(2019) 08 JH CK 0179

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3802 Of 2005

Swapan Bhattacharya APPELLANT

Vs

Bank Of India And Ors RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Oriental Bank Of Commerce Officer Employees (Conduct) Regulations, 1982 — Regulation 3(1)

Citation : (2019) 08 JH CK 0179

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Anil Kumar, Chandana Kumari, A. Allam

Final Decision : Dismissed

Judgement

Heard the learned counsel for the parties.

1. The petitioner has preferred this writ petition for quashing the punishment order dated 30.12.2003 and appellate order dated 25.7.2004. Review order dated 21.4. 2005 is also under challenge.

2. Mr. Anil Kumar learned Sr. Counsel for the petitioner submits that the petitioner was working and posted as Manager of Bank of India at Balsagra Branch, Hazaribagh Zone. He was charged for the act of misconduct alleged to have been committed during tenure of his service from 15.5.1999 to 5.7.2001 as Manager, Balasagra Branch Hazaribagh. Altogether seven charges were brought against the petitioner which are as under :-

Article No.1:- Sanctioned and disbursed overdraft/loan against fake LIC policies and failed to follow Bank's rule for financing overdraft/loan against LIC policies.

Article No.2 Sanctioned Kishan Credit Car (KCC) by violating Bank's norms in as much as land holding certificate from concerned competent authority were not obtained.

Article No.3 :- Disbursed the vehicle loan for purchase of car by debiting loan without sanctioned by the competent authority.

Article No.4 :- Sanctioned and disbursed Tractor Loan by violating Bank's norms.

Article No.5 Financed 46 accounts as detailed out in statement of allegation in gross violation of Bank's norms regarding service area without obtaining prior permission from controlling office or without obtaining NOC.

Article No.6 Paid Rs. 72000/- by debiting tractor loan.

Article No. 7:- Financed 6 tractor accounts by obtaining fake/forged land possession certificate/charge creation certificate without verification of land records.

3. Mr.Anil Kumar , learned Sr. Counsel, for the petitioner at the very outset submits that the charge sheet is on the basis of certain Rules and Regulations framed by the Bank, which has not been provided to the petitioner and inspite of the order of this court, the said Rules and Regulations have not been brought on record by the Respondents-Bank. He submits that in view of that, charges are not sustainable, as the petitioner was not knowing as to what rules an regulations he had violated for which chargesheet in question has been issued to him. He further submits that after submissions of the chargesheet, the petitioner made reply in respect of the chargesheet provided to him and thereafter enquiry was conducted by the Respondents -Bank vide order dated 20.2.2003 and to the effect Enquiry Officer was appointed and after concluding the enquiry, enquiry report was submitted on 20.8.2003 wherein charge against this petitioner has been proved except charge no. 6 which has not been proved. Mr. Kumar further submits that so far as the charge nos. 1,4 and 7 are concerned, they are identical and same in nature, but the respondents with oblique motive divided the charges into three parts and according to him, this was done, so that the highest punishment could be awarded to the petitioner for identical charges. He further submits that MW 1,2 and 3 deposition has not been taken into consideration by the Enquiry Officer who supported the case of the petitioner. He further submits that in view of the deposition of MW 1,2 and 3 it has been proved that there is no substantiate loss to the Bank .Mr. Kumar submits that the impugned order of punishment dated 30.12. 2003 has been issued by the respondent authorities in violation of principles of natural justice as the respondents authorities have not given second show cause notice before awarding punishment to the petitioner and as such on this ground also , the impugned order of punishment is liable to be set aside. He further submits that the Enquiry Officer has also not given proper opportunity to the petitioner in adducing his evidence, which would be evident from the written statement filed by the petitioner before the Enquiry Officer .He further submits that the charges levelled against the petitioner is for non-following the Bank's Rule of Financial over draft/loan against LIC Policies and other irregularities with respect to certain accounts, but from the enquiry report and the impugned order of punishment, it

