

GAHC010259472019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7861/2019

UNION OF INDIA AND 9 ORS.
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, CENTRAL SECRETARIAT, NORTH BLOCK, NEW DELHI- 110001

2: THE CABINET SECRETARY
TO THE GOVT OF INDIA
CABINET SECRETARIAT
GOVT OF INDIA
RASHTRAPATI BHAWAN
NEW DELHI- 110004
INDIA

3: THE SASHAstra SEEMA BAL
DIRECTORATE GENERAL
SSB
EAST BLOCK- V
R G PURAM
NEW DELHI- 110066
REP. BY ITS DIRECTOR GENERAL

4: THE CENTRAL VIGILANCE COMMISSION
SATARKTA BHAWAN
GPO COMPLEX BLOCK A
INA
NEW DELHI- 110023
REP. BY ITS DIRECTOR

5: THE UNION PUBLIC SERVICE COMMISSION
DHOLPUR HOUSE
SHAHJAHAN ROAD
NEW DELHI- 110069

6: THE DEPUTY SECRETARY
UPSC

DHOLPUR HOUSE
SHAHJAHAN ROAD
NEW DELHI- 110069

7: THE DEPUTY INSPECTOR GENERAL
SSB SECTOR HQ
BOMDILA
ARUNACHAL PRADESH- 790001

8: THE DEPUTY INSPECTOR GENERAL (PERS)
SSB
DIRECTORATE GENERAL
SSB EAST BLOCK-V
R G PURAM
NEW DELHI- 110066

9: THE ASSTT DIRECTOR (PERS-I)
SSB
DG
SSB EAST BLOCK-V
R G PURAM
NEW DELHI- 110066

10: THE AREA ORGANIZER
SSB
SECTOR HQ
GANGTOK
SIKKIM
PIN- 73710

VERSUS

BIRAJ BORTHAKUR
S/O- LATE DIMBESWAR BORTHAKUR, SUB AREA ORGANIZER, O/O THE
DEPUTY INSPECTOR GENERAL SECTOR HEAD QUARTER, SASHASTRA
SEEMA BAL, BOMDILA, ARUNACHAL PRADESH, PIN- 790001

For petitioner/appellant(s) : Mr. RKD Choudhury,
DY. SGI

Ms. L. Devi, Advocate

For respondent(s) : Mr. C.S. Hazarika, Advocate
Ms. A. Barman, Advocate

BEFORE
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER

Date: 24.07.2024

(Kardak Ete, J)

By filing this writ petition, the petitioners have assailed the order dated 06.03.2019 passed by the learned Central Administrative Tribunal (CAT) Guwahati in O.A. No.045/00298/2016, whereby the Original Application filed by the respondent, namely- Sri Biraj Borthakur, has been allowed and the penalty imposed vide order dated 12.02.2016 against the respondent has been set aside.

2. The brief facts of the case are that the respondent was appointed as a Sub-Inspector (Pharmacist) a combatised non-gazetted post in SSB in the year 1984. Thereafter, he was appointed as a Circle Organiser (a civilian Gazetted post), the post which he had joined on 01.10.1991 and was promoted to the post of Special Area Organizer (in short 'SAO') and posted at Gangtok, Sikkim till September, 2008. Thereafter he was transferred to Bahraich in the State of Uttar Pradesh and then posted to the State of Arunachal Pradesh. During the service of the respondent as SAO at Gangtok, Sikkim, a Court of Enquiry was ordered by the Deputy Inspector of General, SHQ, Ranidanga, vide dated 21.01.2009. After the Court of Enquiry, it was, prima facie, found the involvement of the three officers/officials including the respondent namely- Sri Biraj Borthakur, Sri Vinod Kumar Agarwal and Sri Vijay Paul of having fraudulent encashment of demand draft worth Rs.2,00,000/- (Rupees Two Lakhs) pertaining to GPF withdrawal of Smti Chandra Lama, UDC, Area Office,

Sikkim.

