NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.250 of 2012

Ajay Hariharno S/o Lt. Balmukund Hariharono R/o Infont Of Alok Sadan New Deepak Nagar Distt. Durg CG

---- Petitioner

Versus

1. General Manager (Network -1) Business & Operations Performance Monitoring, Local Head Office, SBI, P.B.No.6, Hoshangabad Road, Bhopal-462 011
2. The Deputy General Manger (B & O) NW-3, Appellate Authority, Disciplinary Proceeding Section, Administrative Office, Byron Bazar Raipur Cg
3. The Assistant General Manger (Administration)/Disciplinary Authority, State Bank Of India, Disciplinary Proceedings Section, Administrative Office, 1st Floor, Bairan Bazar Raipur CG
4. The Branch Manager/local management/passing officer, State Bank of India, Branch Chhuriya, District Rajnandgaon, CG

---- Respondent

For Petitioner : Petitioner in person.
For Respondents : Shri Prafull Bharat with Shri P. R. Patankar, Advocates

---

Hon'ble Shri Justice Manindra Mohan Shrivastava

C A V Order

20/11/2015

By this petition under Article 226 of the Constitution of India, the petitioner has impugned the order of suspension dated 04-06-2009 passed by the respondent No.3, order dated 22-07-2011 imposing penalty of dismissal from service on three charges as also order dated 28-11-2011 passed by the respondent No.2-appellate authority dismissing appeal and affirming the order of penalty imposed on the petitioner by the disciplinary authority.

2. Brief and relevant factual matrix giving rise to this petition, as adumbrated in the pleadings of the parties, is stated infra.

During the period, the petitioner was posted as Assistant at Branch-Bemetara of the respondent-Bank, on certain allegations, the petitioner was placed under suspension vide order dated 04-06-2009. Notice was given to the petitioner on 24-12-2009, to which, the petitioner filed his reply on 02-01-2010. Thereafter, letters were issued on 02-02-2010, 05-02-2010 and 08-02-2010 to the petitioner to inspect records and relevant documents. The preliminary enquiry eventually led to institution of departmental enquiry by issuance of charge sheet on 07-07-2010 on three charges. The petitioner submitted reply on 17-07-2010. Thereafter, the petitioner moved applications on 27-07-2010, 03-08-2010 followed by application dated 08-09-2010 demanding certain documents. In the meantime, on 17-08-2010, the Enquiry Officer also appointed. Thereafter, the enquiry continued and after collecting evidence led by the prosecution as well as by the defence, the Enquiry Officer issued a letter dated 07-01-2011. The petitioner submitted reply on 13-01-2011 and repeated its earlier demand of documents. Finally, the enquiry report was submitted by the Enquiry Officer on 03-02-2011. In his report, while Enquiry Officer found charge No.1 and 3 proved against the petitioner, Charge No.2 was found partly proved. A notice was also issued to the petitioner on 17-02-2011 giving him opportunity to submit defence submissions. The petitioner, thereafter, submitted various applications on 03-03-2011, 01-06-2011, 06-06-2011, 08-06-2011 and 04-07-2011, in which, the petitioner repeated its earlier demand of supply of various documents raising grievance that he has not been afforded proper opportunity of hearing and he has been denied access to relevant documents.

However, vide impugned order dated 22-07-2011, the disciplinary authority, relying upon the enquiry report, imposed penalty of dismissal from bank service in exercise of power under clause 6(a) of the memorandum of settlement dated 10-04-2002 governing terms and conditions of services of the petitioner.

Aggrieved by the order of penalty, the petitioner preferred departmental appeal before the respondent No.2 vide memo of appeal dated 23-08-2011. In the appeal, the petitioner came out with some new documents, particularly voucher of the disputed transactions and photocopy of the extract of cheque refer and Return Register. Thereafter, the petitioner repeated his application for consideration of documents submitted along with memo of appeal, on 18-10-2011, 24-10-2011, 24-11-2011 and 28-11-2011. The petitioner submitted that in view of the grounds urged in the appeal and the new documents placed on record by him along with his memo of appeal before the appellate authority, a fresh enquiry is necessary. However, vide impugned order dated 28-11-2011, the appeal was also dismissed, affirming the order order of penalty.

