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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd March, 2021

Pronounced on: 26th March, 2021

\+ W.P.(C) 7401/2017

SUNIL KUMAR NAGPAL ..... Petitioner

Through: Mr. Parmod Kumar Bhardwaj, Adv. with Mr. Sunil Kumar Nagpal, Petitioner in person

versus

CENTRAL BANK OF INDIA & ORS .... Respondent

Through: Mr. Rajesh Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

% JUDGMENT

1. Disciplinary proceedings against the petitioner, who was working as Chief Manager at the South Extension Branch of the Respondent Bank ("the Bank" hereinafter), were initiated *vide* charge sheet dated 11th December, 2013 and an Addendum Memorandum dated 21st March, 2014. These proceeded to an inquiry report dated 7th January, 2015 and culminated in an order dated 27th March, 2015 by the Disciplinary Authority("DA") whereby the petitioner was dismissed from service. The Petitioner's appeal against this order, and revision therefrom, were dismissed *vide* orders dated 10th February, 2016 and 7th January, 2017 respectively.

2. The petitioner prays that the Inquiry Report dated 7th January, 2015, order dated 27th March, 2015, order dated 10th February, 2016 and order dated 7th January, 2017 be quashed and set aside. Consequently, the petitioner prays for a writ of mandamus directing reinstatement of the petitioner in service with consequential benefits along with arrears and interest @18% per annum.

3. Alternatively, it is prayed that the respondents be directed to impose any other suitable penalty apart from dismissal from service.

Facts

4. The petitioner was appointed to the post of Probationary Officer at the Bank in 1984 and, in the month of June 2011, came to be posted as Chief Manager at the South Extension branch of Bank.

5. On 27th September, 2013, the petitioner was served a Memorandum by the Zonal manager, Zonal office alleging acts of omission and commission committed by him while discharging his duties at the South Extension branch and at the Khan Market branch of the Bank, to which the petitioner replied *vide* letter dated 14th October 2013.

6. *Vide* letter dated 22nd October, 2013, the petitioner was informed that his reply was not satisfactory and that disciplinary action was initiated against him. Further, *vide* Memo dated 26th October, 2013, the petitioner was placed under suspension, followed

by the charge sheet dated 11th December, 2013 issued by the Senior Regional Manager acting as the DA.

7. The charge-sheet proposed to hold a departmental enquiry against the petitioner in regard to alleged acts of misconduct committed by him as set out in 17 Articles of Charge. The petitioner was directed to submit his written statement of defence within seven days of the receipt of the charge-sheet.

8. In continuation of the aforementioned charge-sheet dated 11th December, 2013 *(supra)*, an Addendum dated 21st March 2014 was also issued to the petitioner wherein 10 additional charges were added to the existing Articles of Charge. The petitioner was directed to submit a written statement of defence within 7 days of the receipt of this Addendum.

9. Thereafter, *vide* orders dated 29th March, 2014, the Inquiry Authority ("IA") and the Presenting Officer ("PO") were appointed.

10. Inquiry proceedings against the petitioner commenced on 6th May, 2014, and were concluded on 25th November, 2014. Written briefs were submitted by the PO on 10th December, 2014 and the petitioner on 11th December, 2014, culminating in an Inquiry Report dated 7th January, 2015.

11. Out of the 17 charges which formed part of the Charge-sheet dated 11th December, 2013 (*supra*), the IA had held charges 1, 3, 6, 9 to 13 and 15 as proved and Charges 2, 4, 5, 7, 8, 14, 16 and 17 as not

proved, and out of the 10 charges which constituted part of the Addendum to Memorandum dated 21st March, 2014 *(supra)*, three charges were held to be proved against the Petitioner.

12. The Senior Regional Manager of the Bank, as DA, on 13/19th January, 2015, addressed a disagreement note to the petitioner concurring with all the findings of the IA, except for Charge Nos. 2 ,4 and 17 which the IA had found not to have been proved against the petitioner. The reasons for disagreement were stated in the letter, and the petitioner was given an opportunity to submit its written submissions within 7 days of receipt thereof. The inquiry report dated 7th January, 2015 was annexed with the disagreement note.

13. Written submissions, in response to the aforementioned disagreement note were filed by the petitioner on 17th February, 2015 wherein the petitioner disputed the findings of the IA as being erroneous qua the charges the IA had held to be proved against the petitioner and also disputed the charges wherein the DA had differed with the findings of the IA.

14. DA on observing the entire record of the enquiry proceedings both oral as well as documentary and written briefs submitted by the PO and petitioner before the IA, findings of IA and written submissions submitted by Petitioner before the DA, vide order No. RO(South)/HRD/DAD/2014-15/933 dated 27th March, 2015 held charges 1 to 4, 6, 7(partly proved), 9 to 13 and 15 to 17 and Addendum charges 1, 2, 7, 9 to be proved and remaining charges not to be proved.

15. The DA, noting that the petitioner had misutilised his position as branch head by carrying out reckless financing, violating bank systems and procedures, acting in a manner which was unbecoming of a bank employee and failing to take all possible steps to protect the interests of the bank recorded the following observations:

> "Looking to the nature and gravity of the charges proved against the CSO and considering the facts, enquiry proceedings, written briefs of PO, and CSO, findings of enquiring authority and written submissions of CSO and having regard to the acts of omission and commission committed by the CSO wherein unethical, manipulative and accommodative transactions have been done in the accounts for concealment of correct status of the account, Five Borrowal frauds have been perpetrated, as also the huge loss of 12 crores, likely to be suffered by the bank on accounts of lapses attributable to Sh. Nagpal. I observe that his continuation in the bank is a threat to the organisation and the staff working with him and these acts if not checked at this moment will result in adverse consequences causing huge monetary losses to the bank which is custodian of Public Money…"

Having so observed, the DA came to impose the punishment, on the petitioner, of "dismissal which shall ordinarily be a disqualification for future employment" in terms of regulation 4(j) of Central bank of India Officer Employees (Discipline & Appeal) Regulations, 1976 ("the Regulations", hereinafter), further directing that the petitioner would "not be entitled for any increment falling due during the period of suspension and for the difference between the full wages and subsistence allowance and any other privileges for the period of suspension", or to "any type of leave for the suspension period."

16. Against the aforementioned order dated 27th March, 2015 (*supra*), the petitioner preferred an appeal on 10th May, 2015 which was dismissed *vide* order dated 10th February, 2016 with the following observations:

(i) The principles of natural justice have been observed by the IA. Every opportunity had been provided to him to rebut the charges levelled against him, to cross examine the bank's witnesses and to produce witnesses/evidences in his own defence which was also stated to have been availed by the petitioner. It was also observed that the petitioner was also given the opportunity to defend his case through his representative, which, too, he availed.

(ii) The enquiry had been conducted strictly in accordance with the regulations of Central Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976 ("the Regulations", hereinafter).

(iii) All points raised by the petitioner in appeal were already dealt with and most of the objections raised by the petitioner were mere repetitions of objections raised in his submissions against the findings of the IA which had already been taken care of and dealt in the final orders issued in this regard.

(iv) The plea, of the petitioner, that the DA had erroneously

proceeded only against the petitioner, who was the recommending authority, without taking action against the sanctioning authorities, the DA held that staff accountability was fixed in the bank as per well-set guidelines and well-established policy framed by their central office and disciplinary action is initiated against the persons who are found accountable for the lapses/ misconduct. It was noted that in the present case also accountability was fixed on recommending officials, as well as other staff and accordingly disciplinary action was initiated against them. Simply alleging that the DA has intentionally shifted all onus on the petitioner was stated to not serve any purpose as a number of bank officials of different levels were said to be involved in staff accountability exercise. It was observed that disciplinary action proceedings are initiated only after completion of such well-defined exercise and proper identification of officials accountable for the slippage of accounts to NPA or fraud etc.

