

(1991) 06 CAL CK 0011
In the Calcutta High Court
Case No : Matter No. 316 of 1987

Sri Pronab Kumar Mukherjee

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 26-06-1991

Acts Referred:

Allahabad Bank Officer Employees (Discipline and Appeal) Regulations, 1976 —
Regulation 4(8), 4(9)

Citation : (1992) 2 CALLT 146

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Advocate : Malay Kumar Bose, R.N. Das and Nandalal Nayek, for the
Appellant; Debranjana Mallick, for the Respondent

Final Decision : Allowed

Judgement

Mahitosh Majumdar, J.—This writ application is directed against the disciplinary proceeding including the order of dismissal in terms of the charge-sheet dated 21.10.86. The petitioner further prays for a direction upon the respondents to cancel, withdraw and/or rescind the purported order of removal being D/A Order No. Cal Br/1/87 dated 19.1.87 being Annexure "G" to the petition.

2. The facts of the present case, in brief, are that at the material time the petitioner was posted at the Calcutta Main Branch of the Bank and worked as Officer-in-Charge of the Extension Counter at the Head Office, The Counter was run by the petitioner along with the two cashiers, two clerks and one peon. The petitioner was required to supervise the work of the Extension Counter including passing of cheques of the Accounts of Staff of the office and other miscellaneous vouchers pertaining to the Head Office. The petitioner's main functions in the Extension Counter may be summed up as follows :-

(i) to maintain the staff Savings Account of the Head Office and Miscellaneous expenditures account of the Head Office Staff.

(ii) passing of vouchers, cheques and other miscellaneous payments.

(iii) to take cash out of the vault as per appropriate requirement of the day and to distribute the same to the Cashiers for payment.

(iv) after the payment is completed and the cash is tallied as per daily vouchers and cheques on Savings Banks Account the remaining cash is handed over to your petitioner by the two cashiers for keeping in the vault. The petitioner being the custodian tallies the same with the cash balance of the previous day and the payment made on the day and after being satisfied, the same is kept in the vault. All necessary entries therefore are made day-to-day.

3. There were two grievances which will be dealt with later on. The petitioner was discharging his duties in the Extension Counter. His service was not blemished nor any complaint was received against the petitioner from any quarter. On 9th October 1986 i.e. the last working day before the Puja holidays at or about 3.00 p.m. two officers from the Calcutta Main Branch, namely, Sri Kapoor, Deputy Operational Manager and Sri Soumitra Mondal paid a visit to the Extension Counter of which the petitioner was in charge. The said officers checked the cash vis-a-vis the payment vouchers. It was detected that a sum of Rs. 40,000/- was found short of the actual amount. Subsequently the two officers namely Sri Biswaroop Basu, Manager (Personnel) and Sri R. M. Kapoor, Deputy Manager (Administration) of the Head Office, were deputed to carry out a checking of cash at the Head Office, Extension Counter, who in turn just carried out "the formalities and got the cash balance signed by the petitioner. Since the day's business was not closed and the undisturbed amount was not made over to the petitioner till that time, the petitioner had no knowledge of the said shortage inasmuch as the entire transaction save as passing the cheques and vouchers by the petitioner was made by the cashiers of the said counter. The petitioner being in charge of the said Extension- Counter proposed in writing to the Assistant General Manager viz. the respondent No. 4 that he would liquidate the said sum of Rs. 40,000/- on his own within ten days from the date. This gesture of the petitioner to shoulder the entire burden was only to save the petitioner's sub-ordinates from being harassed and/or from any disciplinary action inasmuch as the petitioner had good faith in them. Respondent No. 4 became convinced with the statement made by the petitioner and instructed the petitioner in the interest of the Bank to make arrangement for liquidation of the same on the said date. As the petitioner had no capacity to liquidate the said sum of Rs. 40,000/- the petitioner approached to the petitioner's two colleagues of the said bank viz. Smt. Kakali Mukherjee and Sri N. Das, both officers of the Head Office, who issued two withdrawal slips for Rs. 40,000/-. The two withdrawal slips were not accepted by the respondents and instead the petitioner was made to sign a suspense account voucher adjusting within the ten days shortage of Rs. 40,000/-. The day's transaction was not recorded by the petitioner save and except passing of vouchers. On the same date i.e. 9th October 1986 at about 5.30 p.m. the petitioner by a Memo bearing No. Ref/AGM/