will appear that nowhere it has been mentioned by the Enquiry Officer or the Disciplinary Authority the petitioner violated the rules while granting overdraft/ loan to the different loanees and in absence of the specific rules, it cannot be said that the petitioner had violated the same and therefore, the charges made against the petitioner is absolutely vague and findings given by the Inquiry Officer and the Disciplinary Authority are perverse. He further submits that the petitioner has also submitted a reply dated 28.8.2003 to the Disciplinary Authority upon the enquiry report, which was given to the petitioner but the same has not been taken into consideration and as such, the impugned order passed by the Disciplinary Authority is perverse. He further submits that three witnesses have been examined on the side of the Bank and they have supported the case of the petitioner and the same has not been taken into consideration by the Bank Authority. He further submits that non-available of the specific rules relating to the sanction of over draft/loan and the matter respect to the other charges, it cannot be said that the interest of Bank has been jeopardized because of the action on the part of the petitioner when all the accounts have been closed after making payment by the loanees and as such the findngs given by the Disciplinary Authority for removal of the petitioner from the service is illegal, arbitrary and without jurisdiction. He further submits that so far as charge no. 3 is concerned, that has been partly substantiated and charge no. 6 was not substantiated. He further submits that inspite of that, the petitioner has been awarded most of highest punishment i.e. removal from service which shows that the charges levelled against the petitioner does not commensurate with the punishment awarded which is harsh in nature. He brought the enquiry report before this court which is annexed as annexure-2 to the writ petition and submitted that investigation report of Mr. Bhairo Singh, investigation report of Mr. Aminulah and relevant position of Bank's internal Audit Report of the year 2001 were demanded to produce during the departmental proceding on behalf of the petitioner which was disallowed by the Enquiry Officer on the ground that the documents demanded by the petitioner having no direct reference in the chargesheet. Referring to the arguments about the report of the Investigating Officer which was very much relevant for the petitioner to prove his innocence and that has not been done in this case and the learned counsel submits that the inquiry report is vitiated. He further submits that the Enquiry Officer has considered the LIC certificate as genuine, whereas there was no requirement of taking, such LIC Policy. The Enquiry Officer has came to the conclusion that it is contravention of the bank rules and it was done to accommodate the borrowers. He submits that to ensure 100% collateral security the petitioner has taken LIC Policy as security. He further submits that the enquiry officer has taken note of the fact that MW 2 in ES-4 stated that the certificates and assignments were apparently genuine but on verification all the policies, except one, were found genuine. He further submits that MW1 and MW 2 confirmed that 4 out of 5 accounts were closed prior to investigation and there is meager balance in the remaining account of Maqbool Ansari. He further submits that creation of certificate by BDO and Circle Inspector were found to be correct by the Enquiry

Officer. He further submits that with regard to charge of Article -2 the petitioner relied on the practice followed by the Branch and the fact that 6 out of 9 accounts are closed. This finding of the Enquiry Officer is again vitiated as it is the practice in the bank and predecessor of the petitioner had also followed that precedent and there is no illegality if the petitioner accommodated on that precedent. He further submits that finding of the Enquiry Officer to the effect that fake LIC policies, which were not taken, are not substantiated by any evidence. He further submits that in the enquiry report it has come that 12 accounts were closed and repayment was regular in these accounts and inspite of that , Enquiry Officer has come to the conclusion that charge against the petitioner is proved. After submission of the Enquiry report, the petitioner was served second show cause which he replied.

By order dated 30.12.2003 Disciplinary Authority came to the conclusion that the petitioner violated bank's laid down norms of the financing the banks money is Jeopardized by financing against fake LIC policies, accommodating borrowers towards margin contribution by releasing the loan in KCC A/C, financing beyond service area without obtaining prior permission from bank and no objection certificate from concerned bank and diluting security of the Bank by way of accepting fake land charge creation certificate. The allegation have been substantiated by not only the oral evidence, but also adequately by documentary evidences. The Disciplinary authority opined that the allegations are made serious in nature and based on the records of the enquiry, and the ends of justice shall be met of following punishment order :-

Charge No.1

Proved

"Removal from service which shall not been disqualification for future employment in terms of regulation(i) of Bank India officer Employees (Discipline and Appeal) Regulation, 1976

Charge No.2

Proved

-do-

Charge No.3

Proved

"Censore" in terms of regulation 4(a) of Bank 0f India Officer Employees (Discipline and Appeal) regulation, 1976.

