

(2014) 03 MEG CK 0001
In the Meghalaya High Court
Case No : Writ Petition (C) No. 346 of 2009

Shri. Hrishikesh Bhattacharjee	Vs	APPELLANT
The Indian Bank and Others		RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 309

Citation : (2014) 3 GLD 295 : (2014) 2 GLT 208 : (2014) 2 LLJ 744

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : B.K. Das, for the Appellant; S.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—Heard Mr. B.K. Das, learned counsel appearing for the petitioner and Mr. S.P. Sharma, learned counsel appearing for the respondents-Bank. By this writ petition, the petitioner who was serving as clerk/shroff in the Indian Bank is assailing the order dated 31.03.2008 for imposing penalty of "compulsory retirement with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due to otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment" in terms of Regulation 6(c) of the Memorandum of Settlement dated 10.04.2002 between the Banks and the Workmen Association and the period of suspension from 11.07.2005 till date is treated as one on suspension only and also the order of the appellate authority dated 22.05.2009 for dismissing the appeal filed by the petitioner against the order dated 31.03.2008.

2. This Court is of the considered view that it may not be required to mention the factual aspects of the present writ petition in detail inasmuch as, the fact of the case of the petitioner as well as that of the respondents had been discussed in detail in the impugned order dated 31.03.2008 and the order of the appellate authority dated 22.05.2009. Accordingly, only the brief facts sufficient for

deciding the issues called for consideration in the present writ petition are mentioned in thumbnail.

3. The petitioner had joined in the category of clerk/shroff in 1989 recruited by BSRB, NEG, Guwahati. It is stated that the petitioner discharged all his assigned responsibilities and duties without any blemish and with utmost sincerity and integrity and also immediate superiors of the petitioner in recognition of the sincere service of the petitioner had issued an Appreciation Certificate to the petitioner. To the utter surprise, the petitioner received an explanation notice dated 01.06.2005 issued by the Deputy General Manager, leveling as many as 13(thirteen) allegations for misappropriation of Rs. 2,88,150/- (Rupees two lacs eighty eight thousand one hundred fifty) only pertaining to Tiny Deposit Scheme (for short "TDS") of the Bank during the periods from 01.09.2002 to 28.02.2003 and 01.09.2004 to 28.02.2005. The said explanation notice dated 01.06.2005 (Annexure-3 to the writ petition) reads as follows:-

COG/VIG/S-11/96/05-06

VIGILANCE DEPARTMENT INDIAN BANK CIRCLE OFFICE, NABAGRAHA ROAD, SILPUKHURI, GUWAHATI-781003.

01.06.2005

CONFIDENTIAL

Mr. H. Bhattacharjee, SR No. 26585 Clerk/Shroff, Indian Bank, Shillong.

Dear Sir,

MISAPPROPRIATION IN THE TINY DEPOSIT ACCOUNTS AT SHILLONG BRANCH.

It has been reported to me that while working at Shillong branch, you were assigned the tiny deposit section from 01.09.2002 to 28.02.2003 and 01.09.2004 to 28.02.2005 during which following irregularities were committed in the tiny deposit portfolio:

1. The procedure for opening of new accounts was not followed. The depositors never came to the branch to open the account and they did not sign in front of the officer looking after the scheme. The branches neither obtain the proof of address nor insisted for the photograph of the depositor. The account was introduced by the tiny deposit agent himself.
2. The tiny deposit agent had engaged sub agents for collection of deposits which though was in your knowledge but the same was not brought to the knowledge of the branch manager or the controlling office.
3. The tiny deposit cards were never treated as numbered items. The tiny deposit cards were printed by the branch locally in spite of these being numbered items.
4. No record for receipt/issue of tiny deposit cards to the tiny deposit agent was

maintained in the branch.

5. Balance confirmation was obtained by the tiny deposit agent and no verification of the same was done by the concerned clerk/desk officer/ABM or the Branch Manager.

6. The procedure of closing of the accounts was also not followed.

7. The matured deposits were not transferred to the overdue deposit.

8. The balance confirmation certificate was submitted to the controlling office without actually getting the same from the customer.

9. The correct accounting procedure was also not followed in the tiny deposit scheme.

10. The guidelines for allowing the loans against the tiny deposit account were also not followed.

11. The sub agents were visiting the branch and making entries in the tiny deposit collection register in the branch but you did not bring this fact to the notice of the branch manager/ABM.

12. You also worked as a sub agent of the tiny deposit agent from Nov. 2001 till Dec. 2003 without informing the branch management or without obtaining any permission from the competent authority of the bank. You therefore violated the norms of the bank and suppressed the facts by not intimating the same to the branch manager.

13. You misappropriated large sum of money from the daily collections by not depositing the same with the tiny deposit agent or with the branch. The total amount misappropriated by you comes to Rs. 2,88,150.00.

You therefore suppressed the information which has led to misappropriation in the tiny deposit portfolio to which you were also a part. By this act you not only failed to protect the interest of the bank but committed gross violation of the norms of the bank.

Please let us have your explanation on the above 10 days from the date of receipt of this letter, failing which it will be construed that you have no explanation to offer and the matter will be further proceeded with.

Yours faithfully,

Sd/-

Deputy General Manager.

4. The petitioner was also placed under suspension vide order dated 11.07.2005 effective from 18.07.2005. In the interregnum, again a second show cause notice dated 26.04.2006, calling explanation from the petitioner for serious irregularities committed by him under the Tiny Deposit Portfolio was issued by

the Deputy General Manager & Circle Head/Disciplinary Authority and the second show cause notice dated 26.04.2006 (Annexure-8 to the writ petition) reads as follows:-

COG/VIG/S-11/96/05-06

VIGILANCE DEPARTMENT INDIAN BANK CIRCLE OFFICE, NABAGRAHA ROAD, SILPUKHURI, GUWAHATI-781003.

26.04.2006

CONFIDENTIAL

Mr. H. Bhattacharjee, SR No. 26585

Clerk/Shroff (Under Suspension) Indian Bank, Shillong.

Dear Sir,

SHOW CAUSE NOTICE

I refer to our letter No. COG/VIG/S-11/96/05-06 dated 01.06.2005 calling for explanation for serious irregularities committed by you in the tiny deposit portfolio. I have carefully gone through the replies submitted by you vide your letter dated 16.07.2005 which were not found satisfactory.