(v) The contention, of the petitioner, that some of the accounts had become NPAs only after his transfer from the branch, which was attributable to poor follow up by the petitioner's successors, the DA observed that, as per the guidelines of the Bank, if the account became a NPA only due to poor monitoring and follow-up of the branch officials, responsibility would not attach to the sanctioning official, but, on the other hand, if the account had become NPA due to weaknesses/lacunas occurred at the time of appraisals/sanctions,

then the recommending/sanctioning authorities would be held responsible. In the case of the petitioner, the DA held that the charges against the petitioner included five fraud accounts involving large sums of money, in respect of which frauds were perpetrated owing to lapses on the part of the petitioner.

(vi) On the objection of the petitioner that sufficient opportunity in the manner of providing documents of defence was not granted to him, the appellate authority observed that on going through the inquiry proceedings, that all reasonable opportunities were provided to the petitioner to defend his case. It was, furthermore, added that the impartiality of the departmental enquiry was evident as the IA had directed the PO for providing the demanded documents which were very large in number to the petitioner for defending his case.

(vii) In response to the objection raised by the petitioner that double punishments were awarded to him for the same alleged offence, the Appellate Authority stated that after going through the entire proceedings of the Departmental enquiry, it observed that in four borrowal accounts, a minuscule part of the charge was regarding unethical entries in these accounts, while Charge No. 13 exclusively dealt in unethical transactions which included of 23 such transactions. It was observed, that this charge of unethical transactions was serious in nature and it was duly established that these unethical transactions were carried out at the behest of the petitioner for concealment of factual

status of accounts which were otherwise NPA.

However, noting that these lapses were only a minuscule part of the charge and as such could have no bearing on the essence of the charges and the resultant penalty.

(viii) On the objection of the petitioner as to how he could have benefited from these alleged unethical transactions and on the plea that the Bank staff and supervisory staff had carried out these transactions on their own at the behest of borrowers and that there was no loss to the bank, the Appellate Authority held the plea of the petitioner to be not acceptable. It was stated that as a branch head, the petitioner had to face the consequences of the increased NPA and so the net impact of the fraudulent entries would check the escalation of NPA of the branch and thereby ease his position. It was moreover observed that one could not digest the logic that at the behest of the borrowers, junior staff of the branch were effecting these alleged unethical transactions without bringing it to the notice of the petitioner. Noting that the petitioner was the branch head and thus the custodian of the branch, It was observed that it was the petitioner's paramount duty to check any such misdeeds in the branch, however, the petitioner had failed to carry out his duties diligently and rather himself had indulged in such malpractices as it was only the petitioner being the branch head who could have benefited from these transactions for concealment of NPA status of the account.

(ix) It was also stated that the plea of increasing/decreasing the limit as being done by the junior staff in the borrowal accounts without taking the petitioner into confidence was not tenable. It was stated that the junior staff would not decrease or increase the limit of the borrower on their own without bringing the same to the knowledge of the branch head. It was stated that in fact the petitioner had manipulated the CBS system by increasing/decreasing the sanctioned limits to provide benefit to the customer and accommodate them for reasons best known to the petitioner which reflected on his doubtful integrity, ulterior motives and malafide intentions.

(x) On the plea of the petitioner that no reckless advances were made by him and that he was only achieving the target set by the regional office in a very consistent manner from month to month basis, it was observed that from the factual position of the branch, it was evident that there was a sudden burst of NPA as well as reporting of fraud in the borrower accounts of the branch which were financed during the petitioner's stay at the branch. This was stated to very much indicate that the advances were made in a reckless manner.

(xi) Regarding the award of heavy punishment against the petitioner, it was noted that the punishment should be commensurate with the nature and gravity of lapses/misconduct committed by the erring official. Moreover, the total amount of loss to be borne by the Bank due to misconduct of the airing officials was also a major factor for deciding the quantum of

penalty/punishment.

17. In light of the observations as stated hereinabove, the Appellate Authority, dismissed the appeal and held the consolidated penalty as imposed by the DA to be commensurate with the gravity of the proven charges.

18. Against the order dated 10th February 2016 (*supra*), the petitioner filed a review petition on 31st March 2016, the crux of which came to be noted in the order of dismissal of the review petition dated 7th January, 2017 in the following terms:

> "The crux of the subject review petition dated 31-3-2016 submitted by Mr. Nagpal is as under :-
>
> - The DA has intentionally evaded to take cognizance of the responsibilities of recommending officers in case of the reported fraud cases and shifted all onus to him.
>
> - The DA has awarded the punishments in a biased manner, as, no enquiry has been initiated against any of the authorities of RLCC with an intention to target him as a scapegoat.
>
> - There was no concealment of facts on his part, as, availing multiple finance was from the borrowers side.
>
> - Enquiry held against the principles of natural justice.
>
> - Enquiry held without having sufficient evidence brought on record."

19. The Reviewing Authority dismissed the Review Petition, observing that review, under Regulation 18 of the Regulations, was possible only where the charged officer placed new material or

evidence before the Reviewing Authority. The petitioner, it was held, had not done so; ergo no case for review had been made out. The Reviewing Authority, therefore, confirmed the order, dated 27th March, 2015, of the DA, dismissing the petitioner from service.

20. It is in these circumstances that the petitioner approached this Court.

21. Owing to considerable time having passed since judgement was initially reserved in this matter, learned Counsel for the parties were permitted to re-argue the matter. Fresh written submissions were also filed, by learned Counsel for the petitioner. Arguments were re-heard on 22nd March, 2021, and judgement was reserved, for pronouncement today, i.e. on 26th March, 2021.

Rival Submissions

22. Arguing for the petitioner, Mr Ankur Chhibber contended thus:

(i) The petitioner had, behind him, 30 years of meritorious and blemishless service, all of which were wiped away by the impugned decision to dismiss him from service.

(ii) The manner in which the DA had chosen to disagree with the findings of the IA and, thereafter, to punish the petitioner, were unknown to law. The IA had held Articles 1, 3, 6, 9 to 13 and 15 of the Articles of Charge against the petitioner to be proved and Articles 2, 4, 5, 7, 8, 14, 16 and 17 not to be proved.

Of these, the disagreement note expressed disagreement qua the findings of the IA in respect of Articles 2, 4 and 17. The disagreement note, however, was issued in violation of the law laid down by the Supreme Court in ***Punjab National Bank v. Kunj Behari Misra***[1], as they reflected a pre-determined intent, of the DA, to hold against the petitioner on the said charges. ***Kunj Behari Misra***[1] had also been followed, by this Court, in ***Rajpal Singh v U.O.I.***[2] This, according to Mr Chhibber, was fatal. In juxtaposition, Mr Chhibber also invited my attention to the fact that, of all the Articles of Charge against him, the DA found only Charges 2, 3, 4, 9 and 13 sufficient to warrant dismissal or removal from service. At the conclusion of the order dated 27th March, 2015, the DA proceeded to award a "consolidated penalty". In other words, submits Mr Chhibber, even as per the DA, dismissal from service was justified only in respect of Articles 2, 3, 4, 9 and 13, *seen together*. Once, the decision *qua* Articles 2 and 4 stood vitiated on account of the manner in which the DA had chosen to disagree with the findings of the IA in respect thereof, Mr. Chhibber would submit that the "consolidated penalty", too, could not sustain. At the very least, therefore, he submits, the DA ought to be directed to reconsider the matter from the stage of issuance of the disagreement note.

(iii) Besides, such awarding of a "charge by charge" punishment was unknown to the law, and contrary to the

[1] **(1998) 7 SCC 84**

Regulations.

(iv) No criminal intent having been imputed to the petitioner, he ought not to have been awarded the extreme punishment of dismissal from service. The punishment awarded to the petitioner was, therefore, shockingly disproportionate to the charges against him. Reliance was placed, in this context, on Staff Accountability Circular dated 25th February, 2012, which envisaged taking of risks as an integral part of the business in banking institutions, and contemplated disciplinary action only against staff members who were guilty of misconduct or moral turpitude, or who were found working against the interests of the bank.

(v) The petitioner alone could not be held liable for the recommending and sanctioning of the loans. The petitioner had been targeted only to save the Sanctioning Authority.

(vi) At the very least, therefore, a case for reducing the quantum of punishment awarded to the petitioner was made out.

