

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C)(CAT)No.02 of 2010

Smt. Jharna Chakraborty,
Ex Extra Departmental Branch,
Post Master, Rajarbag,
wife of Sri Shankar Chandra Barman,
P.O. Rajarbag, P.S. Radha Kishore Pur,
Udaipur, District South Tripura

..... Petitioner

– Vs –

1. The Union of India,
represented by the Chief Postmaster General,
North East Circle, Shillong, PIN : 793001
2. Chief Postmaster General,
North East Circle, Shillong,
Meghalaya, PIN : 793001
3. The Director,
Postal Services, Agartala,
Tripura West, PIN : 799001
4. Sri Tapas Kr. Nath,
Ex-SDI Posts, R.K. Pur,
presently working as Clerk at
Agartala Head Post Office,
Agartala Head Post Office, Tripura West.

.....Respondents

B E F O R E
THE HON’BLE MR. JUSTICE U.B. SAHA
THE HON’BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A. Bhowmik, Advocate

For the respondents : Mr. A. Lodh, Advocate

Date of hearing : 11.02.2015

Date of judgment & order : 27.05.2015

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

(Talapatra J.)

By means of this petition filed under Article 226 of the Constitution of India, the petitioner has sought judicial review of the judgment and order dated 20.01.2010 delivered in Original Application No.169/2007 by the Central Administrative Tribunal, Guwahati Bench, on the ground that the order passed by the Disciplinary Authority is based on no evidence and there is no evidence of any statutory period within which the amount so collected is to be deposited and as such there is no basis of temporary misappropriation of the fund as alleged.

But, the Central Administrative Tribunal, while passing the impugned judgment and order, has not appreciated those aspects. For purpose of appreciating the challenge, the essential facts may be laid at the outset.

2. The petitioner who filed the Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985, had challenged the validity of the order dated 01.05.2006 (Annexure-Q) by filing a statutory appeal. The appeal has been dismissed by the appellate authority by the order dated 06.12.2006 (Annexure-O). The petitioner has challenged both the orders of the disciplinary authority and the appellate authority and sought reinstatement in service with all consequential reliefs, such as back wages etc. in the OA.

3. The facts not in dispute are that, by the Memorandum dated 26.07.2000/31.07.2000 (Annexure-C), issued under Rule 8 of the Postal and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1984, it has been alleged that while the petitioner was working as EDBPM at Rajarbag EDBO, in account associated with Udaipur Court SO, South Tripura, failed to credit an amount of ₹15,450 during the period from February, 1998 to November, 1998 in the Government account being the amount of monthly deposits made by 21 RD account holders of the post office. The petitioner accepted the subsequent deposits from various RD account holders without acknowledging the amount by making entry in the pass books or giving receipt in the counterfoil of deposit slip and nor did credit the amount on the date of receipt or on any subsequent date. Twenty two documents and one witness were listed in support of the said charge. The said charge, however, was denied by the petitioner by filing a written statement dated 09.08.2000.

4. On inquiry, the Inquiry Officer, by the Inquiry Report dated 13.08.2002 (Annexure-H) inferred that the charges levelled have not been proved beyond doubt. However, the Director, Postal Services, Agartala, by the order dated 15.04.2004 (Annexure-I), based on the principle of preponderance of probabilities, awarded the penalty of removal from service. Appeal filed by the petitioner on 08.05.2004, was dismissed by the order

dated 26.08.2004 (Annexure-J). Thereafter, the petitioner preferred a revision petition to the Member (P), Postal Services Board, New Delhi.

5. By the order dated 05.05.2005, the revisional authority, on observing that the petitioner was denied reasonable opportunity of representation, as the Disciplinary Authority recorded its final order on disagreement with the Inquiry Officer's report, without affording the petitioner opportunity of representation, set aside the penalty and remitted back the matter to the Disciplinary Authority for de novo consideration from the stage of forwarding of the note of disagreement on the Inquiry Officer's report to the petitioner.

6. In purported compliance of the said direction, the disagreement note was communicated to the petitioner by the communication dated 22.06.2005 (Annexure-L), requiring her to submit her representation, if any, within 15 days. That opportunity was availed by her on submitting a detailed representation dated 08.07.2005 (Annexure-M), stating that the SDI had threatened her with dire consequences. The statement regarding admission of guilt was obtained on duress and threat. Since the penalty imposed by the order dated 15.04.2004 has been set aside by the revisional authority, there can be any justification to impose any penalty once again. However, the

Disciplinary Authority by the order dated 01.05.2006 (Annexure-N to this petition), has observed that :

"After admitting to the misappropriation in her written statement, the C.O. made good the loss and subsequently deposited an amount of Rs.20,000/- (Rupees twenty thousand) only towards final settlement of the same."

The Disciplinary Authority has further observed that the said amount of ₹20,000 was however not deposited personally by the petitioner instead she deposited the said amount to the SCI without any receipt.

7. On purported appreciation of the materials placed in the inquiry proceeding, the Disciplinary Authority, the Director Postal Services, Agartala, has observed as under :

"Hence, by applying the principles of preponderance of probability, I find the charges levelled against Smt. Jharna Chakraborty, GDSBPM, Rajarbag so proved."

8. As consequence of that finding, the final order of removal from the employment with immediate effect has been passed, which was however challenged in the appeal dated 16.06.2006 before the Post Master General, North East Circle, Shillong, but the said appeal, on noticing that the petitioner by her statement dated 01.12.1998 confessed that he had accepted the above mentioned deposits, but did not credit it to the Government account, was dismissed. Pursuant to such admission, the petitioner credited a sum of ₹20,000 on 04.12.1998 towards the

settlement of the defrauded amount. The said Appellate authority declined to interfere with the final order passed by the Disciplinary Authority.

9. Thereafter, the original application, being Original Application No.169/2007 has been filed before the Central Administrative Tribunal, Guwahati Bench. By the impugned order, the said O.A. was rejected, inasmuch as, according to the CAT, the scope of judicial review of an order passed in the disciplinary proceeding is very narrow.

10. 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 and whether 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 reappraise the evidence and to arrive at its own independent findings on the evidence. [**B.C. Chaturvedi Vs. Union of India & Ors.**, reported in **JT 1995 (8) SC 65**]

11. Having regard to that position of law, the CAT has observed as under :

11. At the outset, we may note that since the charge leveled against the applicant had been denied, full fledged enquiry had been undertaken. Her written statement dated 01.12.1998 was one of the listed document. It is not in dispute that she participated in the departmental enquiry throughout, cross-examined various witnesses examined at length and submitted her defence statement. As on earlier occasion, without assigning reasons for disagreement with the conclusions arrived at by the inquiry officer, penalty was imposed by the disciplinary authority as upheld by the appellate authority, in our considered view revisional authority was fully justified to interdict said findings and remanding the matter from the stage of supplying the said note of disagreement with findings of enquiry officer the by disciplinary authority. She indeed was made available said not of disagreement, requiring her to submit representation, if any, within the time prescribed therein, which opportunity had also been availed by her. In such circumstances, it cannot but be held that the applicant had been afforded a reasonable opportunity of hearing by disciplinary authority before leaving the penalty. Thus only question which remains to be examined is whether applicant's pleas raised in her defence, heavily raised in her representation, appeal etc. had been duly considered or not.

12. Perusal of the disciplinary authority order dated 01.05.2006 as well as appellate order dated 06.12.2006 would reveal that applicant's various contentions were duly noticed and considered in their prospective. Contentions raised by applicant that her authorities were not justified to take in to account, her statement dated 01.12.1998 to arrive at the conclusion of temporary misappropriation of Govt. funds were not justified, is totally baseless, misconceive and without any justification. The impact of said statement particularly in te light of cross-examination of the witnesses has been duly noticed & rightly made the basis for establishing charge against her. We may also note the fact that depositors had made statement before the enquiry officer and they were duly cross-examined, which aspect cannot be easily ignored or brush aside. Merely because some of them stated that signatures were taken on blank paper, would be of no consequences. As long as the fact the applicant had failed to make entry in to their passbooks and did not credited the said amount, remain undisputed, the applicant's various technical plea would be not of any relevance. Charges leveled against her have been established by sufficient evidence brought on record. [Emphasis supplied]

12. Mr. A. Bhowmik, learned counsel appearing for the petitioner, has strenuously argued that there is no evidence at all. The written statements of the depositors were written by one Sri Balan Chakraborty (DW.3). One Sri Tapash Kr. Nath (SW.1) has admitted that the signatures of the depositors were obtained on the blank paper and the petitioner's statement dated 01.12.1998 was also obtained under duress. Thus, neither on the statements of the depositors or on the statement of the petitioner, admitting that she did not credit the amount collected from the R.D. depositors, cannot be relied at all. Thus, the finding in the disagreement note by the Disciplinary Authority that the

petitioner's statement dated 01.12.1998 was the final nail in the coffin is unsustainable.

13. Mr. Bhowmik, learned counsel has further contended that as the petitioner's signature was obtained on the blank paper, the contents in the said statement cannot bind the petitioner, inasmuch as the petitioner had categorically denied the charge. For purpose of reference, the Article of Charge framed against the petitioner, by the Memorandum dated 26.7.2000/31.07.2000 is extracted hereunder :

"ARTICLE

The said Smti Jharna Chakraborty, EDBPM, Rajarbag EDBO in account with Udaipur Court SO under R.K. Pur HO while working as such during the period from Feb'98 to Nov'98 has failed to credit an amount of Rs. 15,450/- (Rupees fifteen thousand four hundred fifty) only in govt. account being the amount of monthly deposits made by 21 RD account holders of the office. The said Smti Jharna Chakraborty accepted the subsequent deposits from the depositors of RD account Nos. 1115677, 1115101, 1115676, 1115598, 1114762, 1113924, 1116056, 1115231, 1113828, 1115493, 1113591, 1114995, 1115172, 1116160, 1115597, 1114763, 1114652, 1113254, 1114557, 1116057, 1114236 without acknowledging the amount by making entry in the pass books or granting receipt in counterfoil of deposit slip and did not credit the amount on the date of receipt or any subsequent date and thereby violated the provisions of Rule 144 read with Rule 143 (3)(a)(1) and 131(3) of Rules for branch offices besides the instructions contained in Rule 96 and Rule 101(1) of Post Office Saving Bank Manual Vol.I read with Rule 4 of Financial Hand book Vol. I. By doing such, she is also alleged to have failed to maintain absolute integrity and devotion to duty contravening the provision of Rule 17 of P&T Extra Departmental Agents(Conduct & Service) Rules, 1964."

14. Mr. Bhowmik, learned counsel appearing for the petitioner, has also referred to the statement of Balan Chakraborty, where he has admitted that the statements in Ex. S-07, Ex. S-08, Ex. S-09, Ex. S-10, Ex. S-14, Ex. S-15, Ex. S-18, Ex. S-21, were written by him, whereas the written statements exhibited as Ex. S-06, Ex. S-11, Ex. S-12, Ex. S-13, Ex. S-16, Ex. S-17, Ex. S-19, Ex. S-20 and Ex. S-22, were written by one Manindra Chakraborty as per the instruction of the then SDIPO, R.K. Pur. In some written statements, exhibited as Ex. S-06 and Ex. S-22, the depositors put their signatures on white paper and the statements were written afterwards, either by him or by Manindra Chakraborty. However, in the cross-examination, he has stated that some of the statements were read out, but he has failed to identify those statements.

15. Mr. Bhowmik, learned counsel, having referred to the inquiry report, particularly the part as extracted below, has submitted that the charge was held not proved by the Inquiring Authority.

“In this case it is first required to be established that the depositors of the RD Passbooks as mentioned in the charge sheet actually deposited the money against their respective accounts or not. Whether the RD passbooks involved in this cause were actually kept in the custody of the RPM or not. In this cause were actually kept in the custody of the BPM or not. In this case on the above mentioned matter burden of proof lies on

the prosecution. What are the supportive documents produced by the prosecution in support of the deposits made against those RD accounts? There was no entry in the RD passbooks about the said deposits, no entry in BORD Journal, no entry in the RD account books. No counterfoil of SD-103 in support of deposit was produced, specific dates of deposits by the depositors were not mentioned by the depositors or prosecution side. Are the documents Exs-1, Exs-6 to 22 are sufficient to support the said RD deposits whereas their credibility/dependability/authenticity have become questionable on the basis of above mentioned all discussions? In Exs-01, the C.D. wrote that she misappropriated Rs. 16200.00 of 23 passbooks but in the charge sheet, which is based on this writings, the charge was that the D.D. failed to credit Rs. 15450.00 being the monthly deposits made in 21 RD passbooks. Here the basic document produced by the prosecution (Exs-01) is not the in toto supportive to the charges. Another factor is that in Exs-01 the wrote that she misappropriated Rs. 16200.00. Misappropriation is a criminal offence which should be tried in the Court of law under CRPC and not departmentally. I am bound to writ this because Exs-01 is the only basic document on which the entire case stands. The documents listed in Annexure-III from Sl. 2 to 5 not show any proof that the depositors made any deposit for which charges were framed. The developments in the enquiry made the documents listed from Sl. 6 to 22 opaque. No seizer list was produced by the prosecution, so it also could not be established in the enquiry that the RD pass books as listed in the charge-sheet were actually in the custody of the BPM and were not in the custody of the depositors. In this case it has also been focussed in the inquiry that documents is listed from EXS-D6 to 22 are not dependable. The document as listed as EXS-1 is based on the documents EXS-6 to 22. The C.D. admitted on EXS-1, whatever might be the reason, but subsequently she denied the charges and the prosecution could not establish the following points clearly.

- (a) Whether the RD passbooks as listed in the charge-sheet were actually in the custody of the BPM or the depositors.
- (b) Whether the RD deposits were actually made by the depositors or not.

- (c) On which dates the depositors made the deposits and what are their supportive documents.**
- (d) If the passbooks were seized from the custody of the BPM, why seizer list was not prepared.**

In the inquiry the response from the prosecution side is found weak on the above points and indications were also absent in the charge sheet. If the deposits cannot be established clearly and specifically document ally and circumstantially, the subsequent charges leveled against the C.OV do not stand and the entire charge become non-est.

As an I.O., I am duty bound to process case and reach decisions in a manner which is lawful and just.

In view of the circumstances, mentioned above, the charges leveled against the C.. have become cloudy and opaque and I have no other alternative but to give benefit of doubt to the C.O.”

16. Those finding however, have been disagreed by the Disciplinary Authority, as would be evident from the order dated 15.04.2004, after observing as such :

“I cannot agree with the assessment of the I.O. that the written statement of the C.O. dtd. 01.12.98 cannot be treated as written statement in the true sense as it is addressed to no one and not in the proper format. I am not aware of any proper format for making such statements nor are statements necessarily to be addressed to any one in particular. What is important is whether the person making the statement has signed it in the presence of witnesses or not. On these accounts the statements holds goods and should be treated as such.

The I.O. observes that no entries were found in the RD Passbooks, BORD journal or the BO accounts book. No counterfoil of SB-103 in support of the deposit produced or specific dates of the deposits

by the depositors mentioned by either the deposits or prosecutions. If the charge of misappropriation is to be accepted against the charged official it should also be realized that the above mentioned documents and records are all in the custody of the BPM herself. There is no one else to exercise any supervision or check and balance in the office. The records could have been easily manipulated to help in any misappropriation but I definitely agree that non-availability of entries corresponding with the deposits are any proof of the guilt of the C.D. By the same token they can neither be any proof of her vindication.

The I.O. has pointed out the differences in the amount stated to be misappropriated by the COD. On 01.12.98 of Rs. 16,200/-(Rupees sixteen thousand two hundred) only and the amount of Rs. 15,450/-(Rupees fifteen thousand four hundred and fifty) only mentioned in the charge-sheet. Surprisingly the I.O. has observed that misappropriation is a criminal offence which should be tried in the court of law under CRPC and not departmentally. I think the I.O. has overstepped his jurisdiction by making such a comment which is not relevant to the job assigned to him which was a establishing whether the charge is labeled against the C.D. stands proved or not.

In conclusion, the statements made by the depositors have to be taken at face value. And since neither the defence nor the depositors have proved that their statements are false, it is established that deposits were in fact made by them in the Rajarbag Brach Office. I cannot understand why the charged official would so willingly make a payment of Rs. 20,000/- (Rupees twenty thousand) only if her intensions were honest. Rs. 20,000/-(Rupees twenty thousand) only was not a small amount and for GDS employee whose recruitment and service conditions merely under threat of loss of job is not tenable. The statement of the C.D. dtd. 01.12.98 is the final nail in the coffin as far as establishing temporary misappropriation of Govt. funds is correct."

17. Mr. A. Bhowmik, learned counsel appearing for the petitioner, has relied on a decision of the apex court in **Moni**

Shankar Vs. Union of India & Anr., reported in **(2008) 3 SCC 484**, where it has been observed that :

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

[Emphasis supplied]

18. Having placed reliance on **Moni Shankar Vs. Union of India & Anr.**, Mr. Bhowmik, learned counsel has submitted that it is not that if there are some evidence the door is shut for the judicial review, but in the judicial review it can also be examined whether the relevant piece of evidence has been taken into consideration and whether the irrelevant facts have been excluded therefrom or not.

19. The reliance has been placed further on **State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya**, reported in **(2011) 4 SCC 584**, where the apex court has held as under :

“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 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.

[Emphasis supplied]

Mr. Bhowmik, learned counsel, has submitted that there is no material on record to arrive at a finding as returned by the Disciplinary Authority.

20. From the other side, Mr. A. Lodh, learned counsel appearing for the respondents, in order to refute the submissions made by Mr. A. Bhowmik, learned counsel, has submitted that it is the duty of the Branch Post Masters to make entry in the SB Journal of amounts deposited and those should be totalled daily

and the daily total should be carried into the B.O. account under the head "Savings Bank Deposits". The particulars of the deposits should be entered in the space provided for the purpose on the back of the B.O. daily account. He has made submission on the basis of the rules for Branch Officers, which records the guidelines for the Branch Postmasters. According to Rule 144 of the Rules for Branch Offices, Mr. Lodh, learned counsel submits that the procedure for R.D. Accounts is the same as for C.T.D. Accounts. Rule 143 (3)(a)(i) of the Rules for Branch Offices, provides as under :

"The C.T.D. Pass-book should normally be presented along with the monthly deposit. There may be cases where the depositor will not be able to produce the pass-book as for example when he has lost it and has applied for a transfer of his account and the Branch Postmaster has not received intimation regarding the transfer. In such cases, the Branch Postmaster should get an application from the depositor stating the facts. The deposit should be accepted and a receipt in Form S.B.-100 should be prepared in triplicate. The pencil-copy should be given to the depositor and the duplicate copy along with the application should be made sent to the account office. An entry should be made in journal leaving the account number blank. The amount should be credited to "C.T.D. Deposits" in the Branch Office Account and Branch Office Daily Account. When intimation regarding the transfer is received from the Account office, the account number should be noted in the journal."

21. Mr. Lodh, learned counsel therefore, has submitted that the misconduct is apparent on the face of the records as produced in the inquiry proceeding viz. BO Daily account (Exbt.S-2), BO RD Journal (Exbt.S-3), BO Account Book (Exbt.S-4) and

Rajarbag BORD Passbooks (Exbt.S-5) where required entries were not made. Mr. Lodh, learned counsel, has further submitted that merely someone has written the statement and obtained signatures thereon, the veracity of those statements cannot be held questionable. However, Mr. Lodh, learned counsel has candidly admitted that the statement of one Balan Chakraborty, has created some confusion for the vagueness in the statement. But, in the cross-examination, he has admitted that Exbt. S-1, had been written by the petitioner herself. He vouched that, on realising the statement is true she put her signature in his presence.