You are therefore charged as under:

1. You yourself worked as a sub agent of the tiny deposit agent from Nov. 2001 till Dec. 2003 without informing the branch manager or without obtaining any permission from the competent authority of the bank. You therefore violated the norms of the bank and suppressed the facts by not intimating the same to the branch manager.
2. The tiny deposit agent had engaged other sub agents for collection of deposits which, although was in your knowledge but you did not bring to the knowledge of the Branch Manager or the Controlling Office.
3. The sub agent were visiting the branch and making entries in the tiny deposit collection register in the branch but you did not bring this fact to the notice of the Branch Manager/ABM.
4. You misappropriated an amount of Rs. 2,88,150.00 from the daily collections you unauthorizedly made from the tiny deposit customers of Shillong branch, by not depositing the same with either the tiny deposit agent or with the branch.
5. While you were functioning in the tiny deposit section, you did not follow the procedure of closing of the accounts as per the banks guidelines.
6. While you were functioning in the tiny deposit section, you did not transfer the matured deposits to the overdue deposit.

You therefore did not perform the assigned task with full honesty and devotion

and also suppressed the information which has led to misappropriation in the tiny deposit portfolio to which you were also a part. You violated the extant guidelines of the Bank by acting as sub agent of the tiny deposit agent of Shillong Branch. By this act you not only failed to protect the interest of the bank but committed gross violation of the norms of the bank.

Your above acts, if proved would be construed as "Gross Misconduct" under the following clauses of Memorandum of Settlements dated 10.04.2002 between the Bank and the Workman Association.

5(a) "engaging in any trade or business outside the scope of his duties except with the written permission of the Bank"

5(d) "Willful damage or attempt to cause damage to the property of the Bank or any of its customers"

5(j) "Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss."

Please show cause as to why disciplinary action should not be taken against you. Your reply should reach us within 10 days from the date of receipt of this letter failing which it would be deemed that you have no explanation to offer and the matter shall be proceeded with.

Yours faithfully,

Sd/-

Deputy General Manager.

5. The petitioner submitted his show cause explanations to the said charges and in his letter, the petitioner had denied all the charges leveled against him. It is also stated by the petitioner that the said charges leveled against were him on the basis of the findings of the Internal Investigation Report dated 23.05.2005 and Vigilance Report dated 30.05.2005 which are not correct. The disciplinary authority, after consideration of the show cause explanation submitted by the petitioner, had decided to hold the departmental enquiry for the said 6(six) articles of charge and accordingly, the departmental enquiry against the petitioner had been initiated under the letter of the Assistant General Manager/ Disciplinary Authority dated 25.11.2006 (Annexure-13 to the writ petition) which reads as follows:-

COG/VIG/S-11/299/06-07

VIGILANCE CELL CIRCLE OFFICE, NABAGRAHA ROAD, SILPUKHURI, GUWAHATI-781003.

Dated: 25.11.2006

CONFIDENTIAL

Mr. H. Bhattacharjee, SR No. 26585 Clerk/Shroff (Under Suspension) Indian Bank, Shillong.

Dear Sir,

ARTICLES OF CHARGE

Your explanation was called for by the Circle Head Office Guwahati vide letter No. COG/VIG/S-11/96/05-06 dated 01.06.2005 for certain irregularities committed by you while functioning in the tiny deposit section of Shillong Branch from 01.09.2002 to 28.02.2003 and 01.09.2004 to 28.02.2005. As your reply dated 16.07.2005 was not found satisfactory, a show cause notice was issued on 26.04.2006. However, there was no reply from you to the said show cause notice.

You are therefore charged as under:

1. You worked as a sub agent of the tiny deposit agent from Nov. 2001 till Dec. 2003 without informing the branch management or without obtaining any permission from the competent authority of the bank. You therefore violated the norms of the bank and suppressed the facts by not intimating the same to the branch manager.
2. You misappropriated large sums of money from the daily collections by not depositing the same with the tiny deposit agent or with the branch. The total amount misappropriated by you comes to Rs. 2,88,150.00.
3. You had full knowledge that the depositors never came to the branch to open the account and they did not sign in front of the officers looking after the scheme. You also knew that the tiny deposit accounts were introduced by the tiny deposit agent himself, but you did not bring these facts to the knowledge of the Branch Manager/Assistant Branch Manager.
4. Besides acting as a sub-agent, you had full knowledge of the engagement of other sub-agents for collection of deposits by the tiny deposit agent, but the same was not brought to the knowledge of the branch manager or the controlling office.
5. You did not undertake maintenance of proper record for receipt/issue of tiny deposit cards to the tiny deposit agent in the branch. Though you had full deposit collection register in the branch, you did not bring this fact to the notice of the branch manager/ABM.
6. You therefore suppressed the information which has led to misappropriation in the tiny deposit portfolio to which you were also a party. By this act you not only failed to protect the interests of the bank but committed gross violation of the norms of the bank.

Your above acts are prejudicial to the interest of the bank.

Your above acts, if proved would constitute Gross Misconduct under clause 5(a) & (j) of the memorandum of settlement on Disciplinary action procedure for

workmen dated 10th April 2002.

I. 5(a) "engaging in any trade or business outside the scope of his duties except with the written permission of the Bank"

II. 5(j) "Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss."

It has been decided to conduct an enquiry into the above charges and Sri. Tapan Chakraborty, Manager, Circle Office is appointed as Inquiry Officer. The Inquiry Officer will intimate you the date and time of enquiry. The enquiry will be conducted as per the procedure laid down in the Memorandum of Settlement dated 10th April, 2002. You may offer your explanation atleast three days before the date of enquiry in defence of the enquiry.

Please note that the enquiry may be proceeded with, in your absence, if you do not appear at the appointed date, time & place of enquiry.

Yours faithfully,

Sd/-

(J.V.L.N. Sastry)

Assistant General Manager/Disciplinary Authority.