During the course of arguments on 22nd March, 2021, learned Counsel advanced a further submission, not to be found either in the contentions advanced before the authorities below, or in the writ petition or in the written submissions filed before this Court, that, in violation of Regulation 4 of the Regulations, the petitioner had not been afforded a second opportunity of hearing before being awarded

[2] **2016 SCC OnLine Del 1586**

the punishment of dismissal from service.

23. Beyond the extent suggested by the above submissions, learned Counsel for the petitioner did not, fairly, call upon the Court to review, on merits, the findings of the authorities below.

24. In response, learned Counsel for the respondents submitted thus:

(i) No violation of the principles of natural justice could be said to have been occasioned in the present case. Reliance was placed, in this context, on ***Oriental Bank of Commerce v R. K. Uppal***[3].

(ii) The High Court, exercising its jurisdiction under Article 226 of the Constitution of India, did not sit as a court of appeal, over the decisions of the authorities below, taken in the disciplinary proceedings against the delinquent employee.

(iii) Apropos the disagreement note dated 13/19th January, 2015, the petitioner had filed a detailed response, running into 93 pages, on 17th February, 2015, meeting the Inquiry Report and the disagreement note charge by charge. In view thereof, no fatal infirmity could be said to exist, merely because of the manner in which the disagreement note was worded.

(iv) The charges against the petitioner being admittedly serious in nature, the punishment of dismissal could not be

[3] **2011 (10) SCR 218**

regarded as disproportionate in any manner.

(v) Referring to the authorities as aforementioned, the Respondent-Bank contended that the petitioner was given adequate opportunity to give submissions to the note of disagreement as well as Inquiry Report and the petitioner, it is contended, wilfully did not file the written submissions, which, as is pointed out, runs into 93 pages, filed by him on 17th February, 2015 in reply to the disagreement note by the DA dated 13/19th January, 2015.

Reliance was placed, by learned Counsel for the respondent, on the recent decision of the Supreme Court in ***Deputy General Manager v. Ajai Kumar Srivastava***[4].

25. Arguing in rejoinder, learned Counsel for the petitioner submitted that, even if the Regulations did not provide for grant of personal hearing by the appellate authority, this requirement had to be read into the Regulations, to ensure compliance with the principles of natural justice. He invited my attention to the judgement of this Court in ***R. R. Peri v. Oriental Bank of Commerce***[5] which, according to him, involved near identical facts, and in which this Court had reduced the punishment awarded to the charged officer. He exhorted on this Court to adopt a similar approach in the present case.

[4] **(2021) 2 SCC 212**
[5] **MANU/DE/2551/2013**

Analysis and Conclusions

26. Of the Articles of Charge contained in the charge-sheet dated 11th December, 2013, the IA held Articles 1, 3, 6, 9 to 13 and 15 to be proved, and Articles 2, 4, 5, 7, 8, 14, 16 and 17 not to be proved. The disagreement note, dated 13th/19th January, 2015 *held* Articles No. 2, 4 and 17 to be proved. The manner in which the DA chose to word the disagreement note, qua these Articles of Charge, is unambiguous. It is clear that, qua these Articles of Charge, the DA had made up his mind, and that, therefore, all further proceedings, in respect thereof, stand completely vitiated. The law, in this regard, in ***Kunj Behari Misra***[1], is clear and unexceptionable. The disagreement note has necessarily to be tentative in nature, and any indication that the DA had *decided*, even before the charged officer had an opportunity to respond in that regard, that the charges stood proved, vitiates the exercise of disagreement in its entirety. The submission, by the petitioner, of a 93-page response thereto, and the consideration thereof by the DA, even if exhaustive, cannot cure this defect, for the simple reason that, once the DA had, on record, arrived at a final decision qua the Articles of Charge in respect of which he disagreed with the IA, all subsequent proceedings in respect thereof stood reduced to a mere formality.

27. In my view, therefore, the finding that Articles 2, 4 and 17 of the Articles of Charge stood proved cannot sustain the scrutiny of law.

28. The final conclusion of the DA, in the order of punishment,

therefore, can survive only in respect of the remaining Articles of Charge. Of these, the DA found Articles 1, 3, 6, 10 to 13, 15 and 16 of the initial charge sheet, and Articles 1, 2, 7 and 9 of the Addendum, to be proved.

29. The DA resorted to a somewhat unusual practice of expressing his opinion regarding the punishment which *each* proved Article of Charge would entail, but, inasmuch as he finally awarded punishment on a cumulative view of the proved Articles of Charge, this, in my view, is not a fatal infirmity.

30. Qua these Articles of Charge which the DA found proved, he found the petitioner to be liable to punished with

(i) removal from service, in respect of Articles 1,

(ii) dismissal from service, in respect of Article 3 and 13,

(iii) reduction of pay by four stages, in respect of Article 6, 10 to 12 and 16, and Addendum Charges 1, 2, 7 and 9, and

(iv) reduction in pay by five stages, in respect of Article 15.

31. As such, of the Articles of Charge which the DA found proved against the petitioner (apart from Articles 2, 4 and 17), "dismissal from service" was found to be a suitable punishment only in respect of Articles 3 and 13.

32. Articles 3 and 13 of the Articles of Charge against the petitioner are, however, unquestionably serious in nature. The findings of the DA, in respect thereof, read thus:

"Charge 3
Sehej Enterprises: Centrade A/c No. 3175711945:

Sh. Nagpal sanctioned Overdraft limit of Rs. 150.00 lacs under Centrade Scheme on 14.4.2012 to M/s Sehej Enterprises against Property bearing no. A-70 (old No. 16-C, Village NangliJalib, now known as Ganesh Nagar, Block-A, New Delhi. While sanctioning the loan he committed following acts of Omission and Commission:

i. He failed to observe due-diligence in the account.

ii. He failed to conduct discrete market enquiries about the credentials of the borrowers and collateral securities accepted for mortgage. It was subsequently revealed that party has defrauded the bank by depositing fake/fabricated title deeds. PNB have informed that the above party had availed loan against security of same property mortgaged with us.

iii. He failed to ensure Comparison of Certified copies of title deed with the original so to check the genuineness. The Title deeds held with the Bank are not genuine.

iv. He failed to conduct Independent inspection and local enquiry of property mortgaged with us. It has facilitated the party to defraud the bank by depositing fake title deeds.

v. He failed to generate CIBIL commercial Report of this Borrower for verification. This ClBIL report clearly indicates a loan of Rs.3.00 crores. The CIBIL report is not generated from the Branch id.

vi. He failed to ensure proper and independent valuation of property as the same has got done by only one valuer.

vii. He failed to obtain Closure certificate/statement regarding closure of A/C with Allahabad Bank.

viii. He failed to conduct renewal of account, renewal of Insurance of property and ensure ITR Verification for last 3 years.

ix. A/C is out of order since 31.05.2013. However, Sh. Nagpal has shown it as regular by manipulating transfer of Rs. 10000.00 from OD A/C Vikas Collection on 29.6.2013 and reversing the same on 01.07.2013.

The borrower has availed multiple Finance from different Banks by concealment of Facts and perpetrated fraud On the bank as the title deeds deposited with the bank to constitute security are not genuine. The bank is likely to suffer financial loss of Rs.l57.43Lacs + Interest.

IA in her findings and after discussion on the exhibits and arguments of both the sides in detail has held the Charge as proved.

CSOE in his written submissions has referred to various exhibits and deposition of MW-3 in reply to various questions has held the charge as not proved.

PO has put forth documents MEx-239/1 to 239/7, MEX-240/l to 240/4, MEX-241/1 to 241/2, DEX-843/1 to 843/5, MEX-243/2, MEX-245. HEX.246/1 to 246/3, DEX.819/1 to 819/11, DEX-823, DEX-833/l, MEX-249/1 to 249/10, MEX-425, MEX-251/1, MEX-252/1 and MEX-252/2, MEX-247/1 to 247/7, DEX-887/10,DEX-850/l and 850/2 and has examined MW-3 vide various questions at EPP-191 and EPP-227.

After examining all the documentary and oral evidences in respect of this charge, I agree with the views of IA and find that CSOE failed to perform his duties diligently and in contravention of Bank norms which resulted in perpetration of this Fraud, thus, causing substantial loss to the Bank. Keeping in view the above, I concur with the findings of IA and hold the charge as “PROVED”

The above acts committed by Sh. Nagpal are in contravention of Central Office guidelines. Thus due to his above lapses, the fraud has been perpetrated and recovery is not forthcoming in

this account.