Est. dated 9th October 1986 was placed under suspension for the shortage of Rs. 40,000/- Immediately after service of the order of suspension the petitioner was detained by the respondents in the office and a report was sent to the Hare Street Police Station. The Police Officers from the Hare Street Police Station attended the office soon thereafter. The petitioner earnestly requested the respondents including the Police Officers to send a message to the petitioner's elder brother Sri Probhat Kumar Mukherjee, an Advocate of the Calcutta High Court so that he might arrange for the said short payments to save the petitioner from the said unfortunate affairs. The said request was acceded to and the petitioner's elder brother attended the office at about 10.30 p.m. and after hearing he expressed his desire to pay a sum of Rs. 8,000/- in cash and Rs. 32,000/- by cheque which could be encashed after the Puja vacation. The Bank authorities demanded money in cash which was not otherwise readily possible to procure during the night. The petitioner was taken to the police station. The petitioner was thereafter released on bail on 14.10. 1986. The petitioner already signed a suspense account voucher for adjusting the said sum of Rs. 40,000/-. This aspect was not also disclosed to the petitioner's elder brother. On 23rd October 1986 the petitioner was served with a Memo No. Est/520 dated 21.10.1986 issued by the respondent No. 4 and by the said Memo the petitioner was directed to show cause in writing within seven days from the date of receipt of the said charge-sheet as to why appropriate disciplinary action as contemplated in Allahabad Bank Officer Employees' (Discipline & Appeal) Regulations 1976 should not be taken against the petitioner. The petitioner's letter dated 9.10.86 as contained in Annexure "A" reads as follows :

"I am to state that there is a shortage of Rs. 40,000/- in Rs. 100/- denomination which was detected by Inspecting Officer deputed from H.O. as also from Calcutta Main Branch at the time of closing. I undertake to repay and make good the shortage for the amount of Rs. 40,000/- within a period of ten days from this date."

4. The show cause notice as contained in Annexure "B" is as follows :-

"This has reference to your letter of date. You have been working as Officer-in-Charge of the extension counter and the cash remain under your sole custody over-night. Since the shortage of Rs. 40,000/ in the cash balance has occurred when the cash was under your custody, you are responsible for the same and you are hereby placed under suspension with immediate effect.

You are therefore instructed to hand over the charge of the extension counter to Shri Nirmal Kanti Saha Officer of the Calcutta Branch. During the period of your suspension you should not enter the Bank's premises and you should not also leave the Head Quarter without the prior permission of the Bank.

During the suspension period you will be paid subsistence allowance as per rules of the Bank in force."

5. The charge-sheet being No. Est/520 dated 21st October 1986 is also quoted

below :-

"You are hereby charged for the following acts" of misconduct committed by you. On 9.10.86 while you were working as Officer-in-Charge of the Extension Counter of the Calcutta Main at the Head Office, 2, N. S. Road, Cakutta-700 001.

At the close of business hours on 9.10.86 when a surprise checking of the cash balance of the Extension Counter was conducted a shortage of Rs. 40,000/- was detected. As per cash balance register maintained at the Extension Counter the amount of Cash Balance at the close of business on 9.10.86 was shown Rs. 4,25,353.83 but on physical verification of cash, the actual amount held was Rs. 3,85,352.83 showing a shortage of Rs. 40,000/- as indicated above. The fact that this shortage of cash was not reported by you to the higher authorities and that the cash at the Extension Counter was held under your sole custody, clearly indicate that the said amount of Rs. 40,000/- was" misappropriated by you.

By your aforesaid act of misconduct you have misused your official position and committed breach of trust reposed upon you by the Bank. Your aforesaid acts are quite unbecoming of an officer of the Bank and are in violation of Regulation 3(1) of Allahabad Bank Officer Employees" (Conduct) Regulations 1976. This act of yours constitute misconduct in terms of Rule 24 of the said Regulations.

You are therefore required to submit your explanation in writing within 7 days from the receipt of this charge sheet as to why appropriate disciplinary action as contemplated in Allahabad Bank Officer Employees" (Discipline & Appeal) Regulations 1976 should not be taken against you.

If no explanation is received from you within the aforesaid stipulated period, it will be presumed that you have no explanation to offer and action as appropriate will be taken against you and decision will be communicated to you.

