertaining as to whether the penalty imposed on the petitioner is irrational, the High Court has to determine, contends Mr. Deb, if there is any relevant factor, which ought to have been taken as an extenuating circumstance against the petitioner but has not been taken into account by the appellate authority, or if an irrelevant factor, which ought not to have been taken into account by the appellate authority, has been taken into account by the appellate authority, while considering the question of the quantum of penalty. If none of these two factors exist, the High Court may, submits Mr. Deb, justifiably refrain from interfering with the penalty imposed on the petitioner. In any view of the matter, contends Mr. Deb, the penalty imposed upon the petitioner is wholly justified and may, therefore, be allowed to be maintained. Reference, in support of his submissions, is made by Union of India and another Vs. G. Ganayutham (Dead) by LRs., and Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another,

14. Upon perusal of the materials on record and upon hearing the learned

counsel for the parties, what attracts my attention, most prominently, is that before entering into the question as to whether the penalty imposed on the petitioner is or is not disproportionate to the nature and gravity of the misconduct found to have been proved against the petitioner, this Court is required to determine as to whether the Apex Court, while passing the order, dated January 18, 1994, aforementioned, left the respondent No. 3 with the discretion, as appellate authority, to impose, on considering the charges in respect of which the petitioner has been found guilty vis-a-vis the extenuating circumstances, which emerged from the materials on record, any punishment including the punishment of removal of the petitioner from service. While determining this aspect of the matter, it would be necessary to consider the relevant observations made by the Apex Court. The observations and directions of the Apex Court, which are relevant for the purpose of disposal of this writ petition, are, therefore, reproduced hereinbelow:

"Now, coming to the facts of this case, it would appear that the main charge against the respondent is putting forward a false claim for reimbursement of expenditure incurred for transporting his belongings from Phek to Amarpur. So far as charge No. 5 is concerned there is no finding that the account became irregular or that any loss was incurred by the Bank on account of the irregularity committed by the respondent. In the circumstances, it may be that the punishment of removal imposed upon the respondent is harsh but this is a matter which the disciplinary authority or the appellate authority should consider and not the High Court or the Administrative Tribunal. In our opinion the proper course to be adopted in such situations would be to send the matter either to the disciplinary authority or the appellate authority to impose appropriate punishment for the above reasons, the appeal is dismissed with an observation that the appellate authority shall consider whether a lesser punishment is not called for in the facts and circumstances of the case. "

(Emphasis is added)

15, A careful and dispassionate reading of what has been observed and directed above by the Apex Court shows that the Apex Court was of the view that the main charge against the petitioner was "putting" forward a false claim for reimbursement of expenditure incurred for transporting the petitioner's belongings and so far as the charge No. 5 was concerned, there exists no finding that the account had become irregular or that any loss had been incurred by the Bank on account of the irregularity committed by the petitioner and that these are the circumstances, which need to be taken into account, while imposing the punishment; however, the Apex Court was also of the view that these circumstances should be taken into account and considered not by the High Court or the Administrative Tribunal, but by the disciplinary or the appellate authority. The Apex Court accordingly directed the appellate authority to consider whether a lesser punishment was not called for in the facts and circumstances of the case mentioned by the Apex Court. Howsoever, soft the words might have

been used by the Apex Court in the order aforementioned, the fact remains that the appellate authority was left with the complete discretion to take a decision on the matter of punishment after taking into account the circumstances pointed out hereinbefore. What, therefore, the appellate authority was required to do was to take into account the extenuating factors, which were noticed by the Apex Court, and, upon taking into account these factors, the appellate authority was completely free to decide the quantum of penalty. However, while considering whether the circumstances, indicated hereinbefore, required a penalty other than the penalty of removal from service, the appellate authority could not have acted arbitrarily or irrationally. Hence, though, normally, the High Court shall not interfere with the penalty if the findings are maintained, it is required, in the face of the peculiar circumstances of the present case, that this Court determines if the penalty of removal from service imposed upon the petitioner is in consonance with the spirit of the observations and directions passed by the Apex Court and, if not so, then, what relief(s) can be granted in the present writ petition.

