(2009) 02 GAU CK 0046

In the Gauhati High Court

Shekhar Ranjan Gupta — APPELLANT

Vs

State Bank of India and Others — RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 408, 420, 470
State Bank of India (Officers Service) Rules, 1992 — Rule 50(3), 50(4), 67

Citation : (2009) 5 GLR 614 : (2009) 4 GLT 388

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The petitioner, who was an officer in JMGS-I and posted as Assistant Manager of respondent bank, was placed under suspension vide order dated 6.11.2008 and thereafter, a disciplinary proceeding was initiated against him by issuing the charge memo dated 1.9.2003 by the Deputy General Manager/ disciplinary authority leveling the charge of misappropriation of customers money, passing of instruments for payments beyond the power vested on him and thereby failing to discharge his duties with utmost sincerity, integrity, devotion, diligence and failure to protect the interest of the bank, based on four allegations, asking him to show cause as to why the disciplinary action should not be taken against him under the provisions of the State Bank of India Officers Service Rules (the Rules) and to file the written statement of defence. The charges and allegations having been denied by the petitioner and the disciplinary authority being not satisfied with the explanation furnished by the petitioner decided to proceed with the disciplinary proceeding initiated against him and accordingly, an enquiry officer was appointed, who conducted the proceeding against the petitioner on the charges leveled against him. The enquiry officer on completion of the proceeding submitted his report with the finding that while the allegation Nos. 2, 3 and 4 levelled against the petitioner are proved, the allegation No. 1 against the petitioner has not been proved. The said enquiry report was forwarded to the petitioner by the disciplinary authority vide communication dated 8.2.2002 asking him to submit his representation and make submission within 15 days from the date of receipt of the same, against the finding recorded by the enquiry officer in the report, pursuant to which the representation dated 18.3.2002 was filed by the petitioner. The disciplinary authority thereafter vide order dated 19.8.2002 imposed the penalty of dismissal from service in terms of Rule 67(j) of the Rules. The departmental appeal filed by the petitioner on 29.2.2002 was, however, dismissed by the appellate authority on 20.5.2003. Hence, the present writ petition.

2. I have heard Mr. B.C. Das, learned senior Counsel for the petitioner as well as Mr. S.S. Sarma, learned senior Counsel for the respondents.

3. Mr. Das, learned senior Counsel for the petitioner has submitted that the impugned order of punishment awarded by the disciplinary authority cannot be sustained in law as the same has been passed on the basis of the report submitted by the enquiry officer, pursuant to an inquiry conducted by him in violation of the principles of natural justice as the petitioner was not allowed to cross-examine 3 material witnesses examined by the management in support of the charges leveled against him, particularly in respect of the allegation Nos. 2, 3 and 4, which were found to be proved by the enquiry officer. According to Mr. Das, the petitioner on 14.9.2001, i.e., the date fixed for examination of other witnesses of the management, having realized that out of emotion he declined to cross-examine the said management witnesses on 6.9.2001, filed the application with prayer to recall those witnesses for cross-examination, which the enquiry officer ought to have allowed so as to give the petitioner a reasonable opportunity to defend himself in the enquiry conducted against him. The same having not been done, the petitioner has been prejudiced as the enquiry officer has recorded the finding that allegation Nos. 2, 3 and 4 are proved on the basis of the evidence of the said 3 witnesses examined by the management, submits the learned senior Counsel.

4. The further contention of Mr. Das is that the appellate authority has by order dated 25.2.2003 rejected the appeal preferred by the petitioner against the punishment awarded by the disciplinary authority, upon consideration of his past service and the previous punishment, without giving him any opportunity and issuing any notice that his past conduct would be considered, which according to the learned senior Counsel, cannot be done by the appellate authority and hence, the order passed by the appellate authority is not sustainable in law. In support of his contention, Mr. Das has placed reliance on the decision of the Apex Court in State of Mysore Vs. K. Manche Gowda,

5. Challenging the order of the disciplinary authority imposing the penalty, Mr. Das has contended that since the disciplinary proceeding and the criminal proceeding initiated at the instance of the bank management rest on the same facts, the petitioner is entitled to be reinstated in service, having been acquitted of the charges by the criminal court. In this connection, learned senior Counsel has placed reliance on the decision of the Apex Court in G.M. Tank Vs. State of

Gujarat and Another,

6. The contra argument of Mr. S.S. Sharma, learned senior Counsel for the respondents is that as it appears from the records of the proceeding, the petitioner himself on 6.9.2001 has declined to cross-examine those 3 witnesses who are the customers of the bank and from whose accounts the petitioner has made fraudulent withdrawal and therefore the enquiry officer has rightly refused the prayer of the petitioner to recall those witnesses for cross-examination vide order passed on 14.9.2001. It has further been submitted by Mr. Sharma that in addition to the deposition of those 3 witnesses, there are ample evidences on record, which proves the allegations against the petitioner and consequently the charges are found to be proved against him. Mr. Sharma, therefore, submits that there is no violation of the principles of natural justice as the petitioner has been given all reasonably opportunity to defend himself in the disciplinary enquiry conducted against him.