22 The statement of Sri Tapash Kr. Nath (SW.1), according to Mr. Lodh, learned counsel clinches any doubt. He has categorically stated that on 01.12.1998, he interrogated the petitioner. Initially she denied any sort of irregularities. Later on, she admitted that she had misappropriated some amount of money against the deposits of some RD accounts of Rajarbag BO. When she was asked to identify those RD accounts, she replied that the RD passbooks were lying with her. She produced 22 RD passbooks before him which were lying in her custody. Then the petitioner made the list of 23 RD accounts, deposits therein amounting in total ₹16,200. In his presence and in presence of Sri Balan Chakraborty, EDDA cum EDMC, Rajarbag BO, a list of the RD accounts were seized on 01.12.1998. Exbt.S-01 is the said list

which was prepared by the petitioner on 01.12.1998. Then he seized 23 RD passbooks and requested her to credit ₹20,000, being the total defrauded amount alongwith default fine. The petitioner promptly credited ₹20,000 at the R.K. Pur HO. The statements of the depositors of 17 RD pass books have been authenticated by the petitioner, stating that, the statements are true and witnessed by Sri Balan Chakraborty on 17.12.1998 and 19.12.1998 respectively.

23. Mr. Lodh, learned counsel, has urged that if those evidentiary materials are read together, it would be apparent following the standard of preponderance of probabilities that disagreement expressed by the Disciplinary Authority is based on consideration of the relevant evidence and in exclusion of irrelevant evidence. Thus no interference is called for. Mr. Lodh, learned counsel appearing for the respondent, has also relied on a decision of the apex court in **Harish Chandra Tiwari Vs. Baiju**, reported in **(2002) 2 SCC 67**, to contend that even the penalty may not be interfered with. In **Harish Chandra Tiwari Vs. Baiju**, it has been held that, if it is found that successive misappropriations remained even unabated after the disciplinary proceeding, then "removal" is just. In that case, an advocate for committing misconduct of misappropriating the amount of his client and for continuance of misappropriation, even when the disciplinary proceeding was in progress was removed from the

roll, holding that the misconduct of the delinquent became more aggravated when he determined to forge an affidavit in the name of his client, which he produced before the Disciplinary Committee to deceive the Disciplinary Committee to believe that he and his client had settled the dispute by making a late payment to his client.

24. Mr. Lodh, learned counsel has also relied on **State Bank of India & Ors. Vs. S.N. Goyal**, reported in **(2008) 8 SCC 92** to buttress his submission that, where the enquiry was found to be fair and proper and the finding of guilt in the enquiry in respect of a serious charge was found to be valid, on the ground of proportionality, no interference is called for. In **State Bank of India & Ors. Vs. S.N. Goyal**, the Manager of a Bank defrauded a meagre amount deposited by the borrowers. Having regard to that aspect of the matter, it has been observed in **State Bank of India & Ors. Vs. S.N. Goyal** as under :

"At the relevant point of time the respondent was functioning as a Branch Manager. A Bank survives on the trust of its clientele and constituents. The position of the Manager of a Bank is a matter of great trust. The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank. Any misappropriation, even temporary, of the funds of the Bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is to be viewed lightly or leniently it will encourage other

Bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected.”

[Emphasis supplied]

25. On appreciation of the records, we find that the admission of misconduct cannot be held to have suffered from any infirmity. Moreover, from the records as admitted in the evidence, being Exbt.S-02 to Exbt.S.10, it is apparent that the petitioner did not make any entry of the deposit. Even if, the statement of the depositors are excluded, it would be adequately proved that she committed temporary misappropriation as she deposited the misappropriated amount with late fine. A lenient view would have been taken if the petitioner did not dispute her own statement in the manner she has done. When she denied her own statement over misappropriation and other misconducts, it reflects her frame of mind. What the apex court held in **Harish Chandra Tiwari Vs. Baiju** and extracted hereunder, has its ramification in the case in hand :

12. Among the different types of misconduct envisaged for a legal practitioner misappropriation of the client's money must be regarded as one of the gravest. In his professional capacity the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw money from the court payable to the client or take money of the client to be deposited in court. In all such cases, when the money of the client reaches his hand it is a trust. If a public servant misappropriates money he is liable to be punished under the present Prevention of Corruption Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from

service. But if an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanour. Perhaps the dimension of the gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a case where the delinquent advocate returned the money before commencing the disciplinary proceedings.

[Emphasis supplied]

26. Having held so, this petition stands dismissed. However, there shall be no order as to costs.

JUDGE

JUDGE

ROY