16. The relevant portion of the decision in *Spencer & Company Ltd.* (supra) which Mr. Das relies, may be quoted hereinbelow:

"6. Ex facie Courtesy is the blend of our order of January 14, 1994. Outwardly, it is neither commanding in nature nor explicitly in terms of a direction. Such is not the sheen and tone of our order, meant as it was, far a high constitutional institution, being the High Court. It comes from another high constitutional institution (this Court) hierarchically superior in the corrective ladder. When one superior speaks to another it is always in language sweet, soft and melodious; more suggestive than directive. Judicial language is always chaste."

17. The case of the *Spencer & Company Ltd.* (supra) was entirely of a different nature. It was a case in which a direction in a suggestive form was given by the Apex Court to the High Court and in this context, the observations, quoted hereinabove, were made by the Apex Court. In the case at hand, there was no limitation on the powers of the Apex Court to give a specific direction to the appellate authority to consider imposition of penalty on the petitioner other than the penalty of removal from service. The inevitable conclusion is that by not resorting to such a clear direction, the Apex Court left the appellate authority completely free to decide as to whether, in the face of the fact that in respect of the charge No. 5, since the account had not become irregular and no loss had been sustained by the Bank as a result of the irregularity committed by the petitioner, a penalty other than the penalty of removal from service was warranted.

18. In short, in the above backdrop, I am, now, required to consider whether the penalty imposed on the petitioner needs to be interfered with and, if so, what shall be the extent of interference by this Court.

19. How far a High Court can interfere, while exercising powers under Article 226, in matters of penalty imposed by a disciplinary authority was considered in

B.C. Chaturvedi v. Union of India and Ors. (supra), and replied as follows:

"17. The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in *State of Orissa Vs. Bidyabhushan Mohapatra*, held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court had a finding that there was some evidence to reach the conclusion, it became inaccessible. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to (sic) direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in *Union of India (UOI) Vs. Sardar Bahadur*, It is true that in *Bhagat Bhagat Ram Vs. State of Himachal Pradesh and Others*, a Bench of two Judges of this Court, while holding that the High Court did not function as a Court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss cause to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In *Rangaswami Vs. State of Tamil Nadu*, a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in *State Bank of India* case where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment."

20. From what has been observed and laid down in *B.C. Chaturvedi* (supra), it clearly follows that after considering a catena of authorities, what the Apex Court held was that the disciplinary authority, and, on appeal, the appellate authorities, being fact-finding authorities, have exclusive power to consider the evidence with

a view to maintain discipline. They are the ones vested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot, ordinarily, substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief by either directing the disciplinary/appellate authority to reconsider the penalty imposed or, to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

21. While considering the case of B.C. Chaturvedi (supra), it is also of utmost importance to bear in mind that in the matter of judicial review of administrative action imposing penalty, the Supreme Court enjoys, under Article 142, far wider powers than the High Courts inasmuch as Article 142 empowers the Supreme Court to do "complete justice" in the matter, while no such power exists with the High Court. It may be noted that in B.C. Chaturvedi (supra), Hansaria, J., took the view that even the High Court and for, that matter, every Court has the power to do complete justice. The relevant observations of B.C. Chaturvedi Vs. Union of India and others,

"23. I would say that power to do complete justice also inheres in every Court, not to speak of a Court of plenary jurisdiction like a High Court. Of course, this power is not wide as which this Court has under Article 142. That, however, is a different matter."

22. In the case of Sanchalakshri and Anr. v. Vijay Kumar Raghuvirprasad Mehta and Anr. (supra), the Apex Court, while taking into consideration the observations, quoted hereinabove of Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another,