Please send your explanation to the undersigned in his personal name.

Please note that this is without prejudice to the Bank's right to issue further charge sheet to you for your any other act of omission commission that may come to its notice subsequently."

6. The petitioner, therefore, sent a letter dated 10th November, 1986 to Sri N.S.T. Chari, Assistant General Manager and Disciplinary Authority, Allahabad Bank. By the said, letter the petitioner recorded that it is a moral obligation to make good the shortage and accordingly forwarded a cheque bearing No. K 592333/BR/1513 of 10.11.86 for Rs. 32,000/- in partial liquidation of the said amount. The petitioner prayed for 15 days" time from the date of the said letter for final liquidation and to reply the charge sheet dated 21.10.86. By a letter dated 24th November, 1986 the petitioner again sent a cheque for Rs. 6,000/- leaving balance of Rs. 2,000/- for which the petitioner requested the authority to give another ten days" time to pay off for final liquidation of the shortage mentioned in the charge sheet and to reply the said charge sheet dated 10th October, 1986. By a letter dated 24th November, 1986 the petitioner informed

the disciplinary authority in the manner following :-

"Further to my letter dated 24.11.88 I enclose herewith a Banker's cheque No. K 593892/BR/1572 of 25.11.86 issued by Calcutta Main Branch favouring yourselves for Rs. 2,000/- (Rupees two thousand only). In this connection, I would like to mention that I had already deposited Rs. 32,000/- and Rs. 6,000/- (Total of Rs. 38,000/-) vide Bankers' cheque Nos. K 592333/BR/1513 of 10.11.86 and K 593888/ BR/1563 of 24.11.86 respectively, which were also duly acknowledged by you.

In view of the above I hereby liquidate finally Rs. 40,000/- which was found shortage on 9.10.86 at the Head Office Extn. Counter while I was in charge of the same. Since it was my moral obligation to make good the shortage I as on date paid Rs. 2,000/-" in final liquidation of the total shortage of Rs. 40,000/-.

As per my letter dated 24.11.86 I will reply your letter No. Est/529 dated 21.10.86 within the time. Please acknowledge receipt of my letter and the enclosed Bankers' cheque and oblige."

7. The petitioner replied to the charge sheet by a letter dated 9th December, 1986. The petitioner in the said reply has stated that he was in charge , of the said Extension Counter. He felt it as his moral obligation to make good the loss of the Bank even at the cost of his personal sufferings. So the amount of shortage was also adjusted go debit the suspense account and the concerned voucher was signed by him. Subsequently, the petitioner also duly made good the shortage vide Bankers' cheque Nos. K 592333/BR/1513 dated 10.11.86, K 593888/ BR/1568 dated 24.11.86 and K 593892/BR/ 1572 dated 25.11.86 for Rs. 32,000/-, Rs. 6,000/- and Rs. 2,000/ respectively. The petitioner in clear terms recorded that he had no intention to misappropriate the Bank's fund or to misuse his official position in the Bank and he also disagreed as to the charges levelled against him,. He further recorded that he being a departmental head and in-charge should repent for that. His recording! is quoted below :-

"I am repented for that. The shortage which was found on that said date has been liquidated fully by me as stated above as such the charge of Breach of trust should not lie on me."

8. The petitioner joined the Bank on 26th July, 1973. He had no black spot or adverse marks in his service while he was in the defence service or in the Bank Service. Petitioner's moto was to work hard for the progress and prosperity of the bank. He has only 4 years and 2 months to serve the Bank and would serve the Bank for the remaining period with utmost honesty, sincerity and integrity. Accordingly, the prayer for condonation of the charges was made. The Disciplinary Authority after receipt of the reply did not hold the enquiry but arrived at its decision on 19.1.87 as would appear in Annexure "G" which was served upon the petitioner. The said decision read thus :-

"1. Sri Pranab Kumar Mukherjee, an Officer of the Branch has been suspended

and served with a charge sheet for certain lapses. He has submitted a reply to charge sheet. As a Disciplinary Authority I decide to dispose of the matter in the following :-

2. The fact of the case in brief is that at the time of surprise checking of the cash balance of the Head Office Extension Counter of Calcutta Main Branch on 9.10.86, a cash shortage of Rs. 40,000/- was detected. Sri Pranab Kumar Mukherjee at that time i.e., on the date of said checking was working as Officer-in-Charge of the said Extension Counter. He was suspended vide my letter No. AGM/Est dated 9.10.86 on the charge of said cash shortage. Subsequently, the charge sheet bearing No. Est/520 dated 21.10.86 has been issued to him for the said charge of misconduct asking him to submit his explanation as to why disciplinary action as contemplated in Allahabad Bank Officer Employees" (D & A) Regulation, 1976 should not be taken against him.