3. The petitioners initiated a disciplinary proceedings against the respondent on account of fraudulent encashment of a sum of Rs.2,00,000/- (Rupees Two Lakhs) meant for payment of GPF withdrawal to Smti Chandra Lama, UDC, which was encashed at SBI, Gangtok, Sikkim on the basis of authorisation letter allegedly signed by the respondent in favour of one Sri Ramesh Kumar. The Memorandum of Charge dated 07.07.2011 was issued to the respondent on the following charges:-

“ARTICLE –I: That Shri B. Borthakur, SAO, Bahraich Area while functioning as SAO/DDO of Sikkim Area during the period December, 2007 to August, 2008 fraudulently encashed GPF withdrawal Demand Draft No.0466-112355 dated 27.12.2007 from SBI, Gangtok directly without depositing the draft in Govt. account being GPF withdrawal amounting to Rs.2 Lakhs in respect of Smt. Chandra Lama, UDC of Sikkim Area by signing the authority letter in favour of Shri Ramesh Kumar who is not an SSB employee which tantamount to misconduct, unfaithfulness, dishonesty and fraud. Thus, Shri B. Borthakur, SAO violated Rule 3(1)(i)(ii) & (iii) and GOID-23(5) below Rule 3 of CCS (Conduct) Rules, 1964.

ARTICLE-II: That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Borthakur, SAO while functioning as DDO/officiating Area Organiser could not ensure official procedure in dealing with incoming/outgoing drafts resulting in missing and embezzlement of Demand Draft No.0466-112355 dated 27.12.2007 amounting to Rs.2,00,000/- thereby violated Sub Rule 2(i) of Rule 3 of CCS (Conduct) Rules, 1964.

ARTICLE-III: That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Borthakur, SAO misled the office by mentioning wrong date of issue of Demand Draft which he collected from PAO, SSB, New Delhi, thereby he caused unnecessary delay in investigation of missing draft which tantamount to misconduct in violation of Rule 3(1) (i) & (ii) of CCS (Conduct) Rules, 1964.

ARTICLE-IV: That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Borthakur, SAO being DDO of office used to keep cashier's key of Cash chest on Sundays and kept demand drafts meant for Area Organiser, Sikkim in his personal custody without making entry in the Diary register/valuable register for considerable period which tantamount to

misconduct in violation of Rule 3(1)(i) & (ii) of CCS (Conduct) Rules, 1964.

ARTICLE-V: That the said Shri B. Borthakur, SAO has paid an amount of Rs. 2,00,000/- to Smt. Chandra Lama, UDC on 10.03.2010 in presence of her advocate when a court case was under subjudice which indicates that Shri B. Borthakur, SAO personally involved in this fraudulent case, which tantamount to an unbecoming act in violation of Rule 3(1) (i) (ii) & (iii) of CCS (Conduct) Rules, 1964."

4. The respondent was holding the charge of Drawing and Disbursement Officer w.e.f. September, 2004 to 18.08.2008 in the Office of the Area Organizer, Sikkim. He was also holding the charge of officiating Area Organizer w.e.f. 18.08.2007 to 15.02.2008. During the relevant period, the said fraudulent encashment of the said demand draft of Rs.2,00,000/- had happened.
5. The respondent had filed a representation dated 10.08.2011 against the aforesaid charges denying all the charges levelled against him. After consideration of the representation/reply filed by the respondent, a common proceeding under Rule 18 of CCA Rules, 1965 was initiated against the officers/officials.
6. The enquiry authority in its report dated 27.07.2013 held that the Article of Charges No.II and III stands proved and Article of Charges No. I, IV and V not proved.
7. As per the enquiry report, consequent upon the lodging of the complaint in local police station by Area Organiser, Sikkim Area, and filing of case in the District Consumer Forum by Smti Chandra Lama, regarding fraudulent encashment of demand draft of worth Rs.2,00,000/- (Rupees two lakhs), the respondent paid an amount of Rs.2,00,000/- (rupees two lakhs) to Smti Chandra Lama, UDC in the presence of her Advocate and others. As per the statement of the respondent, out of Rs.2,00,000/-, Rs.50,000/- was contributed by Sri Vijay Paul SFA(M), but the same was denied by him. The reasons given by the respondent for payment of

Rs.2,00,000/- to Smti Chandra Lama, UDC are that he was harassed by the police every now and then and was feeling utterly humiliated. The said payment of Rs.2,00,000/- to Smti Chandra Lama by the respondent is treated as qualified admission of the misconduct by the authorities.