"8. Learned counsel for respondent 1 relying upon the decision of this Court in Bhagat Ram Vs. State of Himachal Pradesh and Others, submitted that penalty not commensurate with the gravity of the misconduct has to be considered as violative of Article 14. He further submitted that dismissal from service being an economic death, such a severe punishment ought not to have been imposed upon respondent 1 when by his said acts, he was not to gain any additional financial benefit. Whether he was likely to gain anything or not thereby did not have much bearing on the gravity of the misconduct. The acts committed by him constituted not only a serious misconduct but also a serious criminal offence. Learned counsel also relied upon the earlier quoted observations made by Hansaria, J., in B.C. Chaturvedi case. Really they have no relevance to the facts of this case. This is not a case where the High Court/Tribunal found any difficulty in granting an appropriate relief to respondent 1 because of some technicality of rules or procedure even though justice demanded it. Moreover, the said observations are no more than an expression of a personal view. What is to be noted is that Hansaria, J., agreed with what the other two learned Judges held as

regards the powers of the High Court/Tribunal to interfere with the order of penalty passed by the disciplinary authority. Therefore, it would not be correct to say that this Court in B.C. Chaturvedi case has accepted the view that the High Court/Tribunals possess the same power which this Court has under Article 142 of the Constitution for doing complete justice, even in the absence of such a provision."

(Emphasis is supplied)

23. The above observations made in Sanchalakshri (supra) clearly show that the power of the High Court under Article 226 of the Constitution is not as wide as that of the Supreme Court under Article 142 of the Constitution inasmuch as Article 142 empowers the Supreme Court to do complete justice between the parties. With this limitation, one has to consider the present writ petition. While under Article 142, the Supreme Court could have and can, indeed, interfere with a penalty for doing complete justice, the High Court can interfere with the penalty only if the same is irrational, biased, perverse, shocks the conscience of the Court and/or in defiance of logic. Interference on compassion by High Court, in matters of penalty, is not permissible.

24. While considering as to how far a High Court, while acting under Article 226, can (sic) interfere with the penalty imposed by a disciplinary authority, what the High Court basically decides is the "proportionality" of the penalty imposed by a disciplinary authority. The power of judicial review by High Court under Article 226 in matters of administrative action imposing penalty is somewhat circumscribed. The concept of proportionality has been dealt with in Union of India and Anr. v. G. Ganayutham, reported (supra), wherein, while dealing with the concept of "proportionality", the Apex Court observed as follows Union of India and another Vs. G. Ganayutham (Dead) by LRs.,

"8..... The point is whether judicial review powers in administrative law permit the High Court or the Administrative Tribunal to apply the principle of proportionality".

9. Before we refer to the fillings of this Court on the question of proportionality in the administrative law sphere, we shall refer to the leading cases in England on the question of judicial review of administrative action."

The Wednesbury case (1948)

"12. This case is treated as laying down various basic principles relating to judicial review of administrative or statutory discretion. Before summarising the substance of the principles laid down therein we shall refer to the passage from the judgment of lord greene Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (KB at p. 229" All ER p. 682). It reads as follows:

"..... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather

comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord greene has also observed (KB p 230 : All ER p. 683)

"..... it must be proved to be unreasonable in the sense that the Court considers it to be a decision that no reasonable body can come to. It is not what the Court considers unreasonable..... The effect of the legislation is not to set up the Court as an arbiter of the correctness of one view over another."

Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many any choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

The CCSU case (1985) and the expectation of future adoption of proportionality

"11. The principles of judicial review of administrative action were further summarized in 1985 by lord diplock in Council of Civil Service Unions v. Minister for Civil Service as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community, lord diplock observed in that case as follows:

"..... Judicial review has I think, developed to a stage to-day when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by "judicial irrationality" and the third "procedural impropriety". That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community."

Lord diplock explained "irrationality" as follows:

"By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

12. In other words, to characterise a decision of the administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future."

25. What role the Courts/Tribunals perform, in India, in the field of judicial review of administrative action in matters not involving fundamental freedom has been succinctly described, in *Union of India and another Vs. G. Ganayutham (Dead)* by LRs.,

"24. We are of the view that even in our country in cases not involving fundamental freedoms, the role of our Courts/Tribunals in administrative law is purely secondary and while applying *Wednesbury* and *CCSU* principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the Courts and Tribunals in our country can only go into the matter, as a secondary reviewing Court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of *Wednesbury* and *CCSU* tests. The choice of the options available is for the authority; the Court/Tribunal cannot substitute its view as to what is reasonable."