3. Assailing correctness and validity of the departmental proceedings, order passed by the disciplinary and appellate authority, the petitioner in person, submitted that the entire enquiry is vitiated on account of serious violation of principles of natural justice and even though, charges are vague, not specific, lacking in material particulars and details and even though, the charge No.2 as originally framed, was not found proved, yet the disciplinary

authority and appellate authority, in a biased manner, have held the charges proved against the petitioner.

In so far as charge No.1 is concerned, the petitioner in person contended that the entire basis of charge No.1 was that the petitioner debited from the account of CG State Electricity Board, Durg vide Cheque No.114060, Rs.61,153/- on 07-01-2009 crediting the amount to the account of one P. K. Singh, through his own I.D. Whereas, as per the information of CG State Electricity Board, the said cheque was not issued by them. The petitioner, however, came out with specific defence that under the prevalent banking transaction practice, as there was some doubt, the cheque was referred to the higher authority and it is only when the higher authority passed the cheque, the petitioner bound by the orders of higher authority, had to clear the cheque. Therefore, it is contended that in so far as petitioner is concerned, he had performed his duty. It was not within the authority of the petitioner to disobey the directions of higher authority of bank, who had duly passed the cheque after verification. Once the cheque was duly passed upon such verification by the higher authority, the petitioner had no option but to clear the cheque. It is submitted that right from the beginning when the departmental enquiry was initiated, the petitioner had been repeatedly praying for production of relevant cheque refer and return register of the concerned date 07-01-2009 but the relevant original record was not produced on false premise that the records are not available and missing. Throughout the enquiry, time and again, through numerous letters, the petitioner demanded production of cheque refer and return register, which would have proved his innocence. But the said record was deliberately withheld. It was at the appellate stage only, the petitioner was sent photocopy of the relevant cheque refer and return register along with relevant vouchers which the petitioner immediately placed on record before the appellate authority. A perusal of the cheque refer and return register would clearly show that the petitioner, having some doubt, before clearing the cheque, referred the cheque for scrutiny of the higher authority. The Passing Officer scrutinized the same and after due verification, passed the cheque. This is clearly borne out from the photocopy of extract of the relevant cheque refer and return register of relevant dates. Thus, the petitioner's defence that he had cleared the cheque only after the Passing Officer cleared the cheque, deserved acceptance, exonerating the petitioner from the charges. But the original register was neither produced nor the petitioner was allowed to inspect the particular crucial document which was the sole proof of his innocence. He has further submitted that the Passing Officer, who had passed the cheque, was also proceeded against in departmental enquiry on specific allegations of he passing the disputed cheque. This by itself, it is urged, is proof of innocence of the petitioner. However, the appellate authority adopted hyper technical approach and instead of making efforts to find out the truth by requiring production of relevant cheque refer and return register and without holding fair and impartial enquiry in the matter, only on conjectures and surmises, the petitioner was held guilty. It is further argued that mere passing of cheque by itself is not misconduct. If despite all discrepancies, without comparing signature, the petitioner would have passed the cheque without referring the cheque to Passing Officer, the petitioner might be guilty. However, ignoring the clinching documentary evidence in the form of cheque refer and return register, the appellate authority upheld the penalty by adopting hyper technical approach that the aforesaid document was not placed before the disciplinary authority. He submits that in the absence of there being any allegation leveled on the petitioner that he was responsible or had any role to play in missing of the relevant register, the appellate authority was not justified in affirming the findings of the disciplinary authority on charge No.1. It has been argued by the petitioner that fair enquiry was not held and even though, the petitioner was not guilty, merely because, cheque was cleared by the petitioner which was his duty to obey the directions of Passing Officer, holding the petitioner guilty of Charge No.1 is highly illegal, arbitrary and irrational.

4. On Charge No.2, the petitioner submitted that even according to Enquiry Officer, the charge that the petitioner without verifying the signature of account holder, cleared withdrawal of Rs.19,000/- on 10-01-2009 from the account of account holder of P. K.Singh has not been found proved by the Enquiry Officer, as the concerned voucher was not produced during enquiry. Mere passing by the petitioner, in the absence of any proof of irregularity, does not make out charge No.2 against the petitioner. According to the petitioner, once the main charge was not held proved, there remained nothing to record vague finding that the charge is partly proved.