7. Referring to the argument of the learned senior Counsel for the petitioner in challenging the appellate order passed by the appellate authority, it has been submitted that as it appears from the said order dated 25.2.2003, the appellate authority though has taken note of the earlier conduct of the petitioner, the appeal has not been rejected on that count alone. According to Mr. Sharma, the appellate authority has taken into consideration all the relevant materials available on record of the disciplinary proceeding conducted against the petitioner, while rejecting the appeal filed by him against the order imposing penalty. Mr. Sharma submits that in view of the above, the decision of the Apex Court in K. Manche Gowda case is not applicable in the facts of this case.

8. It has further been submitted by Mr. Sharma that the contention of the learned senior Counsel for the petitioner that since the petitioner has been acquitted from the criminal charges leveled against him in the criminal proceeding, he deserves to be reinstated in service, cannot be sustained in law as both the proceedings are distinct and different proceedings, where the nature of proof required is also completely different. While in the disciplinary proceeding it is the preponderance of probabilities and also as to whether a delinquent officer has committed any misconduct within the meaning of the Rules, in the criminal proceeding the criminal charge has to be proved beyond all reasonable doubt so as to prove the culpability of the person concerned to the crime. Hence, according to the learned senior Counsel, the acquittal of an accused from the criminal charge by the criminal court does not necessarily mean that the disciplinary action taken against such person for the misconduct is to be set aside. Mr. Sharma submits that the petitioner has been awarded with the punishment in the disciplinary proceeding initiated against him on 19.8.2002, i.e., more than 2 1/2 years before the order of acquittal recorded by the criminal court on 18.1.2005. According to Mr. Sharma, the judgment of the Apex Court in G.M. Tank case is not applicable in the present case, keeping in view the facts and circumstances involved.

9. Referring to the decision of the Apex Court in State Bank of India and Another Vs. Bela Bagchi and Others, Mr. Sharma has further submitted that as the bank officer is required to exercise higher standard of honesty and integrity, he having dealt with the money of the depositors and customers, whose duty is to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity; honesty, devotion and diligence and not to do anything which is unbecoming of a bank officer, the petitioner has been rightly punished by the disciplinary authority keeping in view the nature of allegations as well as the charges leveled against him which are found to be proved in the disciplinary proceeding conducted against him. The learned senior Counsel submits that the petitioner does not deserve any leniency in the hands of this Court keeping in view the nature of allegations proved against him.

10. I have considered the submissions of the learned senior Counsel for the parties. Also perused the materials available on record as produced by the learned senior Counsel for the respondents.

11. The petitioner has been issued with the charge memo dated 1st September, 2000 levelling the charges against him of misappropriation of customers'' money; passing of instruments for payment beyond the power vested on him; not discharging his duties with utmost integrity, honesty, devotion and diligence; failure to protect the interest of the bank, which is unbecoming of a bank official and thereby violating the provisions contained in Rule 50(3) of the Rule 50(4) of the Rules, on the basis of 4 allegations, out of which the allegation Nos. 2, 3 and 4 found to have been proved by the enquiry officer in the proceeding conducted against him and consequently the charges leveled against him also found to have been proved.

12. The article of charges framed and the allegation Nos. 2, 3 and 4 are reproduced below:

ARTICLE OF CHARGE FRAMED AGAINST SHRI S.R. GUPTA, JMGS-I FOR HIS ALLEGED LAPSES (DETAILED IN ANNEXURE-II) WHILE SHRI GUPTA WAS POSTED AT SOUTH GUWAHATI BRANCH FOR THE PERIOD FROM 28.9.1995 TO 8.11.1998.