8. The disciplinary authority was in disagreement with the findings of the enquiry authority in respect of Article of Charges No. I, IV and V levelled against the respondent. As per the findings of the disciplinary authority in disagreement note dated 14.07.2014, out of 5 Article of Charges framed against the respondent, Article of charges No. I, II, III and V were proved. Thereafter, a copy of the enquiry report along with the disagreement note was served to the respondent for making his representation vide memo dated 14.07.2014. The respondent filed his representation on 07.08.2014 against the enquiry report and disagreement note.

9. On examination of the representation of the respondent, the disciplinary authority rejected the same and has referred the matter to the Union Public Service Commission (UPSC) for advice on the quantum of penalty to be imposed on the respondent. The UPSC vide letter dated 22.07.2015 advised the penalty of reduction to a lower stage in time scale of pay by three stages for a period of five years on the respondents with further direction that charge officer will not earn increment of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing future increment of his pay. Thereafter, a copy of the advice of the UPSC was served to the respondent for making representation/submission vide memo dated 26.08.2015 to which the respondent submitted his representation on 08.10.2015. The disciplinary authority after consideration of the report of the enquiry authority, disagreement note, advice of the UPSC and the representation of the respondent, has imposed penalty of reduction to a lower stage in the time scale of pay by three stages for a period

of five years with further direction that the charge officer will not earn increment of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing future increment of his pay with immediate effect against the respondent vide order dated 12.02.2016.

10. The respondents being aggrieved has filed the Original Application No.045/00298/16 before the CAT, Guwahati Bench, Guwahati. The petitioners have also filed their written statement refuting the averments made by the respondent.

11. The Learned Tribunal disposed of the aforesaid OA vide order dated 06.03.2019, whereby, while rejecting the claim of respondent with regard to the procedural irregularities, has entered into the merit of the charges against the respondent/applicant and held that Article of Charges No. I, II and V are contradictory to each other and also the fact that restricted point of charges being basically fraudulent encashment of the said demand draft, held that the petitioner authorities have not been able to prove the charge levelled against the respondent and set aside the order of penalty dated 12.02.2016 imposed against the respondent and consequently held the applicant/respondent to be entitled to all the consequential benefits as may be admissible under the Rules. Hence, this writ petition by the Union of India.

12. Mr. RKD Choudhury, learned DSGI for the petitioners, has submitted that the enquiry was held against the respondent by following due process of law by giving him ample opportunity to defend his case. Thereafter, the disciplinary authority based on the materials on record came to a findings of proved misconduct, imposed the penalty against the respondent. He submits that there is no procedural irregularities committed either by the Inquiry Authority or the Disciplinary Authority in the disciplinary proceedings as well as while imposing penalty to the respondent. He submits that the learned Tribunal being the judicial

authority has no power to enter into the fact finding or reappraisal of facts as the scope of the tribunal/court is very limited.

13. Mr. RKD Choudury, learned DSGI, submits that the learned Tribunal has set aside the penalty imposed on the respondent on the ground that the authority has not been able to prove the charge levelled against the respondent without considering the aspect that the during the course of enquiry the respondent himself has paid the GPF withdrawal amount from his own account to Smti. Chandra Lama, UDC, the said fact which itself is a clear admission on his part. He further submits that the learned Tribunal has erroneously held that the charge was not duly proved. He submits that the learned Tribunal has no power to substantiate his own conclusion for that of the disciplinary authority. Therefore, he submits that the impugned order dated 06.03.2019 passed by the learned CAT, Guwahati in OA No.045/00298/16 may be set aside and this Court may be pleased to affirm the penalty imposed against the respondent.