BANK OF INDIA

Charge No.4

Proved

Removal from service which shall not been disqualification for future employment in terms of regulation(i) of Bank India officer Employees (Discipline and Appeal) Regulation, 1976

Charge No.5

Proved

Reduction of 2 stages of pay with cumulative effect in terms of regulationi 4(f) of Bank of Indi Officer Employees(Disciplinary and Appeal) Regulation, 1976

Charge No.6

Not proved

Exonerated

Charge No.7

Proved

Removal from service which shall not been disqualification for future employment in terms of regulation(i) of Bank India officer Employees (Discipline and Appeal) Regulation, 1976

4. Against this punishment order the petitioner preferred the appeal which was dismissed by order dated 25.7.2004 and against that, the petitioner also moved before Reviewing authority by way of filing review petition and the same was dismissed on 21.4.2005. He submits that inquiry is vitiated in view of the facts that it has been considered by this Court in the earlier paragraphs. He further submits that on the basis of the enquiry report no prudent person can come to the conclusion that in the enquiry report charge against the petitioner has been proved. He further submits that it is well settled principles of law that High court is very slow in interfering with the punishment order under Article 226 of the Constitution of India, but where, a person shows reason, then the High Court is well under its jurisdiction to do the justice under Article 226 of the Constitution of India. To substantiate this arguments he has relied on the decision in the case of Allahabad Bank and Ors Vs. Krishna Narayan Tewari reported in 2017(1) JBCJ 171(SC).The learned counsel for the petitioner has referred to para7 of the said judgment which reads as follows :-

" 7. We have given out anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Department Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrive at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary inquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and Appellate Authority.

The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence not recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the finding of the Disciplinary Authority. All told the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority".

5. On the point of question of fairness in the enquiry proceeding he has relied on the decision in the case of Moni Shankar Vs. Union of India and Anr reported in (2008)3 S.C.C 484.The learned counsel for the petitioner has referred to para 17 and 18 of the said judgment which reads as follows :-

"17.The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding,principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied , the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality(See State of U.P Vs Sheo Shankar Lal Srivgastava and Coimbatore District Central Coop Bank Vs. Employees Assn)."

"18 We must also place on record that on certain aspects even Judicial review of fact is permissible (E.v Secy.Of State for the Home Deptt.)"

6 With regard to the report of the preliminary enquiry, that was not provided to the petitioner and same has been considered by the Enquiry Officer in the main

enquiry and in view of the well settled proposition of law, the enquiry is vitiated as the preliminary enquiry report inspite of demand from the petitioner the same was not supplied to the petitioner. To substantiate this arguments he has relied on the decision in the case of Nirmala J. Jhala Vs. State of Gujarat and another reported in (2013)4 S.C.C 301.The learned counsel for the petitioner has referred to para 48 of the said judgment which reads as follows :-

"48 A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence/"(Vide Martin Burn Ltd. v. R.N. Banerjee, AIR p. 85, para 27)[See also Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa, V.C. Shukla v. State (Delhi Admn.), Dalpat Kumar v. Prahlad Singh and Cholan Roadways Ltd. v. G. Thirugnanasambandam.]

7. Lastly he argued that even the enquiry report is accepted in totality, the punishment is very harsh and disproportionate. To substantiate this arguments he has also relied on the decision in the case of Kailash Nath Gupta Vs. Enquiry Officer(R.K Rai), Allahabad Bank and Ors. Reported in (2003) 9 S.C.C 480. The learned counsel for the petitioner has referred to para 6,11,12 of the said judgment which reads as follows :-

"6. We have carefully examined the submissions made by the learned counsel for the parties. The High Court did not go into the question as to whether the order of removal of the appellant from service was grossly disproportionate in view of the decision of this court in State Bank of India Vs. Samarendra Kishore Endow."

"11. In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-consideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject-matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs 46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

"12. These aspects do not appear to have been considered by the High Court in the proper perspective. In the fitness of things, therefore, the High Court should examine these aspects afresh. The consideration shall be limited only to the quantum of punishment and not to any other question. As the appellant would have superannuated in the normal course in the year 1994, and the matter is pending for a long time, the High Court is requested to dispose of the matter within six months from the date of receipt of this order. It is made clear that no opinion has been expressed by us as to what would be the appropriate punishment. In this view, the impugned order is set aside. The writ petition is remitted to the High Court for disposal in the light of what is stated above."

8. Finally,he has argued that the same set of charges the petitioner was also prosecuted in a criminal case wherein he has been acquitted in the year 2017.Thus, Mr.Kumar learned Sr. Counsel argued that the misconduct of the petitioner is not proved and what is the regulation,according to the charges that has not been provided to the petitioner, which caused prejudiced to the petitioner and he also further submits that finding of the Enquiry Officer is perverse and according to him, the allegation is vague in absence of the said rules on the basis of charge framed which was not provided to the petitioner and charge cannot be sustained. He also argued that in view of non-supply of relevant documents there is a violation of well settled principle of Audi Alteram Partem . He further submits that this is not a case of non performing assets, there is no loss to the bank and on this ground also the impugned order cannot be sustained in the eyes of law.