3. After that Sri Mukherjee at his own has made good the loss of Rs. 40,000/- to the Bank and has also submitted his reply dated 9.12.86. In his reply while accepting the charge brought against him he has stated inter alia that he had no intention either to misappropriate Bank's fund or to misuse his official position. He has however, repented for the occurrence of the incident and prayed for taking a lenient view.

4. However, taking into consideration the whole aspects of the case, I find that there was temporary misappropriation of Bank's fund by Sri Pranab Kumar Mukherjee, the charged Officer. No doubt, he has repaid the money in few instalments, but his credibility is at stake. In an organisation dealing with public money, such a person whose credibility is not worthy of credence cannot be allowed to continue. This temporary misappropriation of public money cast a shadow in the integrity of the charged officer. His case, therefore, cannot be dealt with leniently. Accordingly, I feel inclined to remove the charged officer from the service of the Bank in its greater interest.

5. I, therefore, ordered for the undernoted punishment on him in terms of Regulation 4(g) of Allahabad Bank Officer Employees" (D & A) Regulation, 1976 :-

"Sri Pranab Kumar Mukherjee be removed from service of the Bank with immediate effect."

6. The pay and allowance for the period of suspension except the subsistence allowance already paid may be paid to him since the loss sustained by Bank has been recouped."

9. The petitioner during the pendency of this writ application was allowed to retire from bank service. Mr. Malay Kumar Bose, the learned Senior Advocate duly assisted by Mr. R. N. Das, Mr. Nandalal Nayek, appeared on behalf of the petitioner, Mr. Bose claimed and contended that the decision thus reached by the authority without holding an enquiry is ex facie illegal. The petitioner was fastened with the charges which do not find place in the charge sheet. The

petitioner during the pendency of the writ application was allowed to retire. On that basis, Mr. Bose contended that the order of retirement amounts to wiping out the alleged misconduct. Reference may be made to a decision of the Supreme Court in the case of K.S. Srinivasan Vs. Union of India (UOI), in support of admission vis-a-vis its probative value. The relevant portion of the said decision is quoted below :-

"On behalf of the appellant it has been next argued that the order dated 14.12.53, contains a clear admission to the effect that the post of public relations Officer belongs to the same grade as Assistant Station Director, and the order shows that it was made after unofficial consultation with the Ministry of Information and Broadcasting. It is contended that this admission should be accepted as admission of fact and held binding on the respondent, particularly when the respondent has not produced the particular order by which a separate cadre, if any, of Public Relations Officers might have been created, in order to disprove the correctness of the admission. We are unable to accept this argument. An admission is not conclusive proof of the matter admitted, though it may in certain circumstances operate as an estoppel."

10. Next decision that is cited by Mr. Bose in the case of Mahananda Bahandari v. Assistant Commercial Superintendent (S.E.) Railway reported in 1974 L IC 1054 in support of retention of money with dishonest intention, relevant portion of which is quoted below :-

"But it seems quite clear that the Enquiry Officer failed to apply his mind and carry out his quasi-judicial duty in finding the petitioner guilty of temporary misappropriation without evidence. This really contravened the rules and principles of natural justice.

On the facts of this case it would be sufficiently clear that the petitioner denied the charges of temporary misappropriation. He never admitted that he failed to render accounts or deposit the money involved in this case with any dishonest intention. On the other hand, his positive case was that there were mere irregularities committed by him on account of certain circumstances beyond his control. Mr. Dhar, on behalf of the petitioner rightly replied on a decision In In Re: C. Raghava Menon, to show that misappropriation even though temporary, must be established on proving dishonest intention. It is said that unless one retains or converts the money to his own use dishonestly, there could not be any misappropriation. For here, the statements made by the petitioner, in any event, did not amount to a clear or unambiguous admission of his guilt.