Certain serious irregularities in Savings Bank section in the conduct of customers accounts and misappropriation of customer''s money are alleged to have been committed by you at South Guwahati Branch during your posting thereat. You had also passed instruments for payment beyond the powers vested with you. You thus did not discharge your duties with utmost integrity, honesty, devotion, diligence and failed to protect the interest of the Bank. These are unbecoming of a Bank official. In this manner, you have violated Rule 50(3) and 50(4) of State Bank of India Officers Service Rules which are applicable to you. Imputation of lapses on the basis of which the aforesaid charge(s) are based are furnished in the attached annexure-II.

Statement of imputation of lapses:

Allegation No. ? 1....

Allegation-2.

One Smt. Baijayanti Naha and Smt. Ratna Naha holder of S/B A/c No. , Oil 90021465 called at South Guwahati Branch on 29.5.1998 for opening of a Savings Bank and Fixed Deposit Accounts in their joint names. They sought your assistance at the Branch for opening of the above accounts as they were not aware of the Bank''s procedures. The initial deposit of Rs. 500 for opening of the account was collected by you from them for cash deposit at the counter and the account was opened with your introductory reference. You filled up number of forms and obtained their signatures. Thereafter they wanted to open a Fixed Deposit Account for Rs. 50, 000 by depositing a draft for Rs. 50, 000 in their account drawn on UBI through you. The proceed of the draft was credited to their SB account on 1.6.1998.

When Smt. Naha approached you to open Fixed Deposit account for Rs. 50,000 out of the proceeds of the draft deposited into their account, you obtained an withdrawal form for Rs. 50,000 dated 30.8.1998 duly signed from them on their SB account No. 01190021465. You accompanied the account holder to SB counter to present the withdrawal form and collected the relative token from them for presenting it to the cash counter for opening of their Fixed Deposit account. Thereafter, instead of depositing the amount for their fixed deposit account, you obtained Rs. 50,000 from the relative cash counter on 30.6.1998. Mrs. Manjushree Dey and Ms. Soma Naha, Assistants, South Guwahati Branch confirmed this vide their statements dated 30.10.1998 and 4.11.1998 respectively. It is therefore alleged that:

(a) You collected Rs. 50, 000 from cash counter on 30.8.1998 against surrender of token of Smt. Naha and neither deposited the amount for their Fixed Deposit account nor handed over the amount to Smt. Naha.

(b) You delivered a hand written Pass Book to Smt. Naha in respect of their joint Savings Bank account duly signed and confirming the entries therein by you. But as per laid down instructions to handwritten pass book can be issued in fully computerized branches. The South Guwahati Branch was fully computerized at the material time. Therefore, the hand written pass book was issued by you violating the Bank''s instructions and to deceive the customers. The acknowledgement for delivery of this irregular pass book was also not obtained by you.

(c) Smt. Baijayanti Naha called on you on 4.6.1998, 5.6.1998 at the branch and on several others dates to collect their fixed deposit receipt. You were misrepresenting the facts to them. Further you told them that the instrument deposited by them was not cleared and it will take some more days to collect the same when you called on them at their residence on 31.7.1998, 2.8.1998 (Sunday), 29.8.1998, 17.8.1998 and 16.9.1998 and many other occasions. You were thus deliberately misrepresenting the facts to Smt. Naha only to keep your misappropriation of Rs. 50, 000 concealed despite the fact that the amount was credited in their account on 1.6.1998.

(d) On 19.9.1998 you called on Smt. Naha at her house and handed over to her an envelope containing Rs. 2166. You told Smt. Naha that the amount being the monthly interest of their Fixed Deposit Account. On receipt of this Smt. Baijayanti Naha became suspicious and called on South Guwahati Branch to find out the procedure for payment of interest on fixed deposit by the Bank. Smt. Naha at that point of time came to know that the fixed deposit account was not opened in their names. You thus misappropriated the sum of Rs. 50,000 and deceived the customer. You did not return the same to Smt. Naha despite your promise/assurance to them. The aforesaid cheque was delivered with a small chit signed by you on 24.9.1998 for encashing the same on 10.10.1998. But the cheque could not be encashed by Smt. Naha due to insufficient fund in you''re a/c despite their enquiry with the branch for the purpose on several occasions and under direction from you. You also made several commitments for returning the sum of Rs. 50,000 to them. You also furnished a written undertaking dated 27.10.1998 in precence of the Chief Manager, South Guwahati Branch to Smt. Naha for returning the amount to them. But you did not keep your commitments/ promise. Smt. Baijayanti Naha alleged all these in her complained and statements dated 21.9.1998, 27.10.1998 and 4.11.1998.

Alkgation-3.