9. Per contra Mr. Allam, the learned Sr. Counsel for the Bank submits that Sri. M.K. Baliarsing was appointed as a presenting officer and not as Enquiry Officer. He placed the charges before the Enquiry Officer which is dated 27.2.2003.The charges are mentioned under the heading of Articles of charge and no where else. Whatever MW 1 and MW 2 and M.W 3 have stated that those are the depositions. The bank has suffered a substantial loss as a result of mis-conduct committed by the petitioner which was serious in nature. So far as charge no.3 is concerned, it was partly substantiated, as a result of which, minor penalty of censor has been imposed and so far as charge no. 6 is concerned, it was not substantiated, so against this charge the petitioner has been exonerated and in respect of that no dismissal order was passed against the petitioner. It is stated that before passing the final order of punishment after the finding given by the Enquiry Officer dated 14.8.2003, the petitioner was called by way of 2nd show cause to place his case and he filed representation dated 28.8.2003 placed his case and the Disciplinary Authority after considering the same passed the penalty order on 30.12.2003 and he was given full opportunity to verify the documents and cross examine the witnesses produced by the management and whatever he wanted to produce his document and to examine his witnesses he was allowed do so. He had fully availed the opportunity and whatever punishment was inflicted, those were against the charges well proved. The petitioner raised the objection in the Appeal but since the petitioner had failed to bring any fresh ground or mitigating factor in support of his contention the appellate authority has also confirmed the penalty order awarded to the petitioner in the present case. Thereafter, the petitioner filed review petition

which was dismissed as nothing fresh ground has been shown. Above all, the Enquiry officer, Disciplinary Authority and the Appellate Authority followed all the norms, rules and regulations framed by the Bank while making a proceeding and inflicting the punishment against the petitioner. Mr. A.Allam further submits that the charges against the petitioner is on the basis of violation of all the norms and rules of the Bank and there is no procedural lacuna in the enquiry proceeding and the petitioner was provided full opportunity to participate in the enquiry proceeding. He further submits that by way of filing the enquiry report of the Enquiry Officer it cannot be said that charge against the petitioner has not been proved. The Disciplinary authority has passed the punishment order after going through the records of the case and there is no illegality in the punishment order, appellate order as well as Reviewing order. He further argues that the Hon'bl High court in sitting under Article 226 of the Constitution of India restricts itself in appreciating the evidence which has been laid before the enquiry proceeding. He further submits that in pursuant to the order of this court dated 26.3.2019 he has brought the rules and regulations of the bank by way of filing supplementary counter affidavit and he referred to the regulation 19.5(f) which reads as follows :-

19.5- By the expression "gross misconduct" shall be meant any of the following acts and omission on the part of an employee:

(a)................................

(b)..............................

(c).............................

(d)...........................

(e)............................

(f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions ensure of warnings have been administered or an adverse remark has been entered against him.

General:

1. Every Officer employee shall at all times take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee.

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

3. No Officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior;

" Provided wherever such directions are oral in nature, the same shall be confirmed in writing by his superior official"

4. Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority.

Lending's and Borrowings:

No officer employee, shall in his individual capacity-

(I) ....

(ii) ....

(iii) ....

(iv) lend money in private capacity to a constituent of the 18 Bank or have personal dealings with such constituent in the purchase or sale of bills of exchange, Government paper or any other securities; and

(v) ....

24. Acts of Misconduct

A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976.

10. On the strength of this regulation Mr. Allam submits that the bank acted bonafidely as an officer who is working with any financial institution the integrity of that person must be at par excellence. He has relied on the decision in the case of of Suresh Pathrella Vs. Oriental Bank of Commerce reported in(2006) 10 S.C.C 572. Mr. Allam, learned counsel for the Bank has referred to para 18,19 and 20 of the said judgment which reads as follows :-

18. It will be noticed that the appellant was charged for the alleged violation of Regulation 3(1) of the Regulations, 1982. Regulation 3(1) reads:

"3. (1) Every officer employee shall, at all time take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer."