6. The respondents in their joint affidavit stated that as per the Internal Investigation Report dated 23.05.2005 and Vigilance Report dated 30.05.2005, the petitioner was found engaged as sub-agent of the Tiny Deposit Agent in utter violation of the service rules of the bank without informing the respondents Bank Branch Manager which caused serious hindrance to the bank in maintaining financial discipline and administration. Moreover, the system and procedure were not followed by the petitioner in respect of:

- i. Opening of Accounts.
- ii. Custody of Tiny Deposit Cards.
- iii. Exchange of three foil cards and ostentation of balance confirmation.
- iv. Procedure of allowing loan against tiny deposit.
- v. Closing of accounts.
- vi. Matured deposit not transferred to overdue deposit.
- vii. Submitting certificates of balance confirmation with regard to Tiny Deposit to the controlling office without actually getting the same.

Copy of the Internal Investigation Report dated 23.05.2005 and Vigilance Report dated 30.05.2005 are enclosed with the writ petition as Annexure-14 and Annexure-15 respectively.

7. It is stated that the petitioner also requested the enquiry authority to furnish 10(ten) documents viz:

(1) List of accounts, with names and addresses from whom the CSE is alleged to have collected money for tiny deposit.

(2) Opening forms with specimen signatures of all the above accounts.

(3) TD Cards and balance certificate related to all the above accounts for the period from 2000 to 2003.

(4) Ledger extract of the Tiny Deposit Ledger for the above accounts for the period of 2000 to 2003.

(5) Copies of the complaint regarding short credit received from the above account holder, if any.

(6) Cash Deposit challan along with enclosures for the case Deposited in the above account on 10.03.2005 (Rs. 1,17,00/-) 18.03.2005 (Rs. 23,150) 31.03.2005 (Rs. 90,400/-) 02.04.2005 (90,400/-).

(7) Office order related to work allocation of the staff and officers from 01.09.2002 to 01.09.2004.

(8) Copy of the FIR filed by the Bank with police.

(9) Copy of the charge sheet framed by the police after investigation.

(10) Certified extract of the reply of the explanation received by the Bank from Manager/Asst. Manager Branch Manager/Officer who worked at Shillong Branch during the period from 2000 to 2003 in the matter of their knowledge about engagement of CSE as the sub-agent (Shri. S.P. Deb, Shri. A.K. Bajpayee, Smti. M.Q. Bareh, Shri. Ranjan Mokhapadhyia, Shri. F.W. Majaw and Sri. Aseem Verma).

8. The petitioner had submitted his show cause explanation dated 06.06.2006 wherein, the petitioner had denied all the charges leveled against him. The petitioner also filed a representation/letter dated 15.02.2008 to the Assistant General Manager & Disciplinary Authority requesting him to arrange to pay any due subsistence allowance w.e.f. 18.07.2006 before 22.02.2008 to enable him to appear before the authority for personal hearing. In the departmental proceeding against the petitioner for the said charges, the prosecution side i.e. the Department side not only produced the witnesses but also the documents to bring home the charges leveled against the petitioner. In the writ petition, it is not the case of the petitioner that the disciplinary proceeding was in violation of natural justice and also the petitioner was not given a fair chance to put up his case and also the petitioner was not allowed to participate in the disciplinary proceeding.

9. The enquiry officer after full length departmental enquiry and also after giving an ample opportunity to the petitioner to put up his case, and also after appreciation of oral and documentary evidence of the parties, submitted the

Enquiry Report dated 31.10.2007 (Annexure-20 to the writ petition). On perusal of the enquiry report, it is clear that the petitioner was permitted to bring his defence assistant. The enquiry officer in his report dated 31.10.2007 had discussed in detail of each of the charges as well as oral and documentary evidence in support of the respective case of the parties. The enquiry officer by giving the reasons had come to the conclusion that in respect of charge sheet No. COG/VIG/S-11/299/06-07 dated 25.11.2006 issued to Shri. Hrishikesh Bhattacharjee (writ petitioner) as per his opinion derived on the basis of the documents/evidences/witnesses produced in the enquiry the charge No. 1, 2, 4 & 6 are proved in full and charge No. 5 is partially proved. The portion of the enquiry report dated 31.10.2007 which shows the documents as well as the statements of the witnesses relied on, allowing the petitioner to cross examine the prosecution witnesses as well as permitting the petitioner to produce defence assistant are quoted hereunder:-

FINDINGS OF SRI TAPAN KUMAR CHAKRABARTY, ENQUIRY OFFICER, MANAGER (SR NO) OF INDIAN BANK, CIRCLE OFFICE, GUWAHATI IN CONNECTION WITH THE DEPARTMENTAL ENQUIRY CONDUCTED BY HIM FOR THE CHARGE SHEET NO. COG/VIG/S - 11/299/06-07 DATED 25.11.06 ISSUED BY THE ASSISTANT GENERAL MANAGER/DISCIPLINARY AUTHORITY, CIRCLE OFFICE, GUWAHATI TO SRI HRISHIKESH BHATTACHARJEE, SR NO. 26585, CLERK/SHROFF OF SHILLONG BRANCH (UNDER SUSPENSION)

PREAMBLE

Sri Hrishikesh Bhattacharjee, SR No. 26585, clerk/shroff of Shillong Branch was issued one charge sheet No. COG/VIG/S - 11/299/06-07 dated 25.11.06 by Assistant General Manager/Disciplinary Authority, Circle Office, Guwahati wherein certain charge were framed against him (CSE).

I was appointed as Enquiry Officer (EO) by Assistant General Manager/Disciplinary Authority, Circle Office, Guwahati vide letter No. COG/VIG/S - 11/307/06-07 dated 25.11.06 to conduct Departmental Enquiry into the charges leveled against Sri Hrishikesh Bhattacharjee.

Sri D. Mohan SR No. 16743, Manager, Circle Office, Guwahati was appointed as Presenting Officer (PO) vide letter COG/VIG/S - 11/308/06-07 dated 25.11.06 in the Departmental Enquiry to be conducted by me.

SUSPENSION

The employee was placed under suspension with effect from 11.07.05 on account of the irregularities alleged to have committed by him.

CSE's REPLY TO CHARGE SHEET

CSE has not replied to the charge sheet.

DETAILS OF DATES & VENUES OF ENQUIRY

FACILITIES ALLOWED TO CSE

1. Defence Assistant:

At the request of CSE vide his letter dated 24.01.07, CSE was permitted to bring Sri Pradosh Kanti Deb Roy, SR No. 12426, Special Assistant, Guwahati Branch as his Defence Assistant in the Enquiry.