In fact, as already noticed, the Disciplinary Authority before issuing a second show cause notice felt convinced about the truth of the circumstances stated by the petitioner under which he committed certain acts revealed in the statement of allegations in support of the charges made against him."

11. Further reference was made by Mr. Bose to a decision in the case of Jagdish Prosad v. State of M.P. AIR 1961 SC 1070. The relevant portion of the said

decision is as follows :-

"In such a case, even if the appellant had made some statements which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. But apart from this consideration, if the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in order of dismissal passed against him. Under Article 311(2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and in the present case, before the show cause notice was served on him he has had no opportunity at all to meet the charge. After the charge sheet was supplied to him he did not get an opportunity to cross-examine Kethulekar and others. He has not given a copy of the report made by the enquiry officers in the said enquiries. He could not offer his explanation as to any of the points made against him and it appears that from the evidence recorded in the previous enquiries as a result of which Kethulekar was suspended an inference was drawn against the appellant and show cause notice served on him. In our opinion, the appellant is justified in contending that in the circumstances of this case he has had no opportunity of showing cause at all, and so the requirements of Article 311(2) is not satisfied."

12. Reference may be made In Re : C. Raghava Menon reported in AIR 1941 Mad. 250, relevant portion of which is as follows :-

"It has been repeatedly held that mere retention of money would not warrant a conviction u/s 403, Penal Code, and the accused was subsequently reinstated as the result of a departmental enquiry. The conviction is, therefore, set aside and the fine if levied will be refunded."

13. On the role of the functioning of the disciplinary authority and the order passed by it, reliance on the decision of the Supreme Court in the case of A. L. Kalra v. Project Equipment Corporation of India Ltd. (1984) SCC 497 was placed. The relevant portion of the said decision is quoted below :-

"An administrative authority who purports to act by its regulation must held bound by the regulation, even if that has no force of law. What is as misconduct in the present case does not constitute misconduct. Therefore, per se under 1975 Rules the respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. The action is thoroughly arbitrary and violative of Articles 14 and 16.

Where misconduct when proved entails penal consequences it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct."

14. On the aspect of the finding being outside the scope of the chargesheet Mr.

Bose strongly placed the reliance on the decision of the Supreme Court in the case of *State of Punjab v. Bakhtawar Singh and Ors.* reported in 1972 SLR 85. The relevant portion is as follows :-

"Sri Bakhtawar Singh was not charged with having not discharged his duties impartially. None of the charges levelled against him accused him of not discharging his duties impartially. Hence the Minister was not justified in taking into consideration a charge in respect of which the member was not given any opportunity to explain his position. Further the finding of the Minister that Sri Bakhtawar Singh was taking part in politics is a vague finding. Politics is a word of wide import. By merely saying that he was taking part in politics nothing concrete is conveyed or established."

15. Further reliance was made by Mr. Bose in the case of *S. Subha Rao v. State of Mysore* reported in AIR 1964 Mysore 221, relevant portion of which is quoted below :-

"Reverting now to the proceedings of the Board of Enquiry, it should be mentioned that instead of concentrating its attention upon and confining its investigation to the causes of the collapse of the school building or any part thereof whatever it was, the Board went about making an extremely roving enquiry into what it considered it to be very many acts and omissions on the part of the petitioners during the period, when the school building was under construction. The charges formulated by the Government against the petitioners were altered beyond recognition and those altered charges which displaced the charges formulated by the Government were made the subject matter of the enquiry."

"It is in my opinion plain that the only charge into which a Board of Enquiry appointed under Rule 11 (4) of the Mysore Civil Services (Classifications, Control and Appeal) Rules, 1957, may make an enquiry would be the charge framed under Rule 11(2) by the disciplinary authority or by the authority specially empowered in that behalf. It is not within the competence of the Board of Enquiry to frame fresh charges when it is appointed to enquire into a charge already framed under sub-rule (2). But, if it nevertheless proceeds to do so, it would be clearly acting without the authority of law and any finding recorded by the Board of Enquiry into a charge framed by it not already included in the charge framed under sub-rule (2) would be a finding which has no existence in the eye of law and cannot properly form the foundation for the imposition of a punishment on the delinquent Government servant."