I find that had the CSOE been vigilant and observed due diligence while sanctioning this account, the borrower could not have perpetrated fraudulent acts with the Bank thus causing huge financial loss of Rs. 157.43 lacs+ Interest + Charges.

As such Shri S.K. Nagpal acted in a manner which is unbecoming of an officer employee and did not take all possible steps to ensure and protect the interests of the bank and did not discharge his duties with utmost integrity, honesty, devotion and diligence and is charged under Regulation 3 (1) and 3(3) read with Regulation 24 of Central Bank of India Officer Employees (Conduct) Regulations, 1976, attracting penalty under Regulation '4' of Central Bank of India Officer Employees (Discipline & Appeal) Regulations 1976, as amended from time to time.

The above acts tantamount to gross misconduct with ulterior motives and looking to the Fraud perpetrated in the account and gravity of the charge and huge loss of Rs. 157.43 lacs + interest, I award the following penalty to CSO in respect of this charge:

Dismissal which shall ordinarily be a disqualification for future employment in terms of Regulation 4(j) of Central Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976, amended up to date."

"Charge No. 13:

Unethical Transactions:

Sh. Nagpal failed to furnish correct status of borrowal accounts. He Concealed following NPA accounts by Transferring the amount from other accounts to the Probable NPA accounts and reversing the same after one or two days. The account of Vikas Collection was used as a conduit and was in no away related to the business of the borrower.

23 such transactions have been done. One such transaction is discussed in detail as under to describe the modus-operandi.

The other 21 identical manipulative and accommodative transactions are given in Annexure A.

Amount Credited from OD Vikas collection A/c No. 3064937301 to A/C no. 3154712353 of Balaji Metals on 29.11.2012 and reversed on 30.11.2012.

1.29.11.2012 Rs.30,000/- to A/C No.3154712353 Balaji Metal Works reversed on 30.11.2012.

On 29.11.2012 a sum of Rs. 30000/- was transferred from OD account no. 30644937301 of M/s Vikas Collection to A/c No. 3154712353 of M/s Balaji Metals as the same was on verge of slippage to NPA and that any credit would be treated as repayment by the CBS system.

Hence this credit prevented slippage of this account and this account was shown as PA by the system. As the account was upgraded by system and there purpose was over the amount of Rs. 30000/- was reversed on 30.11.2012.

This entire transaction was carried out vide contra Vouchers without obtaining any mandate from the account holders. No mandate of the party whose account has been debited is on record. Although these entries were posted and authorised by other staff members, but Sh. Nagpal being the Branch head failed to monitor these transactions which were manipulative, accommodative and unethical in nature.

The details of other 21 identical manipulative and accommodative transactions are given in Annexure-A attached herewith.

Debit and Credit entries in the same account were made through batch entry which are as under:-

1. 27.08.2012 Rs.25,000.00 in ODBD A/C No. 3070480550.

2. 30.04.2013 Rs.46,000.00 in OD cent mortgage A/C No. 3135835185 Sanjeev Narang.

3. 31.05.2013 Rs.10,000.00 in OD cent mortgage A/C No. 3135835185 Sanjeev Narang

4. 09.07.2013 Rs.26,000.00 in OD cent mortgage A/C No. 3089986305 Biram Bati

5. 26.03.2013 Rs.2,75,000.00 in OD cent mortgage A/C No. 3181092266 of Vivek Gupta

On account of these manipulative transactions, Sh. Nagpal concealed the correct position of accounts which were otherwise NPA. The accounts are irregular and are likely to turn into NPAs. The Bank is likely to suffer huge financial loss, which is prejudicial to the interest of the Bank.

IA in her findings and after discussion on the exhibits and arguments of both the sides in detail has held the Charge **as proved**.

CSO in his written submissions has Referred to deposition of MW-2 in reply to Q No.54 at EPP-173, deposition of MW-3 vide reply to Q No.-12 at EPP-180and examination of MW-3 vide Q No. 2,3 at EPP-203 and Q No,250 at EPP-225.

After examination of documents marked as MEX 301/1,MEX-415,MEX-416, MEX-407 DEX-252/2 to 252/3, MEX-407,MEX-411,412,413,414,415,416,417,MEX-418/1 to 418/2 DEX- 887/15 and examination of MW-2 vide various questions at EPP-166,167,168,172,173,180,225. It is duly substantiated that above referred transactions and other 21 identical manipulative and accommodative transactions were done as per details in Annexure-A. These entries were done to conceal the correct position of the accounts which otherwise were NPA.

On perusal of Enquiry proceedings it is established that there was no mandate from respective account holders for effecting these transfers from their accounts and that these entries were passed on verbal instructions of CSO which is duly testified by MW-3 during cross examination vide Q No. 11 appearing on EPP-180 and reply to Q No,256 appearing on EPP-255.

It is observed that the only person to benefit from these manipulative entries was CSO as such an action would not have benefitted either MW-2 the maker and MW-3 the checker Of these transactions. These entries resulted in

concealment of correct status of the accounts which otherwise were NPA.

After re-examining all the documentary and oral evidences in respect .of this charge it is clearly established that these manipulative transactions were carried out at the instance of Sh. Nagpal in order conceal the correct position of accounts which were Otherwise NPA. These accounts were irregular and were likely to slip in to NPA category. From these manipulative and; accommodative transactions it is established that CSO had malafide intentions with ulterior motives which is unbecoming of an Officer.

Thus Shri S K. Nagpal acted in a manner which is unbecoming of an officer employee and did not take all possible steps to ensure and protect the interests of the bank and did not discharge his duties with utmost integrity, honesty devotion and diligence and is charged under Regulation 3(1) and 3(3) read with Regulation 24 of Central Bank of India Officer Employees' (Conduct) Regulations,1976, attracting penalty under Regulation '4' of Central Bank of India Officer Employees" (Discipline 8t Appeal) Regulations 1976 as amended from time to time.

Keeping in view the above, I concur with the findings of IA and hold the charge as "PROVED" beyond doubt and considering the malafide intention and gravity of this charge, I award the penalty as under:

Dismissal which shall ordinarily be a disqualification for future employment in terms of Regulation 4(j) of Central Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976, amended up to date."

33. In this context, I find the reliance, by Mr. Rajesh Kumar, on the judgement in ***Ajai Kumar Srivastava***[4] to be apt. The respondent before the Supreme Court, in that case, too, was a bank employee, in respect of whom serious charges, albeit with allegations of *mala fides*, were levelled, in effecting bank transactions including, *inter alia*,

advancing of loans. The IA found Article 1 of the Articles of Charge not to be proved, and Articles 2 to 7 to be proved. The DA disagreed with the IA in respect of Article 1. A disagreement note was issued to the respondent, along with a copy of the Inquiry Report. The DA held all Articles of Charge to have been proved, and dismissed the respondent from service. On the appeal, therefrom, also failing, the respondent approached the High Court, which set aside the order of the DA and the appellate authority as being unreasoned. The Bank appealed to the Supreme Court. Holding, *inter alia*, that the decisions of the disciplinary and the appellate authority were detailed and reasoned, the Supreme Court allowed the appeal of the Bank**.** Paras 22 to 28 of the judgment of the Supreme Court read thus:

> "**22.** The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in ***State of T.N. v. T.V. Venugopalan***, **(1994) 6 SCC 302** and later in ***State of T.N.* v. *A. Rajapandian*, (1995) 1 SCC 216** and further examined by the three-Judge Bench of this Court in ***B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749** wherein it has been held as under: (***B.C. Chaturvedi***[6] *case*, SCC pp. 759-60, para 13)
>
> > "*13*. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted

[6] **(1995) 6 SCC 749**

to be canvassed before the court/tribunal. In ***Union of India*** **v.** ***H.C. Goel*****, AIR 1964 SC 364** this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

23. It has been consistently followed in the later decision of this Court in ***H.P. SEB*** **v.** ***Mahesh Dahiya*****, (2017) 1 SCC 768** and recently by the three-Judge Bench of this Court in ***Pravin Kumar*** **v.** ***Union of India*****, (2020) 9 SCC 471**.