(Emphasis is added)

26. In the case of *Union of India v. G. Ganayutham* reported (*supra*) the position of proportionality, in the realm of administrative law, has been summed up thus *Union of India and another Vs. G. Ganayutham (Dead)* by LRs.,

28. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the *Wednesbury* test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense

that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

3(a) xxxxx xxxxx

3(b) xxxxx xxxxx

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by lord greene and lord diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether Courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

27. How far Wednesbury and CCSU tests apply, in India, in the matter of punishment in disciplinary matters, the Court, in Union of India and another Vs. G. Ganayutham (Dead) by LR.,

"30, In Ranjit Thakur this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case in B. C. Chaturvedi v. Union of India a three-judges Bench said the same thing as follows:

"75. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief either penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Similar view was taken in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, that the Court will not intervene unless the punishment is wholly disproportionate.

31. In such a situation, unless the Court/ Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational, according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the

matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C. Chaturvedi case that the Court might - to shorten litigation - think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B.C. Chaturvedi and other case referred to therein it has however been made clear that the power of this Court under Article 136 is different.)"

28. What is of immense importance to note, now is that in the case at hand there can be challenge to the imposition of penalty on ground of discrimination or on the ground of arbitrariness. If more than one person faces a disciplinary proceeding and the penalties handed over are drastically different from each other, then, the question of discrimination arises and while considering whether such a discrimination needs to be interfered with, the High Court's role is of primary reviewing authority. However, if the challenge to the quantum of penalty is not on the ground of discrimination, but on the ground of arbitrariness, then, the role of the Court will be that of a secondary reviewing authority. When the role of the Court is secondary in nature, then, the test of reasonableness as propounded in *Wednesbury* and *CCSU* cases would be applied. This aspect of the matter can be clarified by referring to the case of *Om Kumar and Ors. v. Union of India*, reported in 2001 (2) SCC 386 wherein it has been observed and held as follows:

"66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.

67. But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of *Royappa* (as in cases where punishments in disciplinary cases are challenged), the question will be whether administrative order is "rational" or "reasonable" and the test then is the *Wednesbury* test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant facts from consideration or has taken irrelevant factors into consideration or whether his view i.e. one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. (In *G.B. Mahajan v. Jalgaon Municipal Council* *venkatachaliah, J.* (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of *Wednesbury* rules. In *Tata Cellular v. Union of India*, *Indian Express Newspapers Bombay (P) Ltd. v. Union of India*, *Supreme Court Employees' Welfare Assn. v.*

Union of India and U. P. Financial Corporation v. Gem Cap (India) (P) Ltd. while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise than being discriminatory) this Court has confined itself to a Wednesbury review always.

29. What follows from a careful reading of the above observations made in Om Kumar (supra) is that when an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The Court will not, in such a case, apply the concept of proportionality as a primary reviewing Court, because no issue of fundamental freedoms nor of discrimination under Article 14 arises in such a context. If the Court, on reviewing the question of punishment, is satisfied that Wednesbury principles are violated, it shall, ordinarily, remit the matter to the administrator for a fresh decision as to the quantum of punishment and it is only in rare cases, where there has been long delay for the time taken by the disciplinary proceedings and the time taken in the Courts, can the Court substitute its own view as to the quantum of punishment

30. In short, when the role of the Court is secondary the Court will, normally remit the matter to the administrator for a fresh decision on the quantum of punishment and it is in rare cases that the Court will substitute its own views on the question of quantum of punishment, the basic test being that if the authority concerned has taken into consideration a fact, which was irrelevant in determining the question of penalty, then, interference is possible and, similarly, if the authority concerned, while determining the quantum of penalty, has not taken into consideration a relevant fact, then, too interference is permissible. If the authority concerned has not taken into account any irrelevant fact and has not omitted to take into account any relevant fact, then, interference is not possible unless the penalty imposed is biased. In other words, if none of the said two factors exists in a given case and the penalty imposed is also not biased, interference may not be possible, particularly when, in the given set of facts, the administrator has several choices of punishments and he chooses to adopt one of such choices. For the Supreme Court, however, the scope is wider inasmuch as Article 142 empowers the Apex Court, as indicated in B.C. Chaturvedi (supra), "to do complete justice", whereas no such power is available to the High Courts. However, even when the High Court takes the view that the punishment imposed is disproportionate to misconduct, it is necessary for the High Court to assign reasons. In the absence of reasons, there can be no interference with the penalty imposed, for, such interference would be nothing but arbitrary. Reference may be made to Depot Manager, APSRTC v. P.P. Basha and another (supra).