(a) Sri K.P. Nandi holder of Joint Savings Bank Account No. 01190011267 complained to the Bank that withdrawal of Rs. 24,000 dated 16.6.1998 from his above joint SB account was not made by him. The said withdrawal slip for Rs. 24,000 dated 16.6.1998 vide Sl. No. 7 dated 16.6.1998. It is, therefore, alleged that you have fraudulently drawn the above withdrawal slip for Rs. 24,000 dated 16.6.1998 passed it for payment and received cash payment of the said withdrawal and misappropriated the amount.

(b) It is alleged that the deposit of Rs. 14,500 and Rs. 4,000 tendered by Shri K.P. Nandi for credit to his joint S/B Account No. 01190011267 on 6.2.1998 and 4.4.1998 respectively have been misappropriated by you. You have entered the relative entries of Rs. 14,500 and Rs. 4,000 in the joint S/B account Pass Book of Shri K.P. Nandi on the respective dates under your initials although the amount was not actually deposited in the Bank.

(c) There are anomalies between the Pass Book and ledger account of Shri K.P. Nandi although the entries in the pass book were initialed by you. It is, therefore, alleged that in order to remove the anomalies as detailed below and in settlement of the amount misappropriated by you, you issued a cheque No. 568053 dated 30.8.1998 for Rs. 42,210,92 in favour of Shri K.P. Nandi drawn on your S/B Account No. 01190095196. The said cheque was handed over to Shri Nandi on 11.8.1998 by you and requested him to encash it, if the amount is not refunded within 30.8.1998.

+ 24,000.00 - Fraudulently withdrawn on 16.6.1998. + 14,500.00 - Credit shown in Pass Book on 6.2.1998 but no credit reflected in the account with the Bank. + 4,000.00 Credit shown in the Pass Book on 4.4.1998 but no credit reflected in the account with the Bank. 42,500.00 Interest shown in the account with the Branch not in 289.15 Pass Book. 42,210.85 + 0.07

(d) You had visited Shri K.P. Nandi at his residence on 3.11.1998 at about 8.30 p.m. and gave him Rs. 21, 000 in cash against part settlement of the amount misappropriated by you.

(e) You have issued several personal letters to Shri and Smt. Nandi assuring refund of the amount due to them.

(f) South Guwahati Branch was fully computerized w.e.f. 21.6.1997 and the systems of issuing computerised Pass Book conversion of old pass books to computerized Pass Books was introduced. You as S/B section In-charge had allowed hand written Pass Book to be continued particularly in respect of the S/B account of Shri and Smt. Nandi in violation of Bank''s instructions. Most of the entries in the Pass Book were made and authenticated by you.

Allegation-4.

It is alleged that the following amounts were fraudulently withdrawn on different dates from the S/B A/c No. 01190009698 of Smt. Geeta Dey and misappropriated by you.

Rs. 30,000 on 3.8.1998.

Rs. 5,000 on 27.3.1998.

Rs. 5,000 on 30.3.1998.

(a) The signatures appearing on the withdrawal forms do not tally with the recorded signature.

(b) The withdrawal form dated 9.3.1998 and 30.3.1998 for Rs. 30,000 and Rs. 5,000 were passed for payment by you through your Cash Scroll "E" against Sl. Nos. 63 and 57 on 9.3.1998 and 30.3.1998 respectively and the payments thereof were taken by you from the paying cashier.

(c) The Cash Payment of the withdrawal slip dated 27.3.1998 for Rs. 5,000 was also taken by you from the Teller counter.

(d) The withdrawal for Rs. 30,000 on 9.3.1998, was passed for payment by you beyond the passing powers delegated to you and in violation of the Bank''s instructions only to misappropriate the amount.

The allegation No. 1 levelled against the petitioner, however, has been found to be not proved by the enquiry officer in his report.