24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:
(*i*) whether the enquiry was held by the competent authority;
(*ii*) whether rules of natural justice are complied with;
(*iii*) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the

findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."

34. The High Court had held that, while reversing the finding of the IA regarding Article 1, the DA had not given any reasons. In this regard, the Supreme Court observed thus:

"**33.** The submission which was made in regard to the note of disagreement not being served upon the respondent delinquent as to Charge 1 is concerned, this Court does find substance to hold that the disciplinary authority on receiving the report of enquiry, if was not in agreement with the finding recorded by the enquiry officer, was under an obligation to record its reasons of disagreement and call upon the delinquent for his explanation in the first place before recording his finding of guilt and undisputedly the procedure as prescribed by law was not followed and that has caused

prejudice to the respondent and indeed it was in violation of the principles of natural justice. We are of the considered view that so far as the finding of guilt recorded by the disciplinary authority in reference to Charge 1 is concerned, that could not be held to be justified in holding him guilty.

34. But this may not detain us any further for the reason that Charge 1 in reference to which the finding recorded by the enquiry officer has been overturned by the disciplinary authority is severable from the other charges (Charges 2-7) levelled against the respondent which were found proved by the enquiry officer and the finding of fact was confirmed by the disciplinary/appellate authority after meeting out objections raised by the respondent delinquent in his written brief furnished at different stages.

35. If the order of dismissal was based on the findings of Charge 1 alone, it would have been possible for the court to declare the order of dismissal illegal but on the finding of guilt being recorded by the enquiry officer in his report in reference to Charges 2-7 and confirmed by the disciplinary/appellate authority was not liable to be interfered with and those findings established the guilt of grave delinquency which, in our view, was an apparent error being committed by the High Court while interfering with the order of penalty of dismissal inflicted upon the respondent employee.

36. It is supported by the judgment of the Constitution Bench of this Court in ***State of Orissa* v. *Bidyabhushan Mohapatra*, AIR 1963 SC 779** wherein it has been observed as under: (AIR pp. 785-86, para 9)

> "9. The High Court has held [***Bidya Bhushan Mohapatra* v. *State of Orissa*, 1959 SCC OnLine Ori 43]** that there was evidence to support the findings on Heads (*c*) and (*d*) of Charge (1) and on Charge (2). In respect of Charge 1(*b*) the respondent was acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of Charges 1(*a*) and 1(*e*) in the view of the High Court 'the rules of natural justice had not been observed'. The recommendation of the Tribunal was undoubtedly founded on its findings on Charges 1(*a*), 1(*e*), 1(*c*), 1(*d*) and Charge (2). The High

Court was of the opinion that the findings on two of the heads under Charge (1) could not be sustained, because in arriving at the findings the Tribunal had violated the rules of natural justice. The High Court therefore directed that the Government of the State of Orissa should decide whether 'on the basis of those charges, the punishment of dismissal should be maintained or else whether a lesser punishment would suffice'. It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on Charges 1(*a*) and 1(*e*) were vitiated for reasons set out by it, because in our judgment the order [***Bidya Bhushan Mohapatra* v. *State of Orissa*, 1959 SCC OnLine Ori 43**] of the High Court directing the Government to reconsider the question of punishment cannot, for reasons we will presently set out, be sustained. If the order of dismissal was based on the findings on Charges 1(*a*) and 1(*e*) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal."

37. This was further considered by this Court in ***Binny Ltd.* v. *Workmen*, (1972) 3 SCC 806** as under: (SCC p. 813, para 9)

"*9.* … It was urged that the Court should not have assumed that the General Manager would have inflicted the punishment of dismissal solely on the basis of the second charge and consequently the punishment should not be sustained if it was held that one of the two charges on the basis of which it was imposed was unsustainable. This was rejected following the decision in ***State of Orissa* v. *Bidyabhushan Mohapatra*, AIR 1963 SC 779**, wherein it was said that if an order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which punishment

imposed can lawfully be given, it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question. In our view that principle can have no application to the facts of this case. Although the enquiry officer found in fact that the respondent had behaved insolently towards the Warehouse Master, he did not come to the conclusion that this act of indiscipline on a solitary occasion was sufficient to warrant an order of dismissal."

38. Yet again, in ***Sawarn Singh* v. *State of Punjab*, (1976) 2 SCC 868** , this Court held: (SCC p. 873, para 19)

"*19*. In view of this, the deficiency or reference to some irrelevant matters in the order of the Commissioner, had not prejudiced the decision of the case on merits either at the appellate or revisional stage. There is authority for the proposition that where the order of a domestic tribunal makes reference to several grounds, some relevant and existent, and others irrelevant and non-existent, the order will be sustained if the Court is satisfied that the authority would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant or non-existing grounds could not have affected the ultimate decision (see ***State of Orissa* v. *Bidyabhushan Mohapatra*, AIR 1963 SC 779**)."

39. The Constitution Bench has clearly laid down that even after the charges which have been proved, justify imposition of penalty, the court may not exercise its power of judicial review."

35. The judgment of the Supreme Court concludes with the following instructive words, regarding the conduct of bank employees:

"**42.** Before we conclude, we need to emphasise that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it

is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24-7-1999 confirmed in departmental appeal by order dated 15-11-1999."

36. Apropos the need for a greater degree of circumspection, in conducting of affairs by bank employees, I have had occasion to observe, in ***Ishwar Pal Singh v. Punjab National Bank***[7], thus:

"33. In respect of delinquent bank employees, a distinct jurisprudence has developed, which may be reflected in the following passages, from Chairman and Managing Director, ***United Commercial Bank v. P.C. Kakkar*** **(2003) 4 SCC 364**, ***Lalit Popli v. Canara Bank*** **(2003) 3 SCC 583** and ***State Bank of India v. Ramesh Dinkar Punde*** **(2006) 7 SCC 212**:

"A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in ***Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik*** **[(1996) 9 SCC 69 : 1996 SCC (L&S) 1194]** it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious."

[7] **MANU/DE/0575/2020**

(*P.C. Kakkar*[8], para 14)

"As noted above, the employee accepted that there was some lapse on his part but he pleaded lack of criminal intent. A bank employee deals with public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. Any carelessness invites action."

(*Lalit Popli*[9], para 20)

"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 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 emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer 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."

(*Ramesh Dinkar Punde*[10], para 21)

34. On the aspect of susceptibility, to disciplinary proceedings, to attack in judicial review, on the ground of violation of the principles of natural justice, whether contained in the applicable statutory provisions, or at common law, a caveat has been entered, by a line of authorities of the Supreme Court, the most well-known of which is, probably, ***State Bank of Patiala v. S.K. Sharma*** **[(1996) 3 SCC 364]**, which held that perceived infraction of the principles of natural justice could be vitiate disciplinary proceedings only

[8] **(2003) 4 SCC 364**
[9] **(2003) 3 SCC 583**
[10] **(2006) 7 SCC 212**

if, as a consequence of such infraction, prejudice was shown to have resulted to the delinquent officer. Helpfully, for all of whom Article 141 of the Constitution of India enjoins the duty to faithfully follow the law laid down by the Supreme Court, ***State Bank of Patiala***[11] neatly sets out, in para 33 (of the report), the principles enunciated therein, thus (even while clarifying that the said principles were not meant to be exhaustive):

> "(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
>
> (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
>
> (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference

[11] **(1996) 3 SCC 364**

is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting

aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in **B. Karunakar, (1993) 4 SCC 72**. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice 'V' no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

> (7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."
>
> 35. ***State Bank of Patiala*** [11] continues to be followed, till as late as ***Manisha Jaiprakash v. U.O.I.*** **(2019) 10 SCC 115**"

In the same decision, following various decisions of the Supreme Court, it was held, in paras 29 to 32, thus:

> "29. It would be appropriate, at the outset, to analyse the scope of interference, by a writ Court exercising powers under Article 226 of the Constitution of India, with disciplinary proceedings, and the findings returned therein, or punishment imposed as a consequence thereof.
>
> 30. There are authorities galore, which expound on the scope of interference, by writ courts, with disciplinary proceedings, and orders of punishment, passed by disciplinary authorities/appellate authorities. We need search no further than the recent decision, of the Supreme Court in ***State of Karnataka v. N. Gangaraj*** **(2020) 3 SCC 423**, which encapsulates, by reference to its earlier decisions in ***State of Andhra Pradesh v. S. Sree Rama Rao*** **AIR 1963 SC 1723,** ***B.C. Chaturvedi v. U.O.I.*** **(1995) 6 SCC 749,** ***U.O.I. v. H.C. Goel*** **(1964) 4 SCR 781,** ***High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil*** **(2000) 1 SCC 416,** ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*** **(2011) 4 SCC 584,** ***U.O.I. v. G. Gunayuthan*** **(1997) 7 SCC 463,** ***Bank of India v. Degala Suryanarayana*** **(1999) 5 SCC 762 and** ***U.O.I. v. P. Gunasekaran*** **(2015) 2 SCC 610**, practically all the relevant indicia, which govern the exercise of the power of judicial review, by writ courts, in such cases. Paras 7 to 11, 13 and 14 of the report in ***N. Gangaraj*** deserve to be reproduced, in extenso, thus:
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> > "7. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The

power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

8. In ***State of Andhra Pradesh v. S. Sree Rama Rao***[12], a three Judge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It 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. The Court held as under:

> "7. The High Court is not constituted in a proceeding under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it 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. Where there is some evidence, which the authority entrusted with the duty to hold 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 in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence...."

9. In ***B.C. Chaturvedi v. Union of India***[8], again, a three Judge Bench of this Court has held that power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The

[12] **AIR 1963 SC 1723**

Court/Tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding and mould the relief so

as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel, this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

10. In ***High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil***[13], this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under:

"16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is

[13] **(2000) 1 SCC 416**

vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

11. In ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya***[14], this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under:

> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental

[14] **(2011) 4 SCC 584**

enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B.C. Chaturvedi v. Union of India-, Union of India v. G Gunayuthan-, and Bank of India v. Degala Suryanarayana-, High Court of Judicature at Bombay v. Shashi Kant S. Patil,."

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13. In another judgment reported as ***Union of India v. P. Gunasekaran***[15], this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings:

"13. 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

[15] **(2015) 2 SCC 610**

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."

14. On the other hand learned counsel for the respondent relies upon the judgment reported as ***Allahabad Bank v. Krishna Narayan Tewari***, **(2017) 2 SCC 208**, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the Writ Court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct."

31. From the above extracted passages, the following definitive guiding principles may be said to emanate:

(i) A writ court, exercising power of judicial review over the decision of the disciplinary or appellate authority, does not sit in appeal over the said decisions.

(ii) The power of judicial review, vested in the writ court, is confined to the decision making process. It is intended to ensure that the aggrieved individual has received fair treatment at the hands of the authorities below, and is not intended to ensure that the conclusion of the authorities below is necessarily correct in the

eyes of the court.

(iii) The writ court is, therefore, required to determine, essentially, whether

(a) the enquiry was held by a competent authority,

(b) the enquiry was held according to the procedure prescribed in that regard and

(c) principles of natural justice were, or were not, violated.

(iv) So long as some evidence exists, on the basis of which the disciplinary or appellate authorities have proceeded, and the said evidence reasonably supports the conclusion arrived at by the said authorities, the writ court would not review or reassess the evidence and arrive at its independent finding thereon. At the same time, the finding of the disciplinary/appellate authority must be based on some evidence. If so, the adequacy, sufficiency or even reliability of the evidence, is not open for examination by the writ court.

(v) Technical stipulations, contained in the Evidence Act, 1872, and the standards of proof contemplated therein, do not apply to disciplinary proceedings.

(vi) The disciplinary authority is the sole judge of facts, though the appellate authority has co-extensive power to re-appreciate evidence, as well as interfere with the punishment awarded. The writ court will not correct an error of fact of the disciplinary authority, howsoever grave. The exercise of assessment of facts and re-appreciation of evidence, has, however, necessarily to stop at the stage of the appellate authority. The writ court is required to forbear from doing so.

(vii) The writ court can, however, interfere where

(a) the Enquiry Officer is not competent to enquire into the charges,

(b) the disciplinary authority is not competent to pass the order of punishment,

(c) the disciplinary proceedings are not in accordance with the procedure prescribed in that regard,

(d) the principles of natural justice have been violated,

(d) the decision(s) of the authorities below is/are vitiated by extraneous considerations,

(e) the decisions of the authorities are arbitrary or capricious, or

(f) the conclusions of the authorities below are such as no reasonable person, conversant with the facts would arrive at and are, consequently, perverse.

(viii) The writ court can interfere with the quantum of punishment if it shocks the conscience of the court, applying the principles of Wednesbury unreasonableness.

32. In ***Allahabad Bank v. Krishna Narayan Tiwari*** **(2017) 2 SCC 308**, the Supreme Court held, additionally, that a writ court could interfere with the decision of the disciplinary/appellate authority, where the decision(s) were vitiated by non-application of mind, or were unreasoned. In the said case, the Supreme Court held that the appellate authority had "added insult to injury", by mechanically reproducing the findings of the disciplinary authority, thereby evidencing non-application of mind on its part."

37. This Court is not expected to sit as a Court of Appeal over the decisions of the Disciplinary Authority or the Appellate Authority. The law in this regard is clear and well settled, and it would be a

transgression of the jurisdiction vested in this Court by Article 226 of the Constitution of India, if the Court were to enter into the intricacies of the allegations against the petitioner, or the findings of the IO, the DA and the Appellate Authority in that regard. Even *qua* Articles 3 and 13 of the articles of charge, the findings of the Disciplinary Authority are exhaustive and reasoned. It cannot be said that the Disciplinary Authority, or the Appellate Authority, have acted mechanically, or merely by reiterating the findings of the IA.

38. The allegations in Articles 3 and 13 of the articles of charge against the petitioner involved financial impropriety in the matter of dealing with the affairs of the Bank, *inter alia*, with regard to extending of loans and other facilities. The acts of the petitioner have been found to have resulted in possible loss, to the bank, of around ₹ 12 crores. No serious traversal to this finding of fact has been attempted, by learned Counsel for the petitioner. All that was sought to be urged on merits, was that the petitioner was merely a recommending authority, and that his recommendations were subject to further sanction by higher authorities, against whom no action had been taken. On this aspect, too, the law is no longer *res integra*. It is not open to a delinquent officer to contend that, because other officers, who may have been equally or more complicit, in the delinquency, have not been proceeded against appropriately, he should be let off, or subjected to a more lenient approach.

39. The findings regarding misconduct, having been committed by the petitioner, are pure findings of fact, arrived at by conscious

appreciation of the material on record and after grant of adequate opportunity to the petitioner. These findings, clearly are not susceptible to interference, in exercise of Article 226 jurisdiction by this Court.

40. Articles 3 and 13 of the Articles of Charge against the petitioner are, by themselves, sufficient to justify an order dismissing him from service. In view of the nature of the allegations and concurrent findings of the IO, DA and Appellate Authority against the petitioner, I am unable to agree with learned Counsel for the petitioner that any bereft could enure to him under the Staff Accountability Circular dated 25th February, 2012 of the Bank. The decision in ***Ajai Kumar Srivastava***[4] relies on authorities which hold that if the order of punishment can be justified even on some of the articles of charge held to be proved against the delinquent employee, and no case for interference with the findings qua the said articles of charge is made out, the High Court would not re-visit the order of punishment of the delinquent employee. One may also cite in this regard, the judgment in ***State of U.P. v. Nand Kishore Shukla***[16]**.**

41. Even on this score, therefore, no case for interference with the order of punishment with the petitioner can be said to exist.