15A. Mr. Bose also placed reliance in the case of *State of Assam v. Mohan Chandra Kalita and Anr.* reported in AIR 1972 SC 2535. The learned Judge of the Supreme Court while dealing with the aspect of reliance on certain matters which are extraneous charges held in the manner following :-

"From the evidence recorded by the enquiry officer which we have perused and to which a reference will be made presently, it is clear beyond doubt that none of

the witnesses testified to the fact that on 25th September, 1963 or earlier, neither the respondent authorised the collection of Garibhara nor did anyone say that they complained to him about the collections that were being made outside his room. The enquiry officer recorded evidence on allegations extraneous to the charge such as that certain amounts were being collected as fee to be paid to the respondent, that the respondent had disbursed amounts less than those that were payable to the persons entitled to them and concluded that the respondent must have also authorised the collection of Garibhara."

Mr. Bose also cited the case of Taseem Kumar v. Chief Engineer (H.P.) reported in (1984)2 SLR 444. The relevant portion is quoted below :-

"It would not be out of place to mention at this stage that even the show cause notice which was issued to the petitioner proceeds on a ground which is totally extraneous. We have extracted above the relevant portion of the show cause notice which goes to show that the penalty of removal from service was sought to be imposed on the petitioner on the ground that he had "deliberately avoided attendance before the Inquiry Officer on the appointed dates". This was not and could not have been the charge originally levelled against the petitioner and it would not have been made the ground for the imposition of the proposed penalty. Whether or not such lapse, if any, can ever constitute misconduct and be taken into consideration for imposition of penalty, is yet another matter on which we wish to express no opinion. It would thus appear that disciplinary authority also has not at all applied its mind and that it has passed the order of termination mechanically, on the totally extraneous and irrelevant ground. Even on this ground the impugned order of termination must be held to be invalid."

16. Mr. Bose also took pains in pointing out that the plain scrutiny and reading of the charge sheet and also the decision as contained in Annexure "G" to the petition would show that the petitioner was fastened with the charges which do not find place in the charge sheet. Further comment was offered by Mr. Bose on the question of condonation of misconduct. The writ petition filed by the petitioner against the decision of the authority to remove him from service was not otherwise determined by the Court at the time when the order of retirement was passed. During the pendency of the writ application, the order of retirement was passed. The order of retirement, according to Mr. Bose, amounts to condonation of misconduct. In support of the plea for the condonation of misconduct Mr. Bose referred to the earliest decision of this Court in the case of L.W. Middleton Vs. Harry Playfair, which relied on several earlier English decisions. The Court while dealing with the aspect of condonation of misconduct, inter alia held that If a master on discovering that his servant been guilty of misconduct which would justify a dismissal, yet elects to continue him in his service, he cannot at any subsequent time dismiss him on account of that which he has waived or condoned.

17. Mr. Bose also referred to a decision of the Supreme Court in the case of The State of Punjab Vs. Dewan Chuni Lal, . Reference was also made in the case of

Union of India v. Md. Habibul Haque reported in (1978) 1 SLR 748. While referring to the aforesaid decision Mr. Bose also took pains in placing reliance on the decision of this Court in the case of Collector of Customs v. Rebati Mohon Chatterjee reported in 1976 SLR 897. The relevant portion of the said decision is quoted below :-

"In our view, this contention of Mr. Chatterjee is sound and should be upheld. After all, the allegations against the respondent was of graft and corruption since he was being charged with having acquired assets disproportionate to his known sources of income. If the Customs Authorities were really serious in pressing the charge it is, in our view, unthinkable how during the pendency of this appeal they could have promoted the respondent. This action of promotion should, in our view he held, to amount a condonation of any allegation against the respondent. After all, this Court is exercising its equitable jurisdiction in granting discretionary relief. The appellants in our view cannot be allowed to approbate and reprobate at the same time."

18. Mr. Debranjana Mallick, the learned Advocate appearing for the Bank claimed and contended that the entire matter is to be viewed from the conduct of the petitioner which itself constituted the ground for not holding the Allahabad Bank Officers' Employees Conduct Regulation, 1976. In extension of the aforesaid submission Mr. Mallick further elaborately placed ;the charge sheet, the reply of the petitioner to the charge sheet and the payment made on three diverse dates for liquidating the shortage of Rs. 40,000/-. After placing reliance on the documents and pleadings of the parties Mr. Mallick claimed that it was not necessary for the Bank to adduce evidence or to examine himself and to adduce evidence on behalf of the Bank, for the sole reason the petitioner himself expressed "I am repented" and he accepted the moral obligation.