13. It is the contention of the petitioner that he has been denied the reasonably

opportunity to defend himself in the proceeding conducted against him by not allowing him to cross-examine the 3 witnesses who are the customers of the bank and from whose account there were fraudulent withdrawals of the amount and on the basis of whose evidence the enquiry officer has recorded his finding that the allegation Nos. 2, 3 and 4 and the consequential charges levelled against him are proved. It appears from the materials available on record that on 27.8.2001, i.e., the date fixed for recording the evidence of the witness of the management in support of the charges, though 4 witnesses, namely, Smt. Baijayanti Naha, Smt. Ratna Naha, Sri K.P. Naha and Smt. Geeta Dey were present, the statement of Smt. Baijayanti Naha was partly recorded in presence of the charged officer, fixing 3.9.2001 as the next date at the request of the charged officer as the defence representative did not turn up, for which reasons the statements of the other witnesses present could also not be recorded. On the next date fixed, i.e., on 3.9.2001, the statements of Smt. Geeta Dey and Smt. Baijayanti Naha were recorded in presence of the charged officer as well as the defence representative. On completion of recording the statement of those witnesses, they were tendered for cross-examination, but the charged officer declined to cross-examine them on the ground that he has already denied all the allegations and charges leveled against him and that the bank has fabricated certain complaints of certain customers. Consequently, the witnesses were discharged. On the next date fixed, i.e., on 6.9.2001, the charged officer made a prayer before the enquiry officer to allow him to cross-examine those 3 witnesses, which according to him, he declined to do so on the last date out of emotion and nervousness and after a second thought he has decided to cross-examine those witnesses. The enquiry officer rejected such request on the ground that those witnesses who are the customers (outside witnesses) have already been called twice and they have shown their genuine problem in coming again and again. The management thereafter examined 3 witnesses namely Sri P. Choudhury, Mrs. S. Paul and Sri D. Khatlery in support of the charges. The defence representative on that day partly cross-examined the witness Sri P. Choudhury who was subsequently cross-examined on 14.9.2001. The other witnesses namely Mrs. S. Paul and Mr. D. Khatlery were also cross-examined by defence representative on 14.9.2001. The management also examined two more witnesses namely Smt. Soma Nandi and Mrs. Manjushree Dey on that day who were duly cross-examined by the defence representative. All these witnesses namely Sri P. Choudhury, Mrs. Susmita Paul, Smt. Manjushree Dey, Sri D. Khatlery and Smt. Soma Nandi are the officers of the bank who proved various documents and deposed in support of the charges leveled against the petitioner. They have also been cross-examined by the petitioner though this defence representative.

14. It appears from the enquiry report submitted by the enquiry officer that the allegation Nos. 2, 3 and 4 are found to be proved, not on the basis of the evidence of Smt. Baijayanti Naha, Sri K.P. Naha and Smt. Geeta Dey alone, but also on the basis of the evidence of Smt. Manjushree Dey, Smt. Soma Nandi, Sri

P. Choudhury, Smt. S. Paul and Sri D. Khatlery, who have been examined and cross-examined by the charged officer, apart from the documentary evidence being Exts. 11, 12, 14, 16, 18, 19, 24, 29, 30, 31, 32, 33 and 34, which documents have been proved by those witnesses who are the officers of the bank. Therefore, even if the evidence of those 3 witnesses, who are the customers of the bank, namely, Smt. Baijayanti Naha, Sri K.P. Naha and Smt. Geeta Dey are left out of consideration, the enquiry officer''s report reveals that there are ample evidences on record to record the finding that the allegation Nos. 2, 3 and 4 and the consequential charges leveled against the petitioner have been proved. It appears from the disciplinary proceeding that these 3 witnesses were tendered for cross-examination. In fact, the petitioner has declined to cross-examine these witnesses when tendered, but subsequently on the next date fixed has prayed for allowing them to cross-examine, which in my view, has rightly been rejected by the enquiry officer, they being not the official witnesses but the customers of the bank, who cannot be compelled to come again and again at the sweet will of the petitioner. The first contention of the petitioner that the proceeding conducted against him is bad in law having conducted in violation of the principles of natural justice cannot therefore be accepted and hence rejected.

15. The next contention of the petitioner that since the appellate authority while rejecting the appeal preferred by him vide order dated 25.2.2003 took into consideration his past conduct without any notice and hence the appellate order is liable to be set aside, also cannot be accepted, as the appellate authority did not reject his departmental appeal on the ground of his past conduct only. It appears from the order dated 20.5.2003 passed by the appellate authority that all the materials available on record of the disciplinary proceeding were taken into consideration while passing the said order. The appellate authority, however, has noticed the earlier punishment awarded to the petitioner, awarding of which, however, has not been denied by the petitioner even in the present writ petition. Simply because previous punishment awarded to the petitioner has been taken note of, it would not render the appellate order illegal. The decision of the Apex Court in K. Manch Gowda case, on which the learned senior Counsel for the petitioner has placed reliance, cannot be of any help to the petitioner, as in that case, the punishment of dismissal from service was awarded to the officer concerned by the disciplinary authority mainly on the basis of the previous punishment of the officer. The Apex Court has interfered with such penalty imposed having found that the authority might not have imposed the penalty of dismissal from service and might have accepted the recommendation of the enquiry officer and the Public Service Commission to reduce him in rank. In the instant case, the disciplinary authority while passing the order imposing penalty did not take into consideration the previous record of the petitioner and has independently passed the order based on the materials available on the record of the disciplinary proceeding. The appellate authority though noticed the previous punishment awarded to the petitioner, the same is, however, not the main

consideration for rejecting the departmental appeal filed by him, as the appeal has been rejected keeping in view the materials available on the record of the disciplinary proceeding and the order passed by the disciplinary authority.