The regulation ensures that every officer at all times takes all possible steps to protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do noting which will be unbecoming of a bank officer. Such regulations are made to instil the public confidence in the bank so that the interests of customers/ depositors are well safeguarded. In such a situation the fact that no amount was lost to the bank would be no ground to take lenient view for the proved misconduct of a bank officer.

19. In Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik this

Court held that a bank officer acting beyond his authority constituted misconduct and no further proof of loss is necessary.

20. In Regional Manager, U.P. SRTC v. Hoti Lal this Court held in para 10 at SCC p. 614 as under:

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.:

11. He has further relied on the decision of a Coordinate Bench of this court in W.P(S) No. 231 of 2002 which was disposed of on 8.2.2013. The learned single Judge has observed in paragraph 14 of the said judgment which reads as follows:

14. In the case of "State of Andhra Pradesh Vs. Chitra Venkata Rao" [reported in (1975) 2 SCC 557], the Hon'ble Supreme Court has held that the High Court is not a Court of appeal under Article 226. The departmental authorities alone are sole judges of facts and if there is some legal evince on which their findings can be based, the adequacy or reliability of that evidence is not a matter to be agitated before the Court. In para 21 it has been held,

21. "The scope of Article 226 in dealing with departmental inquires has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 227 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hod the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of

natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at the conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

12. He has further relied on the decision of the Division Bench of this Court in L.P.A No. 333 of 2013 which was disposed of on 22.4.2015. The Division Bench of this Court has held in paragraph 10 and 11 of the said judgment which read as:

10. Having heard counsel for both sides and looking to the facts and circumstances of the case, we, hereby, quash and set aside the judgment and order dated 8th August, 2013 passed by the learned Single Judge in W.P.(C) No.2736 of 2004 mainly for the following facts and reasons:-

(I) Observation regarding defence with respect to proved charges

(a) This court is not sitting in appeal against the finding and conclusion arrived at by the Enqiry Officer.

(b) The re-appreciation of the evidences is not permissible in the writ jurisdiction because this is not a first appeal in disguise.

(II) Observation on the defence with respect to procedural defect:

Looking to the facts and circumstances of the case, it appears that there is no procedural defect in holding the departmental enquiry ie. Report of the Inquiry Officer was given to the delinquent and adequate opportunity of being heard has also been given to the delinquent employee at every stage before imposing the punishment.

(III) Observation regarding quantum of punishment:

Now, the only question left before this court is as to whether the quantum of punishment is shockingly disproportionate to the proved misconduct. Learned counsel appearing for Respondent No,. 1 has argued out the case at length before this Court for every proved charge, but none of these contentions has been accepted because golden thread running through all the points raised in defence by respondent no.1 is that there is no financial loss caused to State Bank of India. Perhaps, delinquent employee harbours a misconception in his mind that if any error of the employee does not caused financial loss to the employer, then it can not be considered a misconduct on the part of the employee. This is a wrong notion and we deprecate this practice. If any customer deposits money in cash it can not be retained by the employees even for few days without depositing it, because this delay in depositing the cash tantamounts to temporary misappropriation. It appears that learned Single Judge has lost sight of this misconduct of temporary misappropriation committed by the delinquent employee. In a case of temporary misappropriation, ultimately the money is always deposited after sometime and this is the reason why it is called 'Temporary Misappropriation'. However, it may not result into financial loss to the employee, but that does not mean that there is no misconduct committed by the employee. In fact, there is no need for this court to go into the fine niceties of the evidences on record and suffice it to say that report of the Enquiry Officer is based on evidences on record and findings of the Enquiry Officer are not perverse. So far as quantum of punishment is concerned, taking into consideration the fact that misconduct no.s 3,5 (a), 7 and 8 committed by the respondent employee deliberately are absolutely gross in nature, it appears that the delinquent employee has been let off with a very lenient punishment. The punishment imposed is referred to in paragraph 8 of this order. Sanctioning a loan in spite of the knowledge that the previous loan has not been paid back by the borrower and the fact that the loan amount sanctioned will be used to pay the outstanding of the first loan amount cannot be termed anything but a grave misconduct. This cannot be allowed. Otherwise, as stated hereinabove by counsel for the appellant, the defaulter will take second loan to pay back the first loan amount. He will take third loan to pay back the second one and so on and so forth. This practice will go on till something untoward happens, like death of the loanee. Thus, looking to the nature of misconduct, the quantum of punishment inflicted by the disciplinary authority and approved by the appellate authority is absolutely mild in nature. It should have been much severe. Under no circumstance, such a punishment can be said either shockingly disproportionate or unreasonably excessive because punishment is being inflicted not only to punish the delinquent employee but it should also give a warning signal to other employee also, who will thing twice before committing such errors. This aspect of the matter has not been properly appreciated by the learned Single Judge.