14. In support of his submissions, Mr. RKD Choudhury, learned DSGI, has relied on the judgment of the Hon'ble Supreme Court in the case of **B.C. Chaturvedi vs. Union of India & Ors.**, reported in **(1995) 6 SCC 749**, to project that it is well settled legal position that the disciplinary authority and on appeal, the appellate authority, being the fact finding authority have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty. It is only if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or

to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. Learned DSGI has further placed reliance on the judgment of the Hon'ble Supreme Court in the case of **State Bank of India vs. Samarendra Kishore Endow** reported in **(1994) 2 SCC 537**.

15. On the other hand, Mr. C.S. Hazarika, learned counsel for the respondent, while supporting the impugned order dated 06.03.2019 submits as follows:-

15.1. That the respondent has not fraudulently encashed DD No. 0466-112355 dated 27.12.2007 amounting to Rs.2,00,000/- (Rupees Two Lakh) on 04.02.2008 from SBI Gangtok issued in favour of the AO, SSB, Sikkim, meant for payment of GPF withdrawal in respect of Smt. Chandra Lama, UDC by signing authority letter in favour of Shri Ramesh Kumar.

15.2. It is true that a common proceeding was initiated against the respondent and two others and as such a Memorandum of Charge date 07.07.2011 was issued to the respondent. However, due approval of MHA was not taken before initiation of departmental proceeding and the petitioners, although an order dated 07.07.2011, the President in exercise of powers conferred by sub-Rules (1) and (2) of Rule 18 of the CCS (CCA) Rules, 1965 directed that the proceedings shall be a common one, that the President shall function as the Disciplinary Authority for the purpose of common proceeding and shall be competent to impose any of the penalties specified under Rule 11 of the CCS (CCA) Rules, 1965 and further that the procedure prescribed in Rules 14 and 15 shall be followed in the said proceedings. The respondent submitted his written statement of defence denying all the charges. Subsequently an inquiry was held where, among others, the respondent submitted certain documents in his defence through his letter dated 12.10.2012 before the Inquiry Officer including FSL report dated 08.12.2009 wherein it has

made it clear that the respondent did not sign the authority letter through which one Shri Ramesh Kumar could encash the said Demand Draft.

15.3. That the petitioners have admitted that the penalty imposed by the Disciplinary Authority vide order dated 12.02.2016 was imposed "As per the advice of the UPSC vide their letter dated 22.7.2015"- in other words the Disciplinary Authority did not apply its own mind while imposing the penalty upon the respondent and merely acted as a 'rubber stamp' approving the penalty as advised by the UPSC which in itself is a grave illegality.

15.4. That the petitioners have taken two grounds in challenging the impugned order dated 06.03.2019 passed by the learned Tribunal. The first ground, namely, that the learned Tribunal could not enter into a fact finding inquiry, is a very vague ground bereft of any explanation and hence it would be a grave injustice and a violation of principles of natural justice if the petitioners are allowed to rely on such a vague ground in this proceedings. Secondly, the petitioners have stated in the writ petition that "during the course of the inquiry the applicant himself admitted that he had fraudulently encashed GPF withdrawal amount", to which it is categorically submitted that the respondent never admitted that he had ever fraudulently encashed GPF withdrawal amount of Smt. Chandra Lama. The petitioners are deliberately trying to muddy the waters and seeking to create an impression that the respondent has admitted his guilt in spite of which the learned Tribunal set aside the penalty which is not true at all. The respondent did contribute a part of Rs.2,00,000/- (Rupees Two Lakh) from his own pocket to the tune of Rs. 1.4 Lakhs but that was only to settle the dispute with Smt. Lama and thereby avoid controversy and ignominy of a police case, that too, after taking advice of the police and his superiors. But the charges in the Memorandum of Charge were not that the respondent had paid the money to Smt. Lama but that he had fraudulently encashed the Demand Draft and at no point in the inquiry the

respondent has made any admission to that effect. The statements made are simply not true and contrary to records. The petitioners are also shifting their stance wildly inasmuch as in their own written statement filed before the learned Tribunal, they had projected that the returning of the money by the respondent to Smt. Chandra Lama was a "qualified admission of the misconduct" and yet now the petitioners here before the Hon'ble Court are stating that the same act of the respondent constitute "clear admission on his part". It is submitted that the same party cannot take contrary positions in pleadings on the same issue before two judicial forums.