2. Witness:

CSE requested to produce 1) Sri R.N. Dixit, Senior Manager (BM) of Bankura Branch, 2) Sri Debabrata Sharma as Defence Witness in the Enquiry. But as PO has also requested to produce Sri R.N. Dixit as Management Witness, Sri Dixit. Since the whereabouts of Sri Debabrata Sharma is not known, he could not be produced in the Enquiry as Defence Witness. Further, CSE presented himself as Defence Witness in the Enquiry.

CSE/Defence Assistant requested for spot visit during the course of enquiry, which could not be allowed as sufficient time was allowed for their defence and to bring any witness they wanted to present.

3. Documents:

All documents (MEX - 1 to 16) submitted by the PO have been duly supplied to CSE/Defence Assistant.

4. Inspection/Verification of documents:

CSE/Defence Assistant was permitted to inspect/verify the documents and CSE/Defence Assistant inspected/verified all the documents submitted by PO on 09.03.07.

5. Production of Documents:

CSE/Defence Assistant requested for supply of 10 documents out of which the following four (4) documents were not supplied due to the following reasons assigned by PO:

I. TD Cards and Balance Certificates for the period from 2000 to 2013 - Not available with the Branch.

II. Copy of Charges framed by Police - Case is not over and under investigation.

III. Complaint regarding short credit received from the account holders - No written complaints were received since the short credits were made good before the accounts were closed and paid.

IV. Certified extract of the reply of the explanation received by the Bank from the Managers/ABMs/Officers who worked at Shillong during the period 2000 - 2013 - These documents have no relevance with the case and the charges leveled against CSE.

However, the other documents requested by CSE/Defence Assistant were duly supplied and CSE/Defence Assistant was allowed to produce documents (DEX 01 to 13) during the enquiry.

6. Cross examination of Management Witness:

Defence Assistant was allowed to cross-examine the Management Witness on 09.05.07.

7. Copies of Proceedings at the end of the day:

Copies of Proceedings were duly supplied to the CSE/Defence Assistant at the end of the day on 24.01.07, 09.03.07, 09.05.07 and 10.05.07.

8. Adjournments to suit the convenience of CSE:

Enquiry was adjourned on 09.05.07 at 6 - 15 PM at the request of CSE/Defence Assistant.

9. Extra time allowed to CSE for submission of Documents/list of documents required for Defence:

Due to non submission of documents/list of documents required to be produced for Defence, the enquiry scheduled to be held on 12.02.07 was postponed to 09.03.07 and sufficient time was given to CSE/Defence Assistant to prepare the defence and also to enable them to produce evidence that they proposed to tender in the defence.

NAMES OF WITNESSES

1. Witness produced by PO:

I. MW 1: Sri G.K. Srivastava, Senior Manager, Circle Office, Guwahati.

II. MW 2: Sri Rabindra Nath Dixit, Senior Manager (BM), Bankura Branch.

2. Witness produced by CSE:

Defence Assistant examined CSE and they did not produce any witness other than CSE during the enquiry proceedings.

LIST OF MANAGEMENT EXHIBITS PRODUCED BY PO

PO has submitted Management Exhibits, which have been numbered as MEX 01 to MEX 16.

LIST OF DEFENCE EXHIBITS PRODUCED BY DEFENCE ASSISTANT

CSE/Defence Assistant has submitted Defence Exhibits, which have been numbered as DEX 01 to DEC 13.

FINDINGS OF ENQUIRY OFFICER

Based on the enquiry proceedings recorded and documentary evidences and

witnesses produced by CSE/Defence Assistant and PO, I furnish my observations and findings as under.....

10. The disciplinary authority, after receiving the enquiry report dated 31.10.2007, asked the petitioner for personal hearing and also his explanation to the proposed penalty of compulsory retirement with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due to otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment in terms of Regulation 6(c) of the Memorandum of Settlement dated 10.04.2002 between the Banks and the Workmen Association by furnishing a copy of the said enquiry report under the letter of disciplinary authority i.e. the Assistant General Manager & Disciplinary Authority dated 09.02.2008 (Annexure-27 to the writ petition) which reads as follows:-

Vigilance Cell, Circle Office Siilpakhuri, Guwahati.

COG/VIG/S-11/263/07-08

Date: 09.02.08

To

Sri Hrishikesh Bhattacharjee (u/s)

SR No. 26585

Clerk/Shroff (Indian Bank)

CONFIDENTIAL

C/o Tuhin Chakraborty

Burnside Compound

Ribong.

SHILLONG-793004

Meghalaya State

Dear Sir,

SUB: FC No. 1547 dated 29.06.05 - Chargesheet COG/VIG/S-11/299/06-07 dated 25.11.06 issued to you - Personal hearing regarding proposed punishment.

I refer to the Chargesheet No. COG/VIG/S-11/299/06-07 dated 25.11.06 issued to you and to the subsequent Departmental Enquiry conducted by Sri. Tapan Chakraborty, Enquiry Authority on the charges levelled against you. The Enquiry Authority in his findings dated 31.10.07 held the charges 1, 2, 4 & 6 as fully proved and charge No. 5 as partly proved and charge No. 3 as not proved.

I have analysed the written brief dated 25.07.07 of the Presenting Officer, your

defence representative written brief dated 21.09.07, findings dated 31.10.07 of the Enquiry Authority. Through my letter COG/VIG/S-11/07-08 dated 11.12.07 I communicated to you my disagreement in respect of EA's findings on Charge No. 3 held by him as not proved. You were advised to submit your comments within 10 days, on the findings of the Enquiry Authority and on my disagreement with the EA's findings on charge No. 3. You received my letter on 18.12.07. In spite of sufficient time of 30 days given to you i.e., from 18.12.07 to 17.01.08, extended on two occasions, once on 24.12.07 upto 10.01.08 and the second time on 09.01.08 upto 17.01.08, you did not submit your comments on the findings of the EA and on the disagreement voiced by me.

Subsequently through your letter dated 27.01.08, after expiry of the specified period given to you, you had submitted your comments on my letter dtd. 11.12.07 and I had gone through the same.

I agree with the Enquiry Authority holding the charges 1, 2, 4 & 6 as fully proved and charge No. 5 as partly proved and I hold the charge No. 3 as proved for the reasons communicated to you.