19. Let me now consider the rival contention of the parties from the angle of factual matrix as cast in the writ application and the rejoinder. It is an admitted fact that the petitioner accepted the moral obligation. It is also an admitted fact that the petitioner duly signed suspense voucher. It is an admitted fact that the petitioner duly paid the entire sum of Rs. 40,000/- by three different cheques of three different dates but the matter is to be viewed from the perspective of the regulations as also the decision reached by the authorities. The petitioner was informed of the decision of the Authority after the liquidation of the entire money by him. The charge sheet according to Mr. Mallick was not required to be amended by reason of the admission and the conduct of the petitioner but Mr. Mallick could not answer nor could he show that the petitioner was fastened with the charge of temporary misappropriation of bank's fund nor was he saddled with any charge that his credibility is at stake. The petitioner also was not charged with temporary misappropriation of public money cast a shadow on the integrity of the charge officer. At this stage, the attention of Mr. Mallick was drawn to proviso to Regulation 6(4) which quoted below :-

"On receipt of the written statement of the officer employee, or if no such

statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or if it considers it necessary so to do appoint under sub-regulation (2) in Inquiring Authority for the purpose :

Provided that it may not be necessary to hold an inquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record its findings on each such charge."

20. It is true that it will not be necessary to hold an enquiry in respect of Articles of charge admitted by the employee in his written statement but shall be necessary to record his findings on each such charge. Mr. Mallick was asked to show whether there was any recording of findings of charge originally framed against the petitioner. In the absence of such finding the plea of Mr. Mallick which was very strongly repeated and reiterated by him that it may not be necessary for the authority to hold an enquiry into Articles of charge admitted by the petitioner is not sustainable for the sole reason that the disciplinary authority failed to act in terms of the said proviso by not recording his finding on charge originally framed against him. The reliance on the decision of the Supreme Court in Srinivasan's case (supra) is of much importance. The Supreme Court in the case of Srinivasan v. Union of India (supra), inter alia, held admission is not a conclusive proof of the matter admitted though it may be in certain circumstances operated as an estoppel, there cannot be any mechanical approach of the disciplinary authority in such manner as was done in the facts and circumstances of this case. The admission of the petitioner is to be viewed from the surrounding and alternating circumstances and the plea offered by him. A. K. Sinha, J. (as His Lordship then was) in the case of Makananda Bhaduri v. Assistant Commercial Superintendent (S.E.) Railway held unless one retains and convert the money to his own use dishonestly, there could not be any misappropriation. Even to constitute temporary misappropriation it must be established on evidence that the amount was retained or converted by the delinquent to his own use dishonestly. In Re : C. Raghavan Menon (supra), the Madras High Court held the misappropriation even though temporary must be established on proving dishonest intention. It is said unless one retains and converts the money for his own use dishonestly, there could not be any misappropriation to constitute temporary misappropriation which must be established on evidence. The High Court held that there is no finding that the petitioner retained any amount or converted the amount to his own use dishonestly. In the instant case there is no such enquiry in support of the finding that there was, in fact, temporary misappropriation nor any evidence adduced to establish the dishonest intention of the petitioner while retaining the amount even for temporary period. The learned Judge of the Supreme Court in the case of Jagdish Prasad v. State of M.P. also duly noticed the earlier decision. In spite of repeated query to Mr. Mallick to explain satisfactorily as to why and in what circumstances the disciplinary authority came to the finding that there was temporary misappropriation. The statement made by the petitioner which strongly relied on by Mr. Mallick did not constitute a clear or unambiguous

admission of the guilt. Incurable infirmity crept in the disciplinary proceeding. There is no charge of temporary misappropriation and the petitioner was not asked to show cause that he committed temporary misappropriation. There was also no evidence in support of the finding the petitioner committed temporary misappropriation. Admission of guilt cannot be otherwise construed as a conclusive proof of the guilt. The facts and circumstances also spring surprise for the Court when the authority issued the charge sheet there was no charge that the petitioner committed temporary misappropriation of money. The bank authorities unhesitatingly accepted payment of Rs. 40,000/- from the petitioner towards the liquidation of shortage of Rs. 40,000/-. The impugned decision to remove the petitioner from service spells out new charges or in other words findings reached by the disciplinary authority are completely extraneous to the charge. It will be proper for the Court to unquote the decision of the Supreme Court in the case of *State of Punjab v. Bakhtawar Singh and Ors.* (supra). In that case Bhaktawar Singh was not fastened with the charge of taking part in politics nor with charge of not discharging functions impartially. The learned Judges of the Hon"ble Supreme Court held the word "politics" is word of a wide import and that word "politics" did not find place in the charge sheet. In the case of *Collector of Customs v. Md. Habibul Hague* the finding of the disciplinary authority was found to be at variance with the charges levelled against the petitioner. A. K. Sinha, J. while speaking for the Court held in the manner following :-----