15.5. Learned counsel for the respondent submits that the case of State Bank of India v. Samarendra Kishore Endow reported in (1994) 2 SCC 537 is not applicable to the facts of the present case. In Endow (Supra), the Inquiry Officer's findings were interfered with by the court of first instance (the Hon'ble High Court in that case) but in the present case, even the Inquiry Officer in his Inquiry Report has held that Article of Charge nos. I, IV and V were not proved and in fact, it was well considered by the learned Tribunal that Article of Charge Nos. I and V on one hand and Article of Charge No. II on the other hand cannot run together at all and are contradictory to one another since the allegations in the former charges require intention i.e. application of mind whereas the allegations in the latter charge is predicated upon negligence i.e. absence of application of mind. Moreover, the discretion mentioned in Endow (Supra) was in relation to proportionality of penalty and not regarding the power of the learned Tribunal to set aside a penalty order on various grounds like perversity, etc. The learned Tribunal therefore did not exceed its jurisdiction. Therefore the ratio of Endow (Supra) is not at all applicable to the present case.

16. Mr. C.S. Hazarika, learned counsel, further submits that the entire case of the petitioners in holding the respondent guilty of the charges contained in the

Memorandum of Charge is based on mere conjecture and surmises and the law is well settled on this issue that a charge cannot be sustained on conjectures and surmises. Merely because the respondent gave some money to Smt. Chandra Lama cannot by itself prove that he had a hand in fraudulent encashment of the Demand Draft in question. On the contrary, the respondent has been able to prove by means of, inter alia, the FSL Report that he definitely did not sign the authority letter that allowed one Shri Ramesh Kumar to encash the said Demand Draft at SBI, Gangtok. Therefore, there is no 'link' that is established between the actions of the respondent and the allegations contained in the Memorandum of Charge relating to fraudulent encashment of Demand Draft. Therefore, he submits that the impugned order dated 06.03.2019 of the learned Tribunal is not liable to be interfered with which is within the scope of judicial review and as such same may be affirmed.

17. We have considered the submissions advanced by the learned counsel for the parties and examined the materials available on record and also perused the impugned Order dated 06.03.2019.

18. It is not disputed that the petitioner was serving as SAO at Gangtok, Sikkim from December, 2007 to August, 2008. At that relevant point of time he was holding the charge of DDO. It is also not in dispute that the amount of Rs.2,00,000/- (Rupees Two Lakh) meant for GPF payment to Smti Chandra Lama was fraudulently encashed from the State Bank of India at Gangtok, Sikkim by one Sri Ramesh Kumar. At that relevant point of time, the respondent was the officer holding the In-charge with regard to the demand draft in question. The allegation came to light when Smti Chandra Lama submitted an application for non-receipt of the GPF withdrawal amount of Rs.2,00,000/- (Rupees Two Lakh) due to her. Thereafter, a case was filed before the District Consumer Forum. An FIR was

lodged that the said demand draft bearing No.0466-112355 dated 27.12.2007 for Rs.2 lakhs meant for payment of GPF withdrawal to Smti Chandra Lama had been fraudulently encashed at SBI, Gangtok, Sikkim on the basis of authorisation letter allegedly signed by the respondent in favour of one Ramesh Kumar. A Court of Enquiry was conducted and having found prima facie involvement of three officers/officials including the respondent, a proceeding was initiated by the petitioners. The respondent were served with the memorandum with five Articles of charges vide order dated 07.07.2011.

19. The respondent has submitted his representation denying the charges and the disciplinary proceedings ensued. The enquiry authority has submitted the enquiry report dated 30.05.2013 with the findings that the Article of Charges No. I, IV and V are not proved and Article of Charges No. II and III stands proved.

20. On consideration of the Inquiry report, the disciplinary authority vide its disagreement note dated 14.07.2014 has concluded that the finding of the Inquiry authority on Article of Charges No. II and III were agreed upon and disagreed the Charges I and IV and the respondent was directed to submit his representation if any within 15 days from the date of receipt of Inquiry report and disagreement note vide order dated 14.07.2014.