(IV) Contextual part of the decision rendered by the Hon'ble Supreme Court in the case of Regional Manager U.P.S.R.T.C., ETAWAH AND OTHERS vs. HOTI LAL AND ANOTHER reported in AIR 2003 SUPREME COURT at page 1462 is quoted hereunder:

"10. .... A mere statement that it is a disproportionate would not suffice. A party appearing before a Court, as to what is that the Court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with he 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 transaction or act in a fiduciary capacity, highest degree of integrity and trust -worthiness is must and unexceptionable. Judges in that background, conclusions of the Division Bench of the High Court do not appear to the proper......."

(V) Relevant part of the decision rendered by the Hon'ble Supreme Court in the case of KARNATAKA STATE ROAD TRANSPORT CORN. VS. B.S. HULLIKATTI reported in (2001) 2 SCC 574 at paragraph 5 and 7 is quoted hereunder:

"5. On the facts as found by the Labour Court and the High Court, it is evident that there was short changing of the fair by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a conductor for nearly 22 years.

It is difficult to believe that he did not know what was the correct fair which was to be charged. Furthermore, the appellant had during the disciplinary proceeding taken into account, the fact that the respondent had been found guilty on as many as 36 times on the facts speak for themselves, is carely applicable in the instance case. Charging 50 paise per ticket more from as many as 35 passenger could only be to get financial benefits by the conductor . This act was either dishonest or was so grossly negligent that the respondent was not fit be retained as a conductor because such action or inaction office is bound to result in financial loss to the appellant corporation.

7. Inner opinion the order of disposal should not have been set aside.................

(V)) As per the observations made by the Hon'ble Supreme court in the aforesaid decision when a persons deals with public money or is engaged in financial transaction or in a fiduciary capacity, highest degree of integrity and trust worthiness is must and UN-exceptionable and it is not only the amount involved but the mental set up. The type of duty performed and similar relevant circumstances which go into the decision making process while considering whether the participant is proportionate or disproportionate. This also applies in the present case as the delinquent employees was working in the Stat e bank of India as a branch manager at the time when misconduct on spot came to light and therefore, punishment imposed upon him by the authority cannot be called shockingly disproportionate to the nature of misconduct.

11. As a cumulative effect of the aforesaid facts, regions and judicial pronouncement we hereby, allow the letters patent appeal and quash and set aside the judgment 8th August, 2013 passed by the learned single Judge in W.P.S. No.2736 of 2004 dated 8th August,2013 and we hereby uphold the order passed by the disciplinary authority dated 6th June, 2000 and appellate authority dated 3rd May, 2001, which are at annexure 7 and 8 respectively to the memo of writ petition.

13. He has further relied in the case of State Bank of India and Ors Vs. Ramesh Dinkar Punde reported in 2006 AIR SCW 5457. The learned counsel for the Bank

has referred to paragraph 21 of the said judgment which reads as under:

"21.Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance with such submission. As already said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a manager of the Bank and it needs to be emphasized 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 so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors,he must be dealt with iron hands and he does not deserve to be dealt with leniently.

14. He has further relied on the decision in the case of Union of India and Ors. Vs. P Gunasekaran reported in AIR 2015 S.C 545. He has referred to the paragraph 13 of the said judgment which reads as

13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No.1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principle of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

I. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not;

(I) re-appreciate the evidence;

(II) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(III) go into the adequacy of the evidence

(IV) go into the reliability of the evidence

(V) interfere, if there be some legal evidence on which findings can be based.

(VI) Correct the error of fact however grave it may appear to be;

(VII) go into the proportionality of punishment unless it shocks its conscience.

15. He has further relied on the decision in the case of of Jayesh Mehta Vs. State Bank of India reported in 2016(1) JLJR 457. He has referred to paragraph 7 and 8 of the Judgment which reads as follows :-

"7.After hearing the counsels of the respective parties at length and on perusal of the documents on records, I am of the considered view that the petitioner has not been able to make out a case to interfere due to the following facts,reasons and judicial pronouncement :-

(1) Admittedly, in the instant case, in pursuance to allegation contained 21 charges held, 16 charges to be proved, 3 charges to be partly proved and 2 charges not proved and considering the allegations of charges and basing on the fact and findings of the inquiry officer, disciplinary authority has passed the punishment of dismissal which has been affirmed by the Appellate as well as Reviewing Committee. This court is not sitting in appeal against against the findings of conclusion arrived at by the inquiry officers since reappreciation is not permissible in the writ jurisdiction. In the case in hand, in view of the seriousness allegations conducted and committed by the petitioner, the power cannot be applied against the facts of three cogent reasons based on evidence cannot be interfered with as has been held by the Hon'ble Apex Court in the case of State of U.P and another Vs. Man Mohan Nath Sinha and Another as reported in (2009)8 SCC 310 in paragraph no. 15 which is quoted hereinbelow :-

"15.The legal position is well settled that the power of Judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to re -appreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions.

(ii) Moreover, with regard to procedural irregularity that there has been no procedural defect in holding the departmental inquiry and the report of the inquiry officer given to the delinquent employee and adequate opportunity has been extended to the petitioner at every stage before infliction of punishment.

(iii) So far as the question of doctrine of proportionality for the quantum of punishment, it is to be seen as to whether the quantum of punishment is shockingly disproportionate to prove misconduct. The Hon'ble Apex Court in the case of Regional Manger, U.P S.R.T.C Etawah and others Vs. Hoti Lal and Another reported in AIR 2003 SC1462 all relevant part of the decision is quoted hereunder :-

"10 A mere Statement that it is disproportionate would not suffice .A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstance which go into the decision making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are in built retirements 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 transaction or act in a fiduciary capacity, highest degree of intercity and trustworthiness is must and unexceptionable. Judged in that background, conclusion of the Division Bench of the High Court do not appear to the proper ...."

16. The Hon'ble Apex Court in the case of Suresh Pathrella Vs Oriental Bank of Commerce reported in (2007) 1 SCC(Cri.) 612 has been pleased to hold in paragraph nos 21 and 22 which are quoted hereunder :-

"21. In Chairman and Md United Commercial Bank Vs. P.C Kakkar, this court said in para 14 at SCC PP 376-77 as under :-

"14 A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/ employee of the bank is required to take all possible steps to protect the interest 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 Vs. Nikunja Bihari Patnaik, it is no defenec 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 reach of discipline and is a misconduct. The charged against the employee were not casual in nature and were serious. These aspect do not appear to have been kept in view by the High Court.

"22. In the present case the appellant acted beyond his authority in breach of the Bank's regulation. Regulation 3(1) of the Bank's Regulation required that every officer of the Bank at all times takes all possible steps to protect the interest of the Bank and discharge his duties with utmost integrity,honesty, devotion and diligence and do nothing which will be unbecoming of a Bank officer. It is a case of loss of confidence in the officer by the bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service,preceded by an enquiry, and to directs the bank to take back the officer in whom the bank has lost confidence, unless the decision to remove the officer is tainted with mala fides, or in violation of principles of natural justice and prejudice to the officer is made out. No such case is made out in the present case.

"8. On the cumulative effect of the aforesaid facts, reasons and judicial pronouncement, I find no reason to interfere with the impugned order of dismissal from services vide dated 9.12.2006 (Annexure -3), 9.4.2007 (Annexure-5) and dated 3.3.2008 (Annexure-6) being confirmed by the Appointing Authority. Appellate authority and Reviewing Authority."

17. On the strength of the above judgment and the facts he argued that there is no illegality in the impugned order passed by the Respondent- Bank.

18. From the records this court finds that the enquiry has been conducted observing the Rule of Audi Alteram Partem. The petitioner was provided full opportunity to defend at every stage. The Disciplinary authority has assigned the reasons of proof of charges. The appellate authority and reviewing authority have also applied their mind and passed the reasoned order. The petitioner has not been able to establish that findings against him have been arrived at on the basis of any foreign materials. On anxious consideration this court finds that this not a case where the order of penalty has been passed without there being evidence on record.

19. In view of the facts, reasons and judicial pronouncement which have been considered herein above, this court finds that there is no illegality in the punishment order dated 30.12.2003 and appellate order dated 25.7.2004 and Reviewing order dated 21.4. 2005 and accordingly, this writ petition is dismissed.