Based on the analysis of all the connected papers, I conclude that the charges levelled against you

? Under Clause 5(a) "engaging in any trade or business outside the scope of his duties except with the written permission of the bank"

? Under Clause 5(j) "doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the bank in serious loss"

of the Memorandum of Settlements dated 10.04.02 are established in the department enquiry.

I hold you guilty of gross misconduct and taking all aspects of the case into account and the gravity of the charges held as proved by me, I propose to impose on you the punishment of "compulsory retirement with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment" under Regulation 6(c) of Memorandum of Settlements dated 10.04.2002 between the Bank and the Workmen Association. Your period of suspension shall be treated as one on suspension only.

Please Show Cause within 10 days from the date of this letter as to why the proposed punishment should not be imposed on you.

Please note that if you do not submit your reply within the stipulated date, it will be construed that you have no cause to offer and the matter will be proceeded with further.

As regards the nature of the proposed punishment, I also offer you a personal hearing on 22.02.08 at 4.00 p.m. at our Circle Office, Guwahati. Please note that

if you fail to appear before me for the personal hearing on the aforesaid date and time, you will be deemed to have forfeited the opportunity of personal hearing and the matter will be proceeded with further.

Sd/-

(J.V.L.N. SASTRY)

ASSISTANT GENERAL MANAGER &

DISCIPLINARY AUTHORITY

11. In response to the said letter dated 09.02.2008, the petitioner made his submission before the Court at the time of personal hearing on 17.03.2008. The said submission of the petitioner is available at Annexure-28 of the writ petition which reads as follows:-

SUBMISSION BEFORE THE DISCIPLINARY AUTHORITY DURING PERSONAL HEARING ON 17.03.08

I have been serving in the bank with unblemished record. I pray for consideration of my clean past record and allow me to continue my job to sustain my family.

My wife, my minor children and my ailing mother are sole dependent on me. My loss of job shall result into starvation of my family. In view of the above I pray for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

Sir, I never acted as sub agent of the TD agent, as alleged and as such there lies no question for me to misappropriate the alleged amount. In view of the above I pray for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

Sir, Sri Sarma, the TD agent in his letter dated 06.01.01 (MEX 3/35) confirmed that I was not acting as sub agent. Available TD cards (MEX 5 to MEX 13 and DEX 11/4) clearly shows that the collection against the mentioned accounts were done by Sri Sarma, under his signature. In view of the above positive evidences on records I pray for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

Enquiry officer has himself mentioned in his report that no direct evidence was produced before him to prove the charge. Sri Dixit (MW 2) also mentioned clearly that he has not seen any signature of mine in TD collection register & TD cards were not made available to him. In view of the above I pray for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

Enquiry officer wrongly interpreted the report of MW 1 and MW 2 as my confession/admission of guilt. The fact remains that I denied the charge all along, as I was not actually involved as sub agent, In view of the above I pray

for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

MEX 3(13), MEX 3(44), DEX 4 and DEC 10 clearly shows that all the accounts were opened after Dec/03 giving no scope to prove the charges as is it framed. In view of the above I pray for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

Basing on the report of the independent investigating officials, Hon"ble Court (DEX 1) clearly stated that there lies no such charge against me. In view of the above I pray for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

I was denied the reasonable opportunities by the EO, as required. In view of the above I pray for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

The proposed punishment is too harsh and shall cause my economic death. In view of the above I pray for exoneration from the alleged charge to enable me to continue my service in the bank to sustain my family.

Considering the above and considering my past unblemished record and also the condition of my family, I finally pray for exoneration to enable me to continue my job in the bank to sustain my family.

Sd/-

(Hrishikesh Bhattacharjee)

12. The disciplinary authority, after giving personal hearing to the petitioner as well as after careful perusal of the submission of the writ petitioner and the enquiry report, passed the impugned order dated 31.03.2008 for imposing penalty for compulsory retirement with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due to otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment in terms of Regulation 6(c) of the Memorandum of Settlement dated 10.04.2002 between the Banks and the Workmen Association. The petitioner being aggrieved by the impugned order dated 31.03.2008, filed the appeal dated 19.06.2008 before the appellate authority. The appellate authority by giving reasons passed the order dated 22.05.2009 for rejecting the appeal. Hence, the present writ petition.

13. The respondents No. 1-4 filed their joint affidavit-in-opposition wherein, the respondents had categorically denied that the petitioner was not furnished with the documents asked for by him in the Departmental Enquiry. The petitioner was given sufficient opportunity to put up his case in the Departmental Enquiry and also was given an opportunity for producing defence assistant. Over and above, it is also stated that the petitioner was permitted to cross examine of the prosecution witnesses and also allowed to examine all the documents produced

and relied upon by the Department in the Departmental Enquiry. The Enquiry officer had fully complied with the principle of natural justice in conducting the Departmental Enquiry and after proper appreciation of the evidences produced by the Department as well as the writ petitioner by giving reasons, had submitted the report dated 31.10.2007; and the copy of the Enquiry Report was also furnished to the writ petitioner. The petitioner was heard personally by the disciplinary authority before passing the impugned order dated 31.03.2008, which is a reasoned one and also the appeal against the order dated 31.03.2008 was dismissed by the impugned reasoned order dated 22.05.2009.

14. In the writ petition, it appears that the writ petitioner is assailing the Enquiry Report dated 31.10.2007, impugned order dated 31.03.2008 as well as the impugned order dated 22.05.2009 on the inter-alia grounds that:

(i) the finding of the Enquiry Report dated 31.10.2007 is not correct inasmuch as both the oral and documentary evidence of the prosecution are not properly appreciated;

(ii) the copies of the documents (mentioned above) asked for are not furnished to the writ petitioner and;

(iii) the penalty imposed to the writ petitioner is severe and disproportionate to the charges leveled against the writ petitioner.