21. The respondent filed his representation dated 07.08.2014 denying the charges levelled against him. The advice obtained from the UPSC was also served to the respondent vide letter dated 26.08.2015 against which the respondent has submitted representation vide letter dated 08.10.2015.

22. Having considered the materials pertains to the entire the proceedings, we are of the view that there is no procedural irregularities being committed by the petitioners in the disciplinary proceedings. The Disciplinary Authority on

examination and consideration of the materials vide order dated 12.02.2016 inflicted the penalty of reduction to a lower stage in time scale of pay by three stages for a period of five years on the respondents with further direction that charge officer will not earn increment of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing future increment of his pay.

23. On careful perusal of the impugned order dated 06.03.2019 passed by the learned Tribunal we find that the learned Tribunal has misdirected itself in appreciating the matter thereby acted as if it is an appellate authority as the learned Tribunal has erroneously proceeded to decide the merit of the charges which is not permissible unless the penalty imposed is disproportionate to the charge made against the delinquent, or it is fraught with malafide or perversity.

24. The learned Tribunal has proceeded on the wrong premises that the Inquiry Authority, Disciplinary Authority and the UPSC have found the Article of charges with different findings/conclusions while ignoring the fact that the disciplinary authority has the power and discretion to have disagreement with the finding of the Inquiry Officer and the UPSC has a different power to give its advise as per the Rules. The learned Tribunal has acted like an appellate authority.

25. Learned Tribunal held that there is no any serious major deviation which would have adversely affected the interest of the respondent. Some of the points raised by the applicant, such as, approval of the Minister of Home Affairs not taken for initiation of the departmental proceedings, the need for taking approval of the Prime Minister, the complete Inquiry Reports not being forwarded etc. are found to be frivolous. The respondent authorities could not have proceeded without getting the approval of the competent authorities at various stages since the case has been routed through the Ministry of Home Affairs for initiating in the name of

Hon'ble President of India and also for obtaining advice of the UPSC. The respondent authorities need not to indicate to the respondent whose approval has been taken at what stage. As such, learned Tribunal found no merit with regard to the procedure being adopted for initiation and finalization of the departmental proceedings, to which we are concurred with.

26. The learned Tribunal, even after having found no procedural irregularities proceeded to determine the merit of charges on the ground that the 3 (three) authorities namely the Inquiry Authority, the Disciplinary Authority and the UPSC have found the Article of Charges with different conclusions on the same materials and that the respondent has consistently and vehemently denied charges, without there being any malafides or perversity.

27. The learned Tribunal held that Articles of charges No. I and II of charges are contradictory in nature and against the principle of fairness and natural justice. If, anyone of them is charged, it would have look simple and genuine whereas putting them together, as independent but combined charges are found to be unfair and not sustainable. The charge under Article III, is held to be frivolous as the respondent has been able to explain adequately and convincingly. Further held that the mistake committed by the respondent appears to be quite genuine and he has been able to substantiate it with the detailed explanation. There appears to be no intention of misleading and causing unnecessary delay in investigation of the missing Demand Draft, therefore, the charge is also found to be not sustainable. As regards to the charge under Article IV, all the three authorities found 'not proved', accordingly, further judicial scrutiny is considered not necessary. With regard to the Article of charge No. V, it is held that the respondent consistently and vehemently denied the charge of having fraudulently encasing the said Demand Draft. It is acceptable that respondent could have withdrawn the money officially

and still denied payment to the lady, i.e. Smt. Chandra Lama, UDC by manipulating the record in his own office.

28. The learned Tribunal, relying on the FSL report, has held that the situation naturally takes the issue from the sphere of evidence to the realm of suspicion. But suspicion however strong may be the basis for finding somebody 'guilt' or 'proved' or used as 'proof of allegation', completely ignoring the elementary principle of law that the standard of proof in a disciplinary proceedings, is preponderance of probability and not proved beyond reasonable doubt as required in the criminal proceedings. Although, as per the FSL report, a specimen signature of the respondent authorising Sri Ramesh Kumar to encash the said demand draft could not be conclusively proved, it would not, in our view, absolved the conduct of the respondent for being considered to be misconduct. Thus, the learned Tribunal has erroneously proceeded to determine the merit of the case and interfered with the penalty imposed by the disciplinary authority against the respondent contrary to the settled position of law.