5. As far as charge No.3 is concerned, it has been argued that this charge is extremely vague, unspecific, lacking in material and particular details and only based on conjectures and surmises. The charge has been leveled and found proved without complete records of debit and credit transactions. Only credit transactions of certain check period were taken into consideration. The complete details of various amount debited from the accounts of the petitioner, overdraft facility availed by the petitioner and in absence of reference to any particular transaction, the entire charge No.3 is highly vague and on that basis,

the petitioner could not be held guilty. Out of all the entries, four entries are prior to 24-07-2008 which is the date of opening of O.D. Account. It is further submitted that the allegation that credit transaction related to amount more than the salary of petitioner is based on incorrect calculation that the net monthly pay of the petitioner is Rs.3,473/- whereas even according to the evidence of prosecution, for the month of November, 2008, total monthly emolument was shown Rs.5,618/-. By adding various allowance, the total monthly emolument of the petitioner for the month of November, 2008 is Rs.9043/- and for the month of December, 2008, Rs.9896/-. If the complete details of debit and credit amount are taken into consideration, the O.D. Facility availed during the relevant period and the salary of the petitioner, charge No.3 is not at all made out. Therefore, the finding of guilt recorded by the Enquiry Officer and affirmed by the appellate authority are perverse. The petitioner has relied upon several decisions referred to in his petition and written submissions.

6. On the other hand, learned counsel for the respondents supported the order of penalty imposed by the disciplinary authority and as well as the order passed by the appellate authority by submitting that the petitioner was working as Assistant and in his capacity as such, was required to perform his duty with utmost integrity and promptitude. Charge No.1 relating to debiting of Rs.61,153/- from the account of CG State Electricity Board and depositing it under the disputed cheque in the account of P. K. Singh was found to be fictitious transaction. The account in the name of P. K. Singh was a fictitious account. The petitioner passed the cheque without proper verification. Upon enquiry, it was found that no such cheque was issued by the Electricity Board.

During the course of enquiry, when initially notice was given to the petitioner to explain his conduct in posting the fictitious cheque in the account of P. K. Singh, the petitioner failed to offer any satisfactory explanation. The petitioner kept on avoiding to file proper reply and engaged in demanding irrelevant documents. Before issuance of charge sheet, number of letters were issued to the petitioner to inspect the relevant records but the petitioner did not avail the opportunity. The relevant cheque refer and return register was found missing from the records of bank, in respect of which, a report was also lodged in the police station. The petitioner suddenly came out with the photocopy of cheque refer and return register and he even sought to mislead higher authorities by mixing part of details of transaction of one date with the part of details of transaction of another date. The petitioner also came out with the photocopy of the voucher. This is clearly shows that these documents were in the possession of the petitioner and it also reflects and leads to inference that right from the beginning, when the matter was brought to day light, the records were got misplaced by the petitioner himself and the fact that the petitioner himself produced the photocopy of the relevant documents before the appellate authority, shows that these records were in possession of the petitioner and therefore, he is liable to be prosecuted. In this respect, attention of this Court has been drawn to report submitted in the police station by submitting that the report was made in the police station, the police did not take any steps in the matter. It is also submitted that while submitting the photocopy of the voucher, cheque refer and return register, the petitioner did not disclose the source wherefrom he obtained these documents. This dubious conduct of the petitioner clearly leads to inference that the petitioner was instrumental in misplacing the records and he was in possession of the same. Therefore, the petitioner cannot be allowed to take benefit of his own wrong. The photocopy of voucher, cheque refer and return register were submitted by the petitioner for the first time before the appellate authority. These documents were never placed before the departmental authority. Therefore, in these circumstances, the appellate authority was fully justified in coming to the conclusion that the petitioner had committed misconduct in passing fictitious cheque against the fictitious account, even though, the Electricity Board had never issued the cheque. The vague explanation offered in the petition is that the some colleague of the petitioner had supplied him the photocopy of the relevant voucher and the cheque refer & return register which is liable to be disbelieved in the absence of disclosure of name of colleague, who supplied him these documents. In fact, the petitioner himself was instrumental in getting the records misplaced or stolen from the records of the bank, so that during enquiry, the incriminating evidence may not be produced against him. The defence of the petitioner that he had debited the account of CG State Electricity Board by transferring Rs.61,153/- in the account of P. K. Singh, only after seeking necessary instructions and orders of the Passing Officer, is not proved from any material documents/ record. Therefore, the authorities have rightly disbelieved and rejected the defence version of the petitioner. The petitioner was a bank employee and the manner, in which, he cleared the cheque and posted in the fictitious account of P. K. Singh through his I.D. clearly proves involvement in the fictitious transaction. It was the duty of the petitioner to verify and match the signatures before passing the same. This having not been done, the petitioner cannot be exonerated on the ground that he had cleared the cheque only on the directions and orders of Passing Officer.