15. In support of the case of the writ petitioner, learned counsel appearing for the petitioner had placed reliance on the decisions of the Apex Court i.e. (i) Roop Singh Negi Vs. Punjab National Bank and Others, ;(ii) Kuldeep Singh Vs. The Commissioner of Police and Others, ;(iii) Bombay Telephone Canteen Employees" Association, Prabhadevi Telephone Exchange Vs. Union of India and another, ;(iv) Rupa Ashok Hurra Vs. Ashok Hurra and Another, and; (v) Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others,

16. The respondents also placed reliance on the decisions of the Apex Court i.e. (i) Panchmahal Vadodara Gramin Bank and Others Vs. D.M. Parmar, ;(ii) Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha, ;(iii) Ramesh Chandra Sharma Vs. Punjab National Bank and Another, ;(iv) State Bank of India and Others Vs. S.N. Goyal, ;(v) The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, ; (vi) Burdwan Central Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and Others, and; (vii) The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, .

17. It is fairly settled law that the High Court under Article 226 or the Supreme Court under Article 32 would not interfere with the findings recorded in the Departmental Enquiry by the Disciplinary Authority or by the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. The power of judicial review available to the High Court under the constitution takes in its stride the domestic enquiry as well

and it can interfere with the conclusion reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. Paras 8 & 9 of the AIR in Kuldeep Singh's case (Supra) read as follows:-

8. The findings, recorded in a domestic enquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in *State of Andhra Pradesh Vs. Sree Rama Rao*, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India Ltd. Vs. Prakash Chand Jain*, and *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, . In *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, , it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial Tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

18. The judicial review of the findings of the Enquiry Officer is seldom invoke and normally there shall be judicial review of the findings of the Enquiry Officer when the findings is based on no evidence or one that no reasonable person would arrive at and it is fairly settled law that there cannot be judicial review of the findings of the Enquiry Officer on the ground that some relevant facts had not been considered or that certain inadmissible material has been taken into consideration inasmuch as that the findings cannot be said to be perverse. The Apex Court in *The General Manager (P) Punjab and Sind Bank and Others Vs. Daya Singh*, held that:

24. Absence of reasons in a disciplinary order would amount to denial of natural justice to the charge-sheeted employee. But the present case was certainly not one of that category. Once the charges were found to have been established, the High Court had no reason to interfere in the decision. Even though there was sufficient documentary evidence on record, the High Court has chosen to hold that the findings of the enquiry officer were perverse. A perverse findings is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in *M/s. Triveni Rubber and Plastics Vs. Collector of Central Excise, Cochin*, . Unless it is found that some relevant

evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in *Arulvelu and Another Vs. State* represented by the Public Prosecutor and Another, . The decision of the High Court cannot therefore be sustained.

25. As held in *Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai*, the scope of judicial review for the High Court in departmental disciplinary matters is limited. The observations of this Court in *Bank of India and Another Vs. Degala Suryanarayana*, are quite instructive: (SCC pp. 768-69, para 11).

11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In *Union of India (UOI) Vs. H.C. Goel*, the Constitution Bench has held: (AIR p. 370, para. 23)

23.....the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.

19. The Apex Court in *State Bank of India and Others Vs. Ramesh Dinkar Punde*, held that:

9. It is impermissible for the High Court to re-appreciate the evidence which had been considered by the Inquiry Officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.

16. In *Union of India (UOI) Vs. Parma Nanda*, , it is held at SCC p. 189 para 27 as under:

27. We must unequivocally state that the jurisdiction of the Tribunal to interfere

with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

17. In *Union Bank of India Vs. Vishwa Mohan*, , this Court held at SCC p. 315 para 12 as under:

12. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the inquiry report/findings to him.

18. In *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, , this Court held at SCC pp. 376-77 para 14 as under:

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

not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

19. In *Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another*, , it was pointed out as under: (SCC p. 614, para 10)

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, highest degree of integrity and trustworthiness is a must and unexceptionable.

20. In *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, , this Court at SCC p. 247 para 15 held:

It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic inquiry.

20. Keeping in view of the decisions of the Apex Court discussed above and also the settled principle of law regarding the limited jurisdiction for judicial review of the findings of the Enquiry Officer, this Court has given anxious consideration to the findings of the Enquiry Officer dated 31.10.2007 as to whether the findings of the Enquiry Officer are based on no evidence or perverse and after such consideration, this Court is of the considered view that the findings of the Enquiry Officer by giving reasons which comprises of 13 pages are based on evidence and not perverse. This Court is not sitting as appellate court of the findings of the Enquiry Officer and accordingly, this Court is not re-appreciating the evidence to come to the different findings. Hence, this Court is of the view that ground No. 1 for assailing the Enquiry Report dated 31.10.2007 and the impugned order dated 31.03.2008 basing on the enquiry report as well as the impugned order of the appellate authority dated 22.05.2009 is not sustainable.

21. It is fairly settled law that non-supply of documents would not ipso facto vitiate the order of punishment in the absence of prejudice to the delinquent. Paras 27 & 28 of the *Scale in Sarv U.P. Gramin Bank's case* (Supra) read as follows:-

27. At the time when the plea was raised before the High Court that the impugned orders are vitiated on account of the non-supply of enquiry report, it would have been appropriate for the High Court to examine the averments made in the writ petition. A perusal of the writ petition would show that the petitioner has failed to lay any foundation to establish that any prejudice has been caused by the non-supply of the enquiry report. In the case of *ECIL (supra)* a constitution bench of this Court reiterated the ratio of law in *Mohd. Ramzan Khan case (supra)* as follows:

As held by this Court in *Union of India v. Mohd. Ramzan Khan*, when the inquiring authority and the disciplinary authority are not one and the same and

the disciplinary authority appoints an inquiring authority to inquire into charges leveled against a delinquent officer who holds inquiry, finds him guilty and submits a report to that effect to the disciplinary authority, a copy of such report is required to be supplied by the disciplinary authority to the delinquent employee before an order of punishment is imposed on him. It was also held that non-supply of report of the inquiry officer to a delinquent employee would be violative of principles of natural justice. The Court observed that after the Constitution (Forty-second Amendment) Act, 1976, second opportunity contemplated by Article 311(2) of the Constitution had been abolished, but principles natural justice and fair play required supply of adverse material to the delinquent who was likely to be affected by such material. Non-supply of report of the inquiry officer to the delinquent would constitute infringement of the doctrine of natural justice.

28. The ECIL matter was placed before the Constitution Bench as the attention of the Court was invited to a three-Judge Bench decision of this Court in Kailash Chander Asthana Vs. State of U.P. and Others, wherein it was held that non-supply of the report would not ipso facto vitiate the order of punishment in the absence of prejudice to the delinquent. Upon a detailed consideration of the entire case law this court laid down certain principles which are as follows:

18. In this view of the matter, the Court dismissed the writ petition. It would thus be dear that the contention before this Court in that case was that the copy of the report of the inquiring authority was necessary to show cause at the second stage, i.e., against the penalty proposed. That was also how the contention was understood by this Court. The contention was not at least it was not understood to mean by this Court, that a copy of the report was necessary to prove the innocence of the employee before the disciplinary authority arrived at its conclusion with regard to the guilt or otherwise on the basis of the said report. Hence, we read nothing in this decision which has taken a view contrary to the view expressed in E. Bashyan case by a Bench of two learned Judges or to the view taken by three learned Judges in Union of India v. Mohd. Ramzan Khan.

22. The Apex Court in Burdwan Central Cooperative Bank Limited case (Supra) held that:

18. The decision of this Court in Govinda Menon Vs. Union of India (UOI), cited by Mr. Ray, also has a direct bearing on the facts of this case, where, although the Respondent No. 1 was not under the administrative control of the Appellant-Bank, prior to his service with the Bank, his previous conduct was a blot on his integrity and devotion to duty as a member of the service. Since no prejudice had been caused to the Respondent No. 1 by the non-supply of the Enquiry Officer's report or the second show-cause notice under Article 311(2) of the Constitution, the Respondent No. 1 had little scope to contend that the principles of natural justice had been violated which had vitiated the proceedings.

19. However, there is one aspect of the matter which cannot be ignored. In

Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., despite holding that non-supply of a copy of the report of the Inquiry Officer to the employee facing a disciplinary proceeding, amounts to denial of natural justice, in the later part of the judgment it was observed that whether in fact, prejudice has been caused to the employee on account of non-furnishing of a copy of the inquiry report has to be considered in the facts of each case. It was observed that where the furnishing of the inquiry report would not make any difference to the ultimate outcome of the matter, it would be a perversion of justice to allow the concerned employee to resume his duties and to get all consequential benefits.

20. It was also observed in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., that in the event the Inquiry Officer's report had not been furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as to what prejudice had been caused to him on account of non-supply of the report. It was held that the order of punishment should not be set aside mechanically on the ground that the copy of the inquiry report had not been supplied to the employee.

23. After careful perusal of the writ petition as well as the written statement of the writ petitioner at the time of personal hearing by the disciplinary authority before passing the impugned order dated 31.03.2008, it is clear that in nowhere of the writ petition and written statement of the petitioner mentioned as to what prejudice had been caused to him on account of non-supply of documents asked for by the petitioner; over and above, the respondents in their joint affidavit clearly stated that copies of the documents asked for by the petitioner had been supplied to him. Accordingly, this Court is of the considered view that the second ground for assailing the impugned order dated 31.03.2008 and the Enquiry Report dated 31.10.2007 is not sustainable.

24. For the foregoing discussions, this Court is not interfering with the findings of the Enquiry Officer, Disciplinary Authority and the appellate authority and once the findings had been accepted, the Court cannot probably take a view that punishment of compulsory retirement of the petitioner was shockingly disproportionate to the charges leveled against the petitioner. Para 10 of the Scale in Panchmahal Vadodara Gramin Bank case (Supra) reads as follows:-

10. On an examination of the enquiry report, we find that there were as many as ten charges against D.M. Parmar and the charges were of serious nature and out of these charges, only one charge was not fully proved, one charge was partly proved and one charge was deleted and rest of the charges were proved. In the conclusion, the enquiry officer has recorded the following findings:

FINDINGS

(1) He did not take all possible steps to ensure and protect the interest of the Bank. In fact he took such steps and did such acts of omission and commission, which were derogatory, detrimental, prejudicial and injurious to the interest of the Bank. Proved.

(2) He showed gross negligence and indifference in discharge of his duties Proved.

(3) He did not discharge his duties with utmost integrity and honesty but in fact did such did such acts of lack of probity on his part Proved.

(4) He did not maintain discipline in all transactions and discharging his duties as a Manager. In fact, he misused and abused his position as a Manager of the branch. Proved.

(5) He did not perform his duties with devotion and diligence and violated and flouted the rules of the Bank. Proved.

(6) He committed acts of breach of trust. Proved.

(7) By his act of misdeeds, he tarnished the image of the bank. ... Proved.

(8) He did acts of unbecoming of a Bank Officer. Proved.

These findings are all based on adequate material referred to in the inquiry report and these materials are mainly bank records. As has been held by this Court in recent decision in General Manager (P) Punjab & Sind Bank & Ors. v. Daya Singh, (2010) 11 SCC 233, in which one of us (H.L. Gokhale, J.) was a party, as long as there are materials and evidence in support of the findings, the High Court cannot interfere with such findings in exercise of powers of judicial review under Article 226 of the Constitution of India. The learned Single Judge of the High Court and the Division Bench of the High Court have, therefore, rightly interfered with the findings. Once the findings of the Enquiry Officer, which have been quoted above, are not interfered with, we fail to see how the delinquent officer can avoid the punishment of dismissal from service. The findings include not only serious acts of negligence but also acts of dishonesty and lack of probity. The Court cannot probably take a view that punishment of dismissal was shockingly or strikingly disproportionate to the gravity of charges proved against D.M. Parmar.

25. Ordinarily the High Court should not interfere with the quantum of punishment imposed by the disciplinary authority. However, the High Court interferes with the punishment imposed upon the appellant if impermissible in law or wholly disproportionate to the misconduct found to have been committed by the delinquent officer. Paras 29, 30 & 31 of SCC in Ramesh Chandra Sharma's case (Supra) read as follows:-

29. Moreover, it now a trite law that ordinarily the High Court should not interfere with the quantum of punishment imposed by the Disciplinary Authority. (See U.P.S.R.T.C. Vs. Ram Kishan Arora,). It has not been found by the High Court that the punishment imposed upon the appellant was impermissible in law or wholly disproportionate to the misconduct found to have been committed by the delinquent officer.

30. Our attention has been drawn to a decision of this Court in S.P. Badrinath Vs.

Govt. of A.P. and Others etc. etc., . This decision has no application in this case, as we have noticed in the present case that the acts of misconduct proved against the appellant were of grave nature.

31. The High Court itself has noticed a large number of decisions and formed the opinion that the charges levelled against the delinquent officer were of grave nature. A major punishment may be inflicted even where no pecuniary loss was caused to the Bank by reason of the act of the delinquent officer. In support of the aforementioned proposition of law, the High Court opined:

The charges leveled against the petitioner, which were found proved upon enquiry, are quite serious in nature. The petitioner had engaged himself in reckless lending causing huge financial loss to the Bank to the extent of Rs. 1,14,87,164.76. It also shows that the petitioner had disbursed loan through middlemen and demanded and received illegal gratification from a borrower. We are of the considered opinion that in such cases, the officers of the Bank should not be permitted to continue in service at all.

Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity. A necessary implication which must be engrafted on the contract of service is that the servant must undertake to serve his master with good faith and fidelity. In a case of loss of confidence, reinstatement cannot be directed. Granting such an employee the relief of reinstatement would be "an act of misplaced sympathy which can find no foundation in law or in equity." [Vide *Air-India Corporation, Bombay Vs. V.A. Rebellow and Another*, ; *The Binny Limited Vs. Their Workmen*, ; *Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others*, ; *Francis Klein and Co. (P) Ltd. Vs. Their Workmen and Another*, ; *The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc.*, and *Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others*,].

In *Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others*, , the Hon"ble Supreme Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved.

Reliance in this regard has also been placed by the High Court on the decision of *State Bank of India and Another Vs. Bela Bagchi and Others*, .

26. Lord Diplock in *Council of Civil Service Unions Vrs. Minister for Civil Service* (called CCSU case) summarize the principle of judicial review administrative action as based upon one or the other of the following, viz. legality, procedural, irregularity, and irrationality. He, however, opined that "proportionality" was as "future possibility". According to my opinion (this Court), Lord Diplock for the first time opened the window of "proportionality" in the judicial review of administrative action. Now, the Apex Court in a catena of cases held that "proportionality" is one of the basis for judicial review of the quantum of punishment imposed on the delinquent/employee by the disciplinary authority. While exercising the power of judicial review of the quantum of punishment basing on "proportionality" the court is applying *Wednesbury Principle* as secondary reviewing authority and also the court will not apply "proportionality" as a primary reviewing court. Therefore, the court could exercise right of secondary review based only on *Wednesbury Principle*. Lord Bridge explained the primary and secondary review in *Brind Case* (1991) 1 AC 969 : (1991) 1 All ER 720 : (1991) 2 WLR 588 (HL) as follows:

The primary judgment as to whether the particular competing public interest justifying the particular restriction imposed falls to be made by the Secretary of State to whom parliament has entrusted the discretion. But, we are entitled to exercise a secondary judgment by asking whether a reasonable Secretary of State, on the material before him, could reasonable make the primary judgment.

The Constitution Bench *E.P. Royappa Vs. State of Tamil Nadu and Another*, held that where a punishments in disciplinary cases are challenged, question will be whether the administrative order is "rational" or "reasonable" and the test then is the *Wednesbury Test*. The Apex Court in *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, had summed up position relating to "proportionality" in paras. 31 and 32 which read as follows:

31. The current position of proportionality in administrative law in England and India can be summarized 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 done on 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 the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go to the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision 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 (1985) AC 374 principles.

(3)(a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(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 the courts will have a primary role only if the freedoms under Articles 19, 21, etc. are involved and not for Article 14.

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain "Ranjit Thakur".

27. The Apex court in *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, held that unless the punishment imposed by the disciplinary authority or by 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. Para. 12 of the judgment in *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, is quoted as under:

12. To put it differently, unless the punishment imposed by the disciplinary authority or by 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.

28. The Apex Court in *State of Rajasthan and Another Vs. Mohammed Ayub Naz*, reiterated that the scope of judicial review of the quantum of punishment is circumscribed and also that the role of administrative authority is primary and that of court is secondary, to be exercised only on well settled *Wednesbury* principles. Further the Apex Court in para. 10 of the SCC in *State of Rajasthan and Another Vs. Mohammed Ayub Naz*, held that:

10. This Court in *Om Kumar and Others Vs. Union of India*, while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the by the High Court on reduction of punishment of removal was not called for.

29. The Apex Court is of the view that the court's interference with the quantum of punishment cannot be a routine matter. The court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety. Para. 10, 11 and 15 of the *Dwarka Prasad Tiwari's* case (supra) reported in *Union of India (UOI) and Others Vs. Dwarka Prasad Tiwari*, reads as follows:-

10. The scope of interference with quantum of punishment has been the subject-matter of various decisions of this Court. Such interference cannot be a routine matter.

11. Lord Greene said in 1948 in the famous *Wednesbury* case: *Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA) that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were not considered; or the decision was one which reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of

administrative action. It is equally well known that in 1983, Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL) (called the CCSU case) summarized the principles of judicial review of administrative action as based upon one or the other of the following viz. illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

15. 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: Associated Provincial Picture Houses Ltd. vs. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA) the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

30. The Apex Court in *Canara Bank Vs. V.K. Awasthy*, held that the interference with the quantum of punishment cannot be a routine matter. Paras 21, 22 and 23 of the SCC in *Canara Bank's* case (Supra) read as follows:

21. Coming to the question whether the punishment awarded was disproportionate, it is to be noted that the various allegations as laid in the departmental proceedings reveal that several acts of misconduct unbecoming of a bank official were committed by the respondent.

22. It is to be noted that the detailed charge-sheets were served on the participated in the proceedings. His explanations were considered and the inquiry officer held the charges to have been amply proved. He recommended dismissal from service. The same was accepted by the disciplinary authority. The proved charges clearly established that the respondent employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interest of the Bank. In the appeal before the prescribed Appellate Authority, the findings of the inquiry officer were challenged. The Appellate Authority after analyzing the materials on record found no substance in the appeal.

23. The scope of interference with the quantum of punishment has been the subject-matter of various decisions of this court. Such interference cannot be a routine matter.

31. There is absolutely no reason for interfering with the quantum of punishment imposed to the writ petitioner under the impugned order dated 31.03.2008 which is permissible under the law. For the foregoing reasons, this writ petition is devoid of merit and is accordingly dismissed.