29. We take note that the respondent has stated that the amount of Rs.2,00,000/- (Rupees Two Lakh) paid to Smti Chandra Lama, UDC was not by him alone but along with Sri Vijay Paul, SFA (M), thereby had made vain attempt to justify that since Smti Chandra Lama, UDC, did not receive her GPF withdrawal of Rs.2,00,000/- (Rupees Two Lakh), they have collectively decided to pay the same. After the case was filed before the District Consumer Forum, Gangtok at Sikkim and an FIR was lodged at Gangtok at Sikkim Police Station in respect of missing of the said demand draft, according to the respondent, the police started questioning in the Office of Gangtok, including himself repeatedly and he started feeling humiliated and he and his wife felt harassed and became mentally depressed and having felt sorry for the plight of Smti. Chandra Lama, UDC, payment was made.

According to the respondent, he and other officials have discussed the matter with Sri Ramesh Kumar and Vijay Paul to deposit an amount of Rs.2,00,000/- (Rupees Two Lakh) by sharing Rs.50,000/- (Rupees Fifty Thousand) each. According to the respondent, considering the physical harassment and as agreed to share an amount of Rs.50,000/- (Rupees Fifty Thousand) for closing the case and ultimately Sri Vijay Paul and he himself had to share the burden of depositing an amount of Rs.2,00,000/- (Rupees Two Lakh) and Sri Vijay Paul had paid an amount of Rs.60,000/- (Rupees Sixty Thousand) and the respondent himself has paid an amount of Rs.1,40,000/- (Rupees One Lakh Forty Thousand). However, as per Inquiry report, it is seen that Sri Vijay Paul had denied the payment of Rs.60,000/- (Rupees Sixty Thousand) to Smti Chandra Lama. Such explanation/excuse sought to be made in making payment of Rs.2,00,000/- (Rupees Two Lakh) either by himself or along with other person, is hard to believe as no complaint or FIR was filed by the respondent to that effect and also regarding missing or fraudulent withdrawal of demand draft. It is only on the case filed before the Consumer Forum as well as on the FIR lodged by the department that the respondent has decided to pay an amount of Rs.2,00,000/- (Rupees Two Lakh) to Smti Chandra Lama, which in our view amounts to an admission. It is also noticed that not only Rs.2,00,000/- (Rupees Two Lakh) was paid to the Smti Chandra Lama but the respondent have also paid another Rs.60,000/- (Rupees Sixty Thousand) to Smti Chandra Lama, UDC, as an interest.

30. The observation of the learned Tribunal that the suspicion cannot take place of proof is also erroneous inasmuch as in a disciplinary proceedings, the standard of proof is not proved beyond reasonable doubt but the preponderance of probability. The learned Tribunal appears to have erroneously applied the principle on total misconception.

31. As noted above, the disciplinary proceedings have been conducted giving fair chance to the respondent to defend himself by following the principle of natural justice and in accordance with the applicable rules. We have also noted that the report of the Inquiry Officer clearly reflects that the respondent has paid the amount of Rs.2,00,000/- (Rupees Two Lakh) to Smti Chandra Lama, UDC which amounts to admission.

32. The learned Tribunal has failed to appreciate that it was the duty of the respondent to check and control the account including the demand draft in question so that it is not lost or fraudulently encash by any person. Although there is no direct admission of fraudulent encashment or any prove of authorisation for encashment on the part of respondent, the fact that the respondent has paid the GPF withdrawal amount to Smti Chandra Lama, UDC, in our considered view, amounts to admission. Such aspect has not been properly appreciated by the learned Tribunal which proceeded erroneously on a wrong premises.