31. In view of the fact that it is basically for the disciplinary or the appellate authority (which the administrative mechanism in a given establishment provides) to determine as to what the penalty in a given set of facts in an organisation shall be and in order to ensure that this freedom is maintained, the matter, in the present case, appears to have been remitted by the Apex Court to

the appellate authority for determination if a penalty other than a penalty of removal from service is warranted. This cannot be stretched to mean, if I may reiterate, that the Apex Court had suggested to the appellate authority that a penalty other than removal from service has to be imposed on the petitioner.

32. It has been submitted by Mr. Biswas that in the face of the nature of the charges said to have been proved, against the delinquent, the charges were not of the kind, which warranted as harsh a punishment as dismissal from service. The penalty of removal from service is, according to Mr. Biswas, shockingly disproportionate to the charges said to have been proved against the petitioner. Mr. Biswas seeks to derive strength for his submission from the case of *Colour-Chem Limited v. A.L. Alaspurkar and Ors.* (supra).

33. It needs to be noted that the case of *Colour-Chem* (supra) is entirely different from the case at hand inasmuch as the charges against the delinquent were that he had fallen asleep, while on duty. There was no allegation that his falling asleep was hazardous for the working of the plant and possibility of explosion was likely to arise. In view of the fact that the charge was merely to the effect that the delinquent had fallen asleep during the working hours, the Court found the punishment of dismissal from service as shockingly disproportionate to the charges proved. It was in a given set of facts that such a conclusion was reached. The case in hand is entirely different.

34. In *Regional Manager, UPSRTC, Etawah and Ors. v. Hoti Lal and Anr.* reported (supra) it has been clearly held that the High Court, while dealing with the question of punishment, has to record reasons as to why it felt that the punishment was not commensurate with the proved charges. In *Hoti Lal* (supra), the Apex Court has also reminded the High Court that in respect of imposition of penalty on persons, who deal with public money, the High Courts shall not, normally, interfere with the choice of punishment adopted by the disciplinary authority concerned. Such a guidance can be gathered from the following observations made in *Hoti Lal* (supra) *Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another*,

"10. It needs to be emphasised that the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (See *Alexander Machinery (Dudley) Ltd. v. Crabtree*). A mere statement that it is disproportionate would not suffice. A party appearing before a Court, as to what it is that the Court is addressing its mind. It

is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned single Judge upholding the order of dismissal".

35. While considering this writ petition, one must also bear in mind, as referred to by Mr. Deb, the case of Chairman and Managing Director United Commercial Bank and others v. P.C. Kakkar (supra), wherein the Supreme Court has made the scope of interference in matters of penalty in the following words Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar,

"70. 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 Wednesbury case 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 on decision-making process and not the decision.

11. To put it differently, 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 shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the 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."

36. In the case of P.C. Kakkar (supra), the Supreme Court has struck a note of caution for the High Courts, when the question of penalty imposed on employees of a bank following departmental proceeding is sought to be interfered with. In this regard, the Apex Court observed:

"13. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the 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 organisation more particularly a bank is dependent upon each of its officers and officer 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."

37. What, thus, crystallizes from the above discussion is that while considering the question of "proportionality" of punishment imposed by an administrative authority, the power of judicial review is basically confined to the review of the decision making process. If the decision has been reached without any basis and on the basis of the materials on record, such a finding will not be, ordinarily, interfered with. If there are two views possible in a given set of facts and the administrator has adopted one of such views, the High Court will not substitute its own view in the place of the view of the administrator. When a finding of guilt is found to be correct, then, the penalty shall not be, normally, interfered with unless the sentence or penalty imposed is shockingly disproportionate to the nature and gravity of the misconduct are so irrational that no rational mind will accept the same or if the penalty is biased or perverse, i.e. wholly contrary to the materials on record. In the case at hand, there is no allegation of bias against the respondent No. 3 nor is there anything discernible from the materials on record to indicate that the penalty has been imposed in the present case out of any bias. What is, therefore, required to be determined is if the penalty is disproportionate to the nature and gravity of the misconduct? While considering this aspect of the matter, one must, as laid down in *Hoti Lal (supra)* and *P.C. Kakkar (supra)*, bear in mind that since the Bank is a repository of public trust and public money and the petitioner was at the relevant time working as a Cashier, the question of penalty to be imposed on the petitioner cannot be taken lightly. The ethos and responsibilities of an organisation, such as a bank, needs to be borne in mind by the Court, while considering the question of determination of penalty to be imposed on a bank employee.

38. Applying the *Wednesbury* and *CCSU* tests, as propounded in *G. Ganayutham (supra)* and *Om Kumar (supra)* to the facts of present case, it clearly follows, in the light of the order, dated January 18, 1994, aforementioned, passed by the Apex Court, that according to the Apex Court, the appellate authority ought to have taken into account, while determining the quantum of punishment, that in respect of charge No. 5, there is no finding that the account became irregular, and/or that the bank sustained any financial loss on account of irregularity committed by the writ petitioner. It further logically follows in the light of the directions issued by the order, dated January 18, 1994, aforementioned that the respondent No. 3 was directed by the Apex Court to take into account the said

two factors, while determining the penalty to be imposed on the petitioner. I have minutely scrutinised the present impugned order dated May 10, 1994, passed by the respondent No. 3 and I find that though the respondent No. 3, in its order, dated May 10, 1995, aforementioned, did mention that he had considered the directions given by the Apex Court in the order, dated January 18, 1994, aforementioned, the fact remains that there is not even an iota of discussion in the impugned order, dated May 10, 1994, aforementioned that the respondent No. 3 did take into account the said two factors pointed out by the Apex Court as extenuating circumstances, but even after so taking the said two factors into consideration, he (respondent No. 3) concluded that the petitioner deserved to be dismissed from service. What, thus, becomes evident from a careful scrutiny of the impugned order, dated May 10, 1995, that the respondent No. 3 has imposed the punishment of removal from service on the petitioner without carefully considering and taking into account the two relevant factors, which had been pointed out by the Apex Court in its order, dated January 18, 1994, aforementioned.

39. Situated thus, this Court, while exercising the writ jurisdiction, has really two options either to remand the case to the respondent No. 3 for passing an appropriate order by taking into account the two relevant factors as indicated hereinabove or this Court may decide for itself as to what punishment should really be imposed on the petitioner.

40. In view of the fact that though the Apex Court, despite being armed with the powers under Article 142 "to do complete justice", has opted to leave, as a secondary reviewing authority, the choice of penalty on the respondent No. 3, I am of the view that in the face of the directions given by the Apex Court, the matter needs to be remanded to the respondent No. 3 with direction to take into account the two relevant factors as indicated in the order, dated January 18, 1994, aforementioned and pass, thereafter, necessary order imposing the penalty.

41. Considering, therefore, the matters in its entirety and in the interest of justice, this writ petition partly succeeds. The impugned order, dated May 10, 1994, aforementioned, passed by the respondent No. 3 is hereby set aside and respondent No. 3 is hereby directed to consider the question of imposition of punishment on the petitioner in the light of the directions given by the Apex Court in their order, dated January 18, 1994, aforementioned and then pass necessary orders imposing penalty on the petitioner. While so imposing the penalty, the respondent No. 3 shall remain at liberty to impose, on the petitioner if in his view the materials on record so justify, such penalty as, in the opinion of the respondent No. 3, even after taking into account, the two relevant factors mentioned hereinbefore, the petition deserves to suffer.

42. However, in order to ensure expeditious disposal of the matter, the respondent No. 3 is hereby directed to dispose of the matter in terms of the directions given by the Apex Court in their order, dated January 18, 1994 aforementioned within a period of two months from today.

43. In the facts and circumstances of the case, I leave the parties to bear their own costs.