"On the third ground it is contended by Mr. Chakraborty, the view taken by the trial Judge that the respondent was punished on a charge different from the charge levelled against him, is clearly erroneous. Mr. Chakraborty draws our attention to the article of charge and submits that there is a clear finding of the Enquiry Officer that the act of aiding and abetting the smuggling of various articles found in the canvas bag and Haque's own brief-case or listed in Annexure II to the chargesheet stood established. It appears that the charge actually framed under the article of charge against the respondent and the charge made in the concluding portion of the statement of allegation are not identically worded. In the article of charge the respondent was charged with the aiding and abetting in the attempt of smuggling of certain articles but in the concluding portion of the statement of allegation in support of the charge it was stated that by his connivance of the act of aiding and abetting the aforesaid smuggling operation the respondent, rendered himself for department action against him. The Enquiry Officer made a finding that the respondent's "connivance of the Act of aiding and abetting the smuggling of the various Articles found in the canvas bag and Haque's own brief case or listed in the Annexure II to the charge sheet" was clearly established. This, however, was not the charge against the respondent as mentioned in the article of charge, for clearly there is no charge of connivance of the act of aiding and abetting the smuggling of various articles against the respondent. It cannot be said that the charge of aiding and abetting the attempt of smuggling of goods are identical

with that of connivance with the act of aiding and abetting the smuggling goods. This apart, the disciplinary authority, again, made a finding that the respondent himself was guilty of smuggling of goods and thus proceeded to impose penalty of dismissal upon the respondent. We, therefore, find no substance in this argument. The learned Judge considered the matter in further details and we entirely agree with the view taken by him."

21. On the question of condonation of misconduct I have already quoted the decisions. The relevant portion of the report in the case of *State of Punjab v. Dewan Chunilal* is as follows :-

"In our view reports earlier than 1944 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944".

A Bank employee challenging the order of removal by initiating the writ proceeding is allowed to retire by the Bank Authority. How the petitioner could allow treat an employee since removed from service as retired from service at the time when the determination of the challenge against the order of removal was not reached. The action of the respondent itself shows that by an order of retirement they have condoned the order of removal inasmuch as there must be some predictability in the action of the executive to put more strong words would have been proper. The authorities cannot be allowed to both approbate and reprobate. On this count the order of removal is sought to be treated as wiped out. When there is a new charge of temporary defalcation the petitioner has a right to know the charge before the decision as contained in Annexure "G" is reached. The petitioner ought to have been given an opportunity to reply to a new charge of temporary defalcation but that was not given. Framing of new charge without giving the delinquent opportunity to know the same or to controvert the same does not depend on mere ipse dixit of the disciplinary authority. Court is reminded of the pronouncement of the Supreme Court in *Kalra's case* (supra) paragraphs 28 and 29. The contention of Mr. Mallick, as is effectively recorded above appears to be very attractive but closure scrutiny shows that they lack in any substance. In view of the detailed reasons and findings reached above I set aside the charge-sheet and the decision inasmuch as the respondent did not proceed with the original charges but proceeded on the basis of temporary misappropriation in respect of which the petitioner was not charged with. The petitioner having retired from service should be accorded all the service benefits and the retirement benefits which would have been accrued to him had he not been fastened with the charge-sheet, order of suspension and the decision as contained in Annexure "G" within a period of two months from the date of communication of this judgment. Be it also recorded that since the petitioner succeeds he shall be paid the remaining amount which should have

been paid to him but could not be made available to him by reason of the order of suspension and removal for the period he was under suspension and removal.

22. Mr. Mallick prays for the stay of the operation of the order but his prayer for stay is refused.

23. All parties concerned to act on the signed copy of the operative part of this judgment on the usual undertaking.