7. In so far as Charge No.2 is concerned, learned counsel for the respondents submits that even though, the Enquiry Officer and the Disciplinary Authority held that the first part of the charge that the petitioner cleared the cheque without verifying the signature could not be proved due to non production of the relevant voucher, as cheque was cleared by the petitioner through his I.D., no illegality or perversity has been committed in recording a finding that the charge No.2 is partly proved.

8. As far as charge No.3 is concerned, it is submitted that the amounts credited in the accounts of the petitioner during the check period, are more than the salary of the petitioner. It was for the petitioner to explain as to why such huge amount is credited in his account. It is submitted that in so far as debits are concerned, it related to overdraft facility and merely because, this amount was withdrawn under overdraft facility, such debited amount cannot be adjusted against the credits made in the account of the petitioner. This proves that the petitioner credited the amount which were highly disproportionate to his monthly salary and proves Charge No.3. It is lastly submitted that the Enquiry Officer duly supplied to the petitioner, all the documents relied upon by the prosecution in the course of enquiry. His reply was obtained.

9. Even before institution of charge sheet, notice was given to the petitioner to inspect relevant documents. The cheque refer and return register as well as vouchers were found missing. Even without that, based on other oral and documentary evidence collected during enquiry, charges were found proved against the petitioner on preponderance of probabilities and there is no requirement of law that charges are required to be proved beyond reasonable

doubt. The degree of proof required to prove the charges in departmental enquiry is not as high in criminal case. All the charges have been found proved against the petitioner on preponderance of probabilities. It is lastly submitted that even if any defect is found in the departmental enquiry, in view of the legal position settled by the Supreme Court in the case of **Union of India vs. Y. S. Sandhu, Ex.-Inspector,** ***2008 AIR SCW 7073,*** the petitioner is not entitled to be reinstated but proper enquiry may be directed by remanding the matter to the Enquiry Officer. In support of his contentions, learned counsel for the respondents relied upon the several authorities referred to in his written submissions.

10. The disciplinary authority vide order dated 22-07-2011 held charge No.1 & 3 fully proved against the petitioner, whereas second charge on the petitioner was found partly proved. On the basis of aforesaid decision, the disciplinary authority imposed extreme penalty of dismissal from service on the petitioner. The appellate authority also dismissed the appeal affirming the order of punishment passed by the disciplinary authority.

11. The first charge against the petitioner is that on 07-01-2009, the petitioner debited an amount of Rs.61,153/- from the account of CG State Electricity Board, Durg (In short "CSEB") in its account No.10563772176 vide Cheque No.114060 and deposited the same in the Savings Account of one Shri P. K. Singh in his account No.30599019299. The CSEB informed the bank that that the aforesaid cheque has not been issued by CSEB. In the charge sheet dated 07-07-2010 (Annexure P-17), the contents of charge No.1 reveal that the allegation against the petitioner is that even though the said

cheque No.114060 was not issued by the CSEB, on the basis of the said cheque, an amount of Rs.61,153/- was debited from the accounts of CSEB and deposited in the savings account of P. K. Singh. The entire basis of Charge No.1 is based on the fact that the concerned cheque was never issued by the CSEB. The petitioner demanded copies of debit/credit vouchers in respect of various cheques issued by the CSEB on 07-01-2009 in favour of different persons and in respect of which, the petitioner carried transaction under his I.D. on 07-01-2009. The petitioner specifically demanded copy of cheque refer and return register dated 07-01-2009 as also copies of day book of the period from 15-12-2008 to 07-01-2009. He also demanded copies of debit/credit vouchers relating to entries in the savings account of P. K. Singh. The petitioner also demanded copies of voucher missing register of the period January 2007 to 24-02-2009. The petitioner's application dated 17-07-2010 has been placed on record as Annexure P-18. In his application, the petitioner stated that in order to submit his reply in defence, the documents demanded by him, be supplied. This was followed by reminders and repeated representations collectively filed as Annexure P-19. A perusal of subsequent representations (Annexure P-20 & P-21) also show that the petitioner kept on making representation raising various grievances with regard to his long continuance of suspension, non supply of relevant documents and non mention of list of witnesses and documents of charge sheet. From the summary of prosecution case submitted by the Presenting Officer (Annexure P-22), the prosecution case in so far as charge No.1 is concerned, is based on prosecution documents P.Ex.1 to 9, 12 & 18. P.Ex.1 is the certificate given by Branch Manager of Bemetara stating that concerned cheque No.114060 of Rs.61,153/- dated 07-01-2009 and related credit voucher of account of P. K.

Singh was not available in the branch. The document P.Ex.2 of the prosecution shows that the amount of Rs.61,153/- was posted under the I.D. of the petitioner. This is also proved from the prosecution document P.Ex.12. The other document of the prosecution also proved that the cheque was never issued by the CSEB. On the basis of aforesaid documentary evidence, the Enquiry Officer recorded a finding even though, no cheque was issued by the CSEB for an amount of Rs.61,153/-, the cheque was deposited with the bank and the petitioner posted the said cheque through his I.D., by which, the aforesaid amount was debited from the account of CSEB and deposited in the account of P. K. Singh.

It is relevant to note that in reply to charge sheet, the petitioner did not submit any specific reply nor he took any specific defence that he had raised any doubt on the disputed cheque and thereafter it was referred by him to the Passing Officer for scrutiny and verification. All through the enquiry, no specific defence of this nature was taken by the petitioner. The petitioner did not come out with any specific defence that it was the Passing Officer, who had scrutinized and verified the cheque and then issued direction to the petitioner to clear the cheque so as to say that the petitioner was bound by the orders and directions of his higher authority to clear the cheque after its verification by the Passing Officer. All the letters and representations submitted by the petitioner related to only demand of documents and other grievance but without disclosing any such specific defence to charge No.1. If the petitioner had this defence that upon presentation of cheque, he had raised doubt and then referred the cheque for scrutiny and verification to the Passing Officer, there was no reason as to why the petitioner could not take this specific defence and then demand documents relating to transactions dated 07-01-2009 which included disputed cheque, debit/credit vouchers, copies of cheque refer and return registers of the concerned date. It was for the first time while filing appeal before the appellate authority that the petitioner produced photocopies of missing records namely, relevant extract of cheque refer and return register. On the basis of these new documents, which were part of records found missing from the records of bank, the petitioner sought to raise a ground in appeal that the concerned cheque was cleared by the Passing Officer and only on that basis, the petitioner, as obedient staff, proceeded to clear the cheque. The entire argument of the petitioner before this Court in respect of charge No.1 is that the petitioner had referred the cheque to the higher authority/Passing Officer for scrutiny and verification and it was only when it was cleared by the Passing Officer, the petitioner posted the cheque and debited the account of CSEB and deposited in the account of P. K. Singh. If it was so, this fact obviously was within the personal knowledge of the petitioner and nothing prevented the petitioner from raising this defence at the very first opportunity, when charge was issued to him. Not only this, even before issuance of charge sheet, when explanation was called from the petitioner, the petitioner did not come out with this defence. The petitioner, throughout, kept on asking for supply of various documents. If the petitioner's defence was that after presentation of cheque, the petitioner had raised apprehensions and referred it to higher authority and only after clearance by the Passing Officer, he had passed the cheque through his I.D., this would have been natural and immediate response from the petitioner right from the beginning. But the petitioner came out with the specific defence only in his appeal by producing for the first time before the appellate authority, photocopy of extract of cheque and copies of cheque refer and return register.

It is relevant to note here that the concerned cheque refer and return register was missing from the records of the bank and the bank had submitted a report in the Police Station also. A copy of the report submitted by the bank in the police station is marked by the prosecution as P.Ex.9. It is different matter that the police did not make proper enquiry in that regard. The fact remains that the report of missing of records was submitted by the bank before the police authorities. It is also surprising and raises serious doubt as to wherefrom the petitioner obtained the relevant extracts of the cheque refer and return register. In the memo of appeal and in the application, which was submitted by the petitioner before the appellate authority, there is no disclosure of the source, from which, the petitioner got this document. The cheque refer and return register was the part of the records of bank, which was found missing. Suddenly, in appellate proceedings, the petitioner filed photocopies of those cheque refer and return register without disclosing his source wherefrom he got this document. In the petition, the petitioner has vaguely stated that this document was supplied to him by his colleague. This is completely evasive and suppresses more than disclosing the source.

12. The petitioner raises grievance that the bank had taken departmental action against the higher authority on the specific allegation, therefore, this proved the fact that the petitioner was not guilty of any misconduct. It is true that the higher authority was also proceeded in departmental enquiry and also dismissed from service. But that by itself, would not exonerate the petitioner from the allegations of misconduct as far as charge No.1 is concerned. On the contrary, the involvement of the petitioner as well as the Passing Officer both

has been made a basis for initiating departmental enquiry against both officers and their dismissal from service. It is thus clear that the defence taken by the petitioner at the belated stage of appeal was an afterthought defence and no reliance can be placed on the documents submitted by the petitioner as they are mere photocopies not certified by any competent authority nor proved from the production of original records. Over and above, sudden disclosure of extract of cheque refer and return register by the petitioner which were found missing from the records of bank and in respect of which, report was lodged in the police station, makes position still worse.

13. In a departmental enquiry, the degree of proof is not as high as in a criminal case where the allegations are required to be proved beyond reasonable doubt. It is too well settled legal position that degree of proof required to prove charges in the departmental enquiry is based on the preponderance of probabilities. The fact that no cheque was issued by the CSEB has been fully proved. The cheque which was presented was fictitious cheque. The petitioner had the pivotal role to play in clearing the cheque debiting the account of CSEB and crediting the amount in the account of one P. K. Singh. At this stage, it is also relevant to note that the account of one P. K. Singh was also found to be fictitious account. The petitioner was an employee of the bank and his duty was to perform duties faithfully in the matter of money transaction and the manner in which the petitioner cleared the cheque, renders him liable for disciplinary action. Therefore, the decision of disciplinary as well as appellate authority on Charge No.1 holding the petitioner guilty of misconduct does not suffer from any illegality, arbitrariness or malafide warranting interference by this Court.

14. Charge No.2 as stated in the charge sheet dated 07-07-2010 alleges that on 10-01-2009, the petitioner allowed cash withdrawal of Rs.19,000/- from the savings account of Shri P. K. Singh without comparing the signature of the account holder. It has been alleged that this cash withdrawal was posted through petitioner's I.D. In the summary of prosecution case submitted by the Presenting Officer on 07-01-2011 vide Annexure P-22, all that has been stated is that the cash withdrawal of Rs.19,000/- was posted by the petitioner under his own I.D. It has been recorded therein that as per the information of Branch Manager, Bemetara, the concerned voucher, by which, cash withdrawal of Rs.19,000/- was made from the account of P. K. Singh is not available. On this basis, it has been stated that the transaction was not proper whereas the gravamen of the charge is that the petitioner allowed cash withdrawal of Rs.19,000/- without comparing the signatures of the account holder. In the entire summary of prosecution vide Annexure P-22, there is no material placed on record nor any conclusion drawn to show that the cash withdrawal was allowed by the petitioner without comparing the signature of the account holder. In the enquiry report dated 03-02-2011, submitted by the Enquiry Officer and forwarded to the petitioner along with notice dated 17-02-2011 (Annexure P-24), the Enquiry Officer recorded a categoric finding on the basis of the entire material on record that as far as Charge No.2 is concerned, the defence of the petitioner that merely because voucher is not available, transaction cannot be said to be improper, has been accepted. Moreover, the Enquiry Officer has also categorically recorded that though it is proved that on 10-01-2009, cash withdrawal of Rs.19,000/- was allowed from the account of account holder P. K. Singh and the transaction was posted through petitioner's I.D., yet no documentary evidence has been produced by the prosecution to

prove that while undertaking such transaction, allowing cash withdrawal on 10-01-2009, signatures of account holder were not compared/verified. The Enquiry Officer categorically recorded a finding that allegation that the petitioner allowed cash withdrawal on 10-01-2009 without comparing/verifying signature of account holder, is not proved. Thus, this finding of the Enquiry Officer by itself, makes it clear that the very basis of the charge against the petitioner under Charge No.2 was not proved. It is relevant to mention here that the charge against the petitioner was that he did not compare/verify the signature of account holder while allowing cash withdrawal of Rs.19,000/-. Except this, there was no other allegation against the petitioner under Charge No.2. Once this allegation was not found proved, the petitioner was entitled to be fully exonerated from Charge No.2. However, the Enquiry Officer recorded that the charge is partly proved, merely because cash withdrawal was posted by the petitioner under his own I.D. In the considered opinion of this Court, mere cash withdrawal by the petitioner through his I.D. by itself, without anything more, does not lead to any misconduct by the petitioner. Unless, it is specifically alleged and proved that while allowing cash withdrawal, the signatures of account holder were not compared/verified, no charge is made out against the petitioner.

The disciplinary authority as well as appellate authority mechanically reproduced the aforesaid conclusion of the Enquiry Officer. Both of them concurred with the conclusion that allegation against the petitioner without comparing/verifying signature of account holder allowed cash withdrawal of Rs.19,000/- from the account of P. K. Singh is not proved. It is not a case where the disciplinary authority or the appellate authority disagreed with this finding of the Enquiry Officer. Having accepted the enquiry report to that extent, there remained no material on record to hold that the charge No.2 was partly proved. Mere cash withdrawal by the petitioner was neither alleged as misconduct nor any other irregularity committed by the petitioner while undertaking such transaction was found in the enquiry. Not only this, the Enquiry Officer had clearly accepted the petitioner's defence that mere non-availability of concerned voucher, by itself, does not prove that the transaction was improper. Even this finding of the Enquiry Officer was not reversed either by the disciplinary authority or by the appellate authority. Therefore, there remained nothing incriminating against the petitioner in so far as Charge No.2 is concerned. Thus, the conclusion of the disciplinary authority/Enquiry Officer and appelalte authority that the charge No.2 is partly proved, is clearly perverse, it being without any evidence. Therefore, the impugned orders passed by the disciplinary authority and appellate authority in respect of Charge No.2 are wholly arbitrary, irrational and unsustainable in law. True it is that in order to prove charges of misconduct in domestic enquiry, the charges may be held proved on preponderance of probabilities. But that does not allowed the disciplinary authority to hold charges proved on mere conjectures and surmises. There has to be some relevant evidence on record to draw a reasonable inference by application of prudence that charges are proved. Even this test of preponderance of probabilities could not be proved during departmental enquiry against the petitioner as far as charge No.2 is concerned. Therefore, it has to be held that the respondents failed to prove charge No.2 against the petitioner.

15. Charge no.3 against the petitioner is that during the period from 15-11-2008 to 24-02-2009, transaction of big amounts were made in the petitioner's own account. It has been alleged that those transactions are not proportionate

to the net monthly pay of the petitioner.

It is relevant to note that along with charge sheet, no specific details of transactions including amounts credited in the account of the petitioner as also the amount debited from the account of the petitioner were not specified in proper details in the statement of allegations. The charge is blissfully vague as it only states that number of transactions of big amount were made. The contents of prosecution summary in so far as Charge No.3 is concerned, also does not clearly specify as to what was the total amount received by the petitioner in his account from time to time. In the prosecution case also all that has been stated is that there are transactions of big amount which are not proportionate to his salary, here also, no specific details were given. The Enquiry Officer in his report dated 03-02-2011 also recorded similar vague findings that there are transactions of big amount but which big amounts were considered to be disproportionate to the salary of the petitioner have not been clearly stated therein.