42. On 22nd March, 2021, as noted hereinabove, learned Counsel for the petitioner submitted that, by not having granted the petitioner a further opportunity of hearing before awarding punishment to him, the

[16] **(1996) 3 SCC 750**

authorities below had acted in contravention of Regulation 4 of the Regulations. In the first place, this submission does not find place either in the writ petition or in any of the written submissions filed by the petitioner. No such contention was advanced before the Disciplinary Authority, Appellate Authority or the Revisionary Authority either. It has been raised for the first time on 22nd March, 2021. That apart, the Regulations dealing with imposition of major penalty, applicable to the Bank, do not require a further opportunity of hearing before awarding the penalty. In this context, I may reproduce Regulation 4 to 6 of the Regulations, thus:

> "**4. Penalties**
>
> The following are the penalties which may be imposed on an officer employee, for acts of misconduct or for any other good and sufficient reasons.
>
> ***Minor Penalties***
>
> a. censure;
> b. withholding of increments of pay with or without cumulative effect;
> c. withholding of promotion;
> d. recovery from pay or such other amount as may be due to him of the whole or paid of any pecuniary loss caused to the Bank by negligence or breach of orders. .
> e. reduction to a lower stage in time-scale of pay for a period not, exceeding 3 years, without cumulative effect and not adversely affecting his pension.
>
> ***Major Penalties***
>
> f. same as provided for in (e) above reduction to a lower stage in the time-scale of pay for a specified period with further directions, as to whether or not the officer will earn increments of pay during the period of

such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;

g. reduction to a lower grade or post;

h. compulsory retirement;

i. removal from service which shall not be a disqualification for future employment;

j. dismissal which shall ordinarily be a disqualification for future employment.

Explanation;- The following shall not amount to a penalty within the meaning of this regulation namely:-

i. withholding of one or more increments of an officer employee on account of his failure to pass a prescribed departmental test or examination in accordance with the terms of appointment to the post which he holds.

ii. stoppage of pay of an officer employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;

iii. non-promotion, whether in an officiating capacity or otherwise, of an officer employee, to a higher grade or post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

iv. reversion to a lower grade or post, of an officer employee officiating in a higher grade or post on the ground that he is considered, after trial, to be unsuitable for such higher grade or post, or on administrative grounds unconnected with his conduct;

v. reversion to his previous grade or post, of an officer employee appointed on probation to another grade or post, during or at the end of the period of probation in accordance with the terms of his appointment or rules or orders governing such probation;

vi. reversion of an officer employee to his parent organisation in case he had come on deputation;

vii. termination of the service -

a. of an officer employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment, or rules or orders governing such probation;

b. of an officer employee appointed in a temporary capacity otherwise than under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;

c. of an officer employee appointed under a contract or agreement In accordance with the terms of such a contract or agreement; and '

d. of an officer employee on abolition of post;

viii. retirement of an officer employee on his attaining the age of superannuation in accordance with the rules and orders governing such superannuation;

ix. termination of employment of a permanent officer employee by giving 3 months notice or on payment of 3 months pay and allowances In lieu of notice

x. termination of employment of an officer employee on medical grounds, if he is declared unfit to continue in bank's service by the bank's medical officer.

Explanatory Notes

Penalties may be imposed for acts of misconduct or for any other good and sufficient reasons. Thus disciplinary action can be initiated and penalties

imposed for acts which are not per se misconduct but which amount to good and sufficient reasons:

For such of those actions that are mentioned in this regulation as those which will not attract penalty or disciplinary action, the procedure for imposing penalties need not be followed.

5. Authority, to Institute disciplinary proceedings and impose penalties

1. The Managing Director or any other authority empowered by him by general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an officer employee of the bank.

2. The Disciplinary Authority may himself institute disciplinary proceedings.

3. The Disciplinary Authority or any authority higher than it, may impose any of the penalties specified in regulation 4 on any officer employee.

Explanatory Notes

- The Managing Director may initiate Disciplinary proceedings by himself or by any other authority empowered by him either by a general or special order [Sub-regulation 1];

- This power is in addition to the power given to the Disciplinary Authority separately

- Thus the power to impose penalties is given to the Disciplinary Authority as well as any authority higher to it.

6. Procedure for Imposing major penalties

1. No order imposing any of the major penalties specified in clauses (f), (g), (h), (i) & (j) of regulation 4 shall be made except after an inquiry is held in accordance with this regulation.

2. Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an officer employee, it may itself enquire into, or appoint any other person who is, or has been, a public servant (herein after referred to as the Inquiring Authority) to inquire into the truth thereof.

Explanation:
When the Disciplinary Authority itself holds the inquiry any reference in sub-regulation (8) to sub-regulation (21) to the inquiring authority shall be construed as a reference to Disciplinary Authority.

3. Where it is proposed to hold an inquiry, the Disciplinary Authority shall, frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a statement of the allegations, list of documents relied on along with copy of such documents and list of witnesses along with copy of statement of witnesses, if any, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defence.

Provided that wherever it is not possible to furnish the copies of documents. Disciplinary Authority shall allow the officer employee inspection of such documents within a time specified in this behalf.

4. 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) an Inquiring Authority or 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.

5. The Disciplinary Authority shall, where it is not the inquiring Authority, forward to the Inquiring Authority:

i. a copy of the articles of charges and statements of imputations of misconduct or is behaviour;

ii. a copy of the written statement of defence, if any, submitted by the officer employee;

iii. a list of documents by which and list of witnesses by whom the articles of charge are proposed to be Substantiated;

iv. a copy of statements of the witnesses, if any;

v. Evidence proving the delivery of articles of charge under sub-regulation (3);

vi. a copy of the order appointing the 'Presenting Officer' in terms of sub-regulation (6).

6. Where the Disciplinary Authority itself enquires or appoints an Inquiring Authority for holding an inquiry, if any, by an order, appoint a public servant to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

7. The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority having regard to the circumstances of the case, so permits.

Note: The officer employee shall not take the assistance of any other officer employee who has two pending disciplinary cases on hand in which he has given assistance.

8. a The Inquiring Authority shall by notice in writing specify the day on which the officer employee shall appear in person before the Inquiring Authority.

b. On the date fixed by the Inquiring Authority, the officer employee shall appear before the Inquiring Authority at the time, place and date specified in the notice.

c. The Inquiring Authority shall ask the officer employee whether he pleads guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the officer employee concerned thereon.

d. The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the officer employee concerned pleads guilty.

Explanatory Note
The Officer employee, on receipt of the charge sheet is required to submit his written statement of defence not exceeding 15 days or within such extended time.

9. If the officer employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the Inquiring Authority.

10. The Inquiring Authority while adjourning the case as in sub-regulation (9) shall also record by an order that the officer employee may for the purpose of preparing defence

i Complete inspection of the documents as in the list furnished to him immediately and in any case not exceeding 5 days from the date of such order if he had not done so earlier as provided for in the proviso to sub-regulation (3)

ii Submit a list of documents and witnesses, that he wants for the inquiry,

iii give-notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of the documents referred to in item (ii).

Note: The relevancy of the documents and the examination of the witnesses referred to in item (ii) shall be given by the Officer employee concerned.

11. The Inquiring Authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.

12. On receipt of the requisition under sub-regulation (11), the authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the Inquiring Authority on the date, place and time specified in the requisition.

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the bank. In that event, it shall inform the Inquiring Authority accordingly.

13. On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses produced by the Presenting Officer or by another Officer duly nominated by the Disciplinary Authority to act on behalf of the Presenting Officer shall be examined by the Presenting Officer or by the Officer nominated by the Disciplinary Authority to act on behalf of the Presenting Officer and may be cross-examined by or on behalf of the officer employee.

The Presenting Officer or the Officer nominated to act on his behalf shall be entitled to re-examine his witnesses' on any points on which they have been cross-examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

14. Before the close of the case, in support of the charges, the Inquiring Authority may, in its discretion, allow the

Presenting Officer to produce evidence not included in the charge sheet or may itself call for new evidence or recall or re-examine any witness. In such case the officer employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned. The Inquiring Authority may also allow the officer employee to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.

15. When the case in support of the charges is closed, the officer employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the officer employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the presenting Officer, if any, appointed.

16. The evidence on behalf of the officer employee shall then be produced. The officer employee may examine himself in his own behalf, if he so prefers. The witnesses produced by the officer employee shall then be examined by the officer employee and may be cross-examined by the Presenting Officer. The officer employee shall -be entitled to re-examine any of his witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the Inquiring Authority.

17. The Inquiring Authority may, after the officer employee closes his evidence, and shall, if the officer employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.

18. The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any appointed, and the officer employee, or permit them to file written briefs of their respective cases within 15 days of the date of completion of the production of evidence, if they so desire.

19. If the officer employee does not submit the written statement of defence referred to in sub-regulation (3) on or before the date specified for the purpose or does not appear in person, or through the assisting officer or otherwise fails or refuses to comply with any of the provisions of these regulations, the Inquiring Authority may hold the inquiry ex-parte.

20. Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another Inquiring Authority which has, and which exercises such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

> Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

21. i. On the conclusion of the Inquiry the Inquiring Authority shall prepare a report which shall contain the following:

> a.. a gist of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
>
> b. a gist of the defence of the officer employee in respect of each article of charge;
>
> c. an assessment of the evidence in respect of each article of charge;
>
> d. the findings on each article of charge and the reasons therefor.
>
> **Explanation**:
> If in the opinion of the inquiring Authority, the proceedings of the inquiry establish any article of

charge different from the original article of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the officer employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

ii The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include

a. the report of the inquiry prepared by it under clause (i);

b. the written statement of defence, if any, submitted by the Officer employee referred to in sub-regulation (15);

c. the oral and documentary evidence produced in the course of the inquiry;

d. written briefs referred to in sub-regulation (18) if any; and

e. the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.

Explanatory Note
A major penalty cannot be imposed on officer employee without holding an inquiry in accordance with this regulation;

For imposing a minor penalty, holding an inquiry is not necessary unless the Disciplinary Authority is satisfied that an inquiry is necessary. When it is decided that an inquiry is not necessary by the Disciplinary Authority then the summary procedure under Sub- Regulation 8 to 21 will have to be followed;

The Disciplinary Authority may inquire into the allegations/imputations of misconduct or misbehaviour

against an officer employee either by himself or appoint an Inquiring Authority to conduct inquiry;

The inquiring Authority's duty is to inquire i.e., hold inquiry into the charges contained in the statement of allegations/imputations and submit its report to the Disciplinary Authority for further action;

The charge sheet must be signed only by the Disciplinary Authority;

The charges must be distinct and definite without any ambiguity;

The articles of charge together with the statement of allegations/imputations on which they are to be based must be communicated to the officer employee in writing. The list of documents to be relied on along with copy of such documents and list of witnesses alongwith copy of statement of witnesses, if any, on which they are based must also be sent along with the articles of charge;

The Officer employee on receipt of the charge sheet is required to submit his written statement of defence not exceeding fifteen days or within such extended time;

The words 'article of charge' are used in the same sense as charges;

The articles of charge and the statement of allegations/imputations together constitute the charge sheet;

After receipt of the written statement of defence from the officer employee or if no written statement is received within the prescribed time limit or the extended time limit, the Disciplinary Authority itself may hold the inquiry or it may appoint another public servant as inquiring Authority;

The appointment of the inquiring Authority must be by way of an order and in writing;

The Disciplinary Authority when it is not the Inquiring Authority, shall forward to the Inquiring Authority all the documents mentioned in the regulation without delay;

The regulation empowers the Disciplinary Authority to appoint a public servant as the Presenting Officer, to present on its behalf the case in support of the articles of charge;

The appointment of the Presenting Officer is by way of a written order, a copy of which is to be sent to the inquiring Authority to enable him to send notices when the inquiry is posted for hearing;

While appointing the inquiring Authority and the Presenting Officer it must be ensured that both of them are not in any way/manner connected with the case/charges.

The charge sheeted officer may take the assistance of any other officer employee for his defence assistant during the inquiry proceedings.

The charge sheeted officer shall not take the assistance of any other officer employee who has two pending cases on hand in which he has given assistance and shall not engage a legal practitioner unless the Disciplinary Authority so permits.

The place, date and the time when the inquiry is to be held must be properly communicated in writing by the Inquiring Authority to the Charge sheeted officer and the Presenting officer that too adequately well in advance to enable them attend the same without fail;

When the inquiry commences and the charge sheeted officer employee pleads not guilty to all, some or any of the charges, the inquiry will have to proceed;

To enable the charge sheeted officer employee to prepare his defence, the Inquiring Authority is required to adjourn the case to a later date not exceeding thirty

days or within such extended time as may be granted by the Inquiring Authority;

While fixing the date the Inquiring Authority has to take into cognizance the time that will be taken to produce the documentary evidence and its inspection by the charge sheeted officer/defence. Preparation of the defence by the charge sheeted officer/defence;

The Inquiring Authority should therefore before fixing up the date for proceedings take into account the convenience of the parties to the proceedings and then arrive at a final logical decision;

On the date when the inquiry is fixed for hearing the oral and documentary evidence is required to be produced by or on behalf of the Disciplinary Authority, The words by or on behalf of the Disciplinary Authority' suggest that such evidence can be produced by the Disciplinary Authority;

When the Charge Sheeted Officer seeks certain documents, the authority having the custody of the requisitioned documents may claim privilege if the production such documents will be prejudicial to the interest of the Bank/Public

Witnesses produced by the Presenting Officer should be examined by him and may be cross examined by the defence and if necessary, re-cross examined by the defence, After the cross examination, if necessary, the Presenting Officer may re-examine the witness, the re-examination should be on a matter on which the witness has already been cross examined and not on any new matter, without the leave of the inquiring Authority;

The inquiring Authority may put questions to the witnesses, if the Inquiring Authority examines .the witnesses then it should be made clear in the proceedings that those statements were made in reply by the questions put by it;

In a situation before the close of the case the, Presenting Officer wants to bring in a evidence not included in the list already furnished with the articles of charges, then the Inquiring Authority may use its discretion and allow the same.

This may also include call for new evidence or reexamination of any witnesses, in case such evidence is allowed, the defence will have to be given opportunity to cross-examine or inspect the relevant document;

After the Presenting Officer rests his case, the charge sheeted officer employee may be required to state either orally or in writing his defence, as he may prefer,

The inquiring Authority may allow the defence also to produce new evidence, if it is of the opinion that it is necessary in the interests of justice.

The evidences on behalf the charge sheeted officer employee when being produced the officer employee may offer himself as a witness on his own behalf. In this case he can be cross examined;

When the defence produce the witnesses/ evidences the same principle as applicable as in the case of witness brought in by the Presenting Officer will be applicable;

After the close of evidence by the officer employee and in case the officer employee has not got himself produced as witness then the Inquiring Authority shall generally question him on the circumstances appearing against him. The purpose of this question is to give an opportunity to the officer in his defence;

The Inquiring Authority, should record this carefully making it clear that the replies were in reply to questions by the inquiring authority;

If the charge sheeted officer fails or refuses to comply with any of the provisions of these regulations, the

> Inquiring Authority may hold the inquiry ex-parte by recording the complete details;
>
> After the stage of completion of evidence of both sides and the statement of the Officer employee, the parties have to file their written briefs for their respective cases within fifteen days of the date of completion of their production, if they so desire;
>
> In cases where an Inquiring Authority ceases to exercise jurisdiction thereon then the succeeding Inquiring Authority may proceed on the evidence already recorded and record subsequent evidence itself and also recall, examine, cross examine and re-examine any witness whose evidence was already recorded.
>
> The Disciplinary Authority can himself hold the enquiry or appoint an inquiring Authority to enquire into the truth or otherwise of the charges, Thus the role of the Inquiring Authority is limited to this only and cannot exceed the same.
>
> The Inquiring Authority should not write anything about punishment or make any reference/ recommendations about it in his report. The ambit of his report will thus be confined only to the aspect as to whether the charge sheeted officer employee is guilty to the charges or not;"

43. This submission of the petitioner, too, therefore, does not commend acceptance.

Conclusion

44. In view of the aforesaid, no case for interference with the impugned decision to dismiss the petitioner from service can be said to be exist.

45. Resultantly, the writ petition is dismissed, albeit with no orders as to costs.

C. HARI SHANKAR, J.

MARCH 26, 2021
HJ