16. As noticed above, the petitioner has been inflicted with the punishment of dismissal from service by the disciplinary authority vide order dated 9.8.2002 upon consideration of the enquiry report submitted by the enquiry officer as well as other materials available on the record of the enquiry proceeding conducted against him, on the basis of charges and allegations reproduced above. A criminal proceeding being GRI No. 5299/98 u/s 470/408, IPC has also been initiated against the petitioner, where the charges u/s 420/408 were framed. The criminal court vide judgment and order dated 18.1.2005 acquitted the petitioner from the charges leveled against him, i.e., the charges as to whether the petitioner has cheated the customers of the bank by dishonestly introducing the bank to deliver certain sum from the accounts of the customers and whether the petitioner was entrusted with a cheque of certain amount by the drawer being the employee of the bank and thereby committed criminal breach of trust.

17. The standard of proof in a disciplinary proceeding initiated against an officer and the standard of proof in a criminal proceeding are different, while in case of former, it is preponderance of probabilities and in the latter, proof beyond all reasonable doubt. The scope of these two proceedings is different, while in the criminal proceeding, the culpability of the accused in commission of crime is seen, in the departmental proceeding against the delinquent the desirability of the officer of continuing in service is required to be considered, keeping in view the allegations leveled against him and whether such allegations, when proved, constitute misconduct. A person though may not be convicted in a criminal proceeding launched against him, he may be dealt with departmentally in a departmental proceeding initiated against him, subject of course to the commission of misconduct.

18. In G.M. Tank (supra), the Apex Court while noticing the facts and evidence in the departmental as well as in the criminal proceeding in the said case, has held that when there was an honourable acquittal of the employee during the pendency of the proceeding challenging the dismissal, the same requires to be taken note of, as the distinction which is usually proved between the departmental and the criminal proceedings on the basis of the approach and the burden of proof was found to be not applicable in the said case. In that case, the charges, against the appellant therein in the departmental enquiry was accumulation of asset which was very much in excess than his known and legal source of income, and the charges in the criminal case under the provisions of the Prevention of Corruption Act was found to be identical and based on same set of facts and the evidence of same set of persons.

19. In the instant case, the charges leveled against the petitioner in the departmental proceeding and in the criminal proceeding are not same and identical. The charges leveled against the petitioner in the criminal case are as

follows:

(1) Whether the accused cheated the customers of the informant bank by dishonestly inducing the bank to deliver Rs. 18,500, Rs. 50,000 and Rs. 40,000 from the account of the customers, as alleged.

(2) Whether the accused was entrusted with a cheque for Rs. 50,000 by the drawer being the employee of the informant bank and he committed criminal breach of trust in respect of the said cheque, as alleged.

The charges leveled against the petitioner in the departmental proceeding as reproduced above, apart from the misappropriation of customers'' money are also passing of the instruments for payment beyond the powers vested on him, not discharging his duties with utmost integrity, honesty, devotion, diligence and failure to protect the interest of the bank which is unbecoming of a bank official. The allegations on which the charges are based are also not identical. That being the position, the decision of the Apex Court in GM Tank case is not applicable in the case in hand.

20. The charges and the allegations made against the petitioner, which have already been reproduced above and found to be proved, are very serious in nature, more so when the petitioner is an officer of the bank, on whom the trust has been reposed by the customers and hence no leniency can be shown. The Apex Court in Bela Bagchi case has observed that a bank officer is required to exercise higher standard of honesty and integrity as he deals with the money of the depositors and the customers. The officers and the employees of the bank are required to take all possible steps to protect the interest of the bank and to discharge their duties with utmost integrity, honesty, devotion and diligence and not to do anything which is unbecoming of an officer of the bank. The very discipline of an organization, more particularly of a bank is dependent upon its officers and the officers acting and operating within their allotted sphere. Acting beyond ones authority is by itself a breach of discipline and his misconduct.

21. In view of the aforesaid discussions, I do not find any merit in the writ petition and, hence, it is dismissed. No casts.