15. In the enquiry report, the petitioner's defence was noted, in which, he stated that between the period from 15-11-2008 to 24-02-2009, the minimum transaction was of Rs.3,500/- and the maximum of Rs.22,000/-, which was made in his O.D. Account No.30547404453. The petitioner also highlighted the five transactions, in which, four transactions are in the range of Rs.10,000/- to Rs.20,000/- and there is only one transaction of Rs.22,000/-. The petitioner, who appeared in person, highlighted by placing on record the documents to show that transactions in petitioner's account was made basis without taking into consideration, relevant transactions of debit and credit. It could not be disputed by the respondents that the petitioner was enjoying O.D. Facility. The

details of debit and credit transactions in the O.D. Account of the petitioner have been extracted by the petitioner in his written defence argument submitted vide covering memo dated 28-06-2015. During the course of arguments, the correctness of these transactions in O. D. account from November, 2008 to February, 2009 could not be disputed by learned counsel for the respondents. The records show that these details were also submitted by the petitioner during enquiry. A perusal of these transactions in O. D. account shows various debits and credits. Charge No.3, vaguely and without complete details of debit and credit amounts during the period in question alleged that the transactions of big amounts have been made, alleging it to be disproportionate to his salary. Neither in the charge sheet nor in the prosecution summary nor in the enquiry report much less in the order of disciplinary/appellate authority, these debit and credit transactions have been looked into nor scrutiny of debit/credit transactions. This aspect was extremely relevant because at Bemetara, the petitioner was having O. D. account operating in his name. In fact, Charge No.3, as has been observed hereinabove, is based only on part of transactions without taking into consideration the overall view of the transaction which included debit and credit transactions in the O. D. account of the petitioner during the check period. Thus, charge No.3 is too vague and incapable of leveling any specific allegation much less proof thereof. The total amount of debit and credit transaction in the O.D. Account of the petitioner during the period November, 2008 to February, 2009, shows that the total amount of Rs.1,51,490/- was debited as against credit of Rs.1,27,800/-. On the face of this factual details appearing in the O.D. Account, transactions of the petitioner, it is beyond all comprehension as to on what basis, it was recorded that credit transactions were disproportionate to the salary of the petitioner. Apart from the petitioner's submission that even the total emoluments of the petitioner for the month of November and December have been wrongly computed, it is quite apparent that the petitioner was allowed to withdraw under the debit transactions, the total amount of Rs.1,51,490/-. Therefore, credit amount which is lower than the same only proves that the charge itself was completely misconceived. In the absence of clear and specific details or allegation that the total of debit amount and salary receipts was highly disproportionate to the credit made in the accounts of the petitioner, the allegation under charge No.3 did not stand anywhere.

17. In view of above analysis and consideration, irresistible conclusion is that the charge No.3 was absolutely vague, lacking in specific details and levelled against the petitioner without comprehensive scrutiny of the debit and credit transactions in the O.D. Account of the petitoner. Therefore, the finding of the Enquiry Officer that the charge No.3 is proved based only on conjectures and surmises. Resultantly, the finding and conclusion of disciplinary authority and the appellate authority that the charge No.3 is proved, is perverse and unsustainable in law.

18. In the present case, valuable assistance was provided by Shri Sourabh Dangi as amicus curiae by bringing to the notice of this Court, various decisions touching upon the legal requirements of fairness in the enquiry and supply of relevant documents, consideration of defence, scope of interference in the matter of departmental enquiry with regard to findings of guilt and also quantum of punishment.

19. In the result, while no interference is called for in so far as finding of

proof of charge No.1 is concerned, it has to be held that the respondents have failed to prove charge No.2 & 3 in accordance with law. The penalty of dismissal from service has been imposed on the petitioner by the respondents on the basis that charge No.1 & 3 is proved and charge No.2 is partly proved.

20. In view of the aforesaid finding and conclusion of this Court, only Charge No.1 has been found to be proved, as a consequence, the appellate authority is required to examine whether proof of Charge No.1 is, by itself, sufficient to impose extreme penalty of dismissal from service. Therefore, for this limited purpose, the matter is remanded to the appellate authority to re-consider the aspect of proportionality of punishment on the basis of proof of charge No.1. The appellate authority shall examine the aspect after taking into consideration all the relevant material including proportionality of punishment and shall reconsider on the basis of charge No.1 alone and take fresh decision with regard to quantum of punishment on Charge No.1. This shall be considered by the appellate authority within a period of three months from the date of first appearance of the petitioner before the appellate authority along with certified copy of this order.

21. In the result, this petition is partly allowed in the manner and to the extent indicated above. No orders as to costs.

Sd/-
Manindra Mohan Shrivastava
Judge

Tumane