33. Even otherwise also, there is no valid reason to interfere with either the disciplinary proceedings or penalty imposed as the same is neither fraught with malafide or perversity. It is trite that the Court/Tribunal while exercising their power of judicial review over such matters do not sit as an appellate authority. Decision qua nature and quantum is the prerogative of the disciplinary authority. It is only in exceptional circumstances, where it is found that the penalty awarded by the disciplinary authority is wholly disproportionate, that too, to an extent that it shocks the conscience of the Court, that the Court steps in and interferes. No doubt, the award of punishment, which is grossly in excess to the allegations, cannot claim immunity and remains open for interference under limited scope for judicial review. This limited power of judicial review to interfere with the penalty is based on the doctrine of proportionality which is a well recognised concept of

judicial review. The punishment should appear to be so disproportionate that it shocks the judicial conscience.

34. Reference may be made to the case of **Deputy Commissioner, Kendriya Vidyalaya Sangathan and Others Vs. J. Hussain** reported in **(2013) 10 SCC 106**, wherein, the Hon'ble Supreme Court has held which is reproduced herein below:-

“8. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority. Such a power which vests with the Appellate Authority departmentally is ordinarily not available to the Court or a Tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See: [Union Territory of Dadra & Nagar Haveli vs. Gulabha M.Lad](#) (2010) 5 SCC 775) In exercise of power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.

9. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with doctrine of Wednesbury rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the Court and the Court is forced to believe that it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in [Council of Civil Service Unions vs. Minister for Civil Service](#) in the following words:

“...Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds on which administrative action is subject to control by judicial review. The first ground I would call “illegality”, the second “irrationality” and the third “procedural impropriety”. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality.”

10. Imprimatur to the aforesaid principle was accorded by this Court as well, in [Ranjit Thakur vs. Union of India](#). Speaking for the Court, Justice Venkatachaliah (as he then was) emphasizing that “all powers have legal limits” invokes the aforesaid doctrine in the following words:

“25.....The question of the choice and quantum of punishment is within the jurisdiction and

discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

35. In the case of **Lucknow Kshetriya Gramin Bank Vs. Rajendra Singh** reported in **(2013) 12 SCC 372**, the Hon'ble Supreme Court has held which is reproduced herein below:-

"13. Indubitably, the well-ingrained principle of law is that it is the Disciplinary Authority, or the Appellate Authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the Disciplinary Authority. In Apparel Export Promotion Council v. A.K. Chopra this principle was explained in the following manner:

"22 The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone."

14. Yet again, in the case of *State of Meghalaya & Ors. Vs. Mecken Singh N.Marak* reported in 2008 (7) SCC 580, this Court reiterated the law by stating:

"14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under [Article 226](#), do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under [Article 226](#). Judged in this background the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."

36. Reverting back to the present case, since the respondent had paid an amount of Rs.2,00,000/- (Rupees Two Lakh) to Smti Chandra Lama, UDC which was alleged to have been fraudulently withdrawn, we are of the view that such an act/conduct on the part of the respondent holding the charge of DDO coupled with an obligation to ensure that such demand draft and other account are to be secured have been allowed to be fraudulently encashed by some other person, amounts to misconduct. Thus, the penalty imposed is, in our view is not disproportionate.

37. On consideration of the impugned order dated 06.03.2019 passed by the learned Tribunal, we are of the view that the learned Tribunal has misdirected and erroneously appreciate the matter which is against the settled principle of law as the learned Tribunal, while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. Neither there is any procedural irregularities in the Departmental proceedings nor any malafide or perversity is established. The punishment imposed by the disciplinary authority or the appellate authority unless shocks the conscience of the court, cannot be subjected to judicial review.

38. In view of the discussions made herein above and the principle of law laid

down by the Hon'ble Supreme Court, we are of the view that the impugned order dated 06.03.2019 passed by the learned Tribunal is not sustainable as the learned Tribunal has not only interfered with and set aside the punishment imposed by the disciplinary authority on reappraisal of facts but overstepped its jurisdiction. We are of the view that the penalty imposed against the respondent is not disproportionate. Thus, the impugned order dated 06.03.2019 passed by the learned Tribunal is interfered with and is hereby set aside and quashed.

39. Writ petition stands allowed and disposed of, accordingly. However, parties to bear their own costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant