

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.7546 OF 2004

ORDER:

This writ petition is filed by the workman seeking issuance of a writ of mandamus, declaring the proceedings of the Disciplinary Authority dated 05.07.2003 as confirmed by the appellate authority vide proceedings dated 25.11.2003, as illegal, arbitrary and contrary to law and consequently, quash the said proceedings and direct the respondents to reinstate the petitioner into service with all consequential benefits and attendant benefits, including arrears of salary, seniority and promotion etc.

2. The petitioner joined the respondent bank in the year 1979 as Sub-staff and was subsequently promoted as Clerk in 1983. He was posted as Cashier in the year 1988 and was functioning as cashier at Kovvur Branch. While he was working at Kovvur Branch, on certain allegation, he was placed under suspension vide proceedings dated 14.03.2002. Vide proceedings dated 18.04.2002, a charge sheet was issued framing the following articles of charge;

- i) While working as Joint Custodian Cashier at Kovvur Branch, you have on various dates between 17.09.2001 and 17.10.2001, taken less cash into joint custody at the end of the day as evidenced from the cash denomination book, than the amount that should have been taken into joint custody as per the closing cash balance in the cash scroll summary;
- ii) You have on 11.09.2001 and 18.10.2001 made alternations in the totals of cash denomination book so as to make the balance agree with the cash balance in cash scroll summary;
- iii) You have made alterations in the cash denomination book several dates such as 17.09.2001, 18.09.2001, 19.09.2001, 06.10.2001, 16.10.2001, 18.10.2001 etc.;
- iv) You have not accounted for the amounts received by you from customers for credit of their ASB accounts on 03.11.2001;

Thereafter, vide proceedings dated 17.06.2002 an enquiry officer was appointed and after completion of enquiry, the enquiry officer submitted his report dated 06.11.2002, copy of which was furnished to the petitioner and the petitioner submitted his detailed explanation on 06.01.2003. Not being satisfied with the explanation of the petitioner, the disciplinary authority, vide proceedings dated 17.03.2003 proposed imposition of punishment of compulsory retirement, for which,

the petitioner submitted his detailed explanation on 24.04.2003. Being dissatisfied with the said explanation, the disciplinary authority vide proceedings dated 05.07.2003 imposed punishment of compulsory retirement against the petitioner.

3. Aggrieved by the same, the petitioner preferred appeal before the appellate authority, which resulted in dismissal vide orders dated 25.11.2003. Questioning the same, the present writ petition is filed.

4. It is contended by the petitioner that the enquiries conducted in complete biased manner. When the alleged custody of cash was in the hands of 2 persons, viz., the petitioner and one Bijoy Kumar, Sub-Manager, the disciplinary authority, without conducting joint enquiry, conducted separate enquiries, and shifted the responsibility on the petitioner while leaving the other delinquent, which is illegal and not sustainable.

5. The respondents filed counter reiterating the charge sheet contents. The petitioner participated in the enquiry and was assisted by Mr.B.V.Kondala Rao, as Defence Representative. The enquiry officer after analyzing the evidence brought on record, held that charges were duly established against the petitioner. The petitioner participated in the personal hearing and submitted his submissions. The disciplinary authority after consideration of the entire material afresh and finding no mitigating factors to alter the penalty proposed, has confirmed the penalty of "compulsory retirement". The petitioner was unsuccessful before the appellate authority. The orders of the disciplinary authority as well as the appellate authority do not suffer from any legal infirmity warranting interference. It is contended that after the mischief came to light, the respondent bank initiated disciplinary proceedings against the custodians of cash, the petitioner and Mr.Bijoy Kumar Bal, Officer. During enquiry Mr.Bijoy Kumar Bal submitted that the cash scroll register was in the possession of the petitioner herein and the petitioner maintained it manually and hence he is responsible for all material alterations in the cash scroll register and shortage of cash.

6. The petitioner filed reply affidavit reiterating the contents of the writ affidavit. It is contended that the disciplinary authority and the appellate authority have simply passed orders with pre-determined mind and without meeting any of the contentions of the petitioner. It is stated that both the impugned proceedings are non-speaking orders and therefore, the writ petition is liable to allowed on that ground. It is stated that the charges are trivial in nature and they are minor irregularities and there is no loss to the Bank and therefore, the punishment of compulsory retirement is disproportionate. It is further contended that when the petitioner and another person were alleged to be involved in the same charge, there

could have been a joint enquiry which would have brought out the truth and delinquency of each candidate. The crucial witnesses/complainants, if any, were not examined and only the Branch Manager and the Investigating Officer were examined.

7. Learned Counsel appearing for the writ petitioner submits that the power that is vested in the authorities is not exercised properly and it was an arbitrary action. The first explanation offered by the petitioner/employee was liable to be accepted since it was stated that the computerization in the branch just commenced and that since they were all new to the system, there were certain minor procedural irregularities and wrong totalling that has cropped up due to incomplete knowledge about handling the computers, and adjusting to the new environment.

8. It is further contended that the documents that were sought to be relied upon by the department were not furnished, the charges as they were framed show that the authorities have prejudged the guilt of the employee and it clearly shows that the principles of natural justice were not properly adhere to. The Enquiry Officer has also not conducted himself in a fair and unbiased manner and that the orders that are passed are non-speaking and vague.

9. It is vehemently contended that as the designation of the writ petitioner himself shows that he is Joint Custodian Cashier at Kovvur Branch along with the Manager by name Bijoy Kumar and even though same set of accusations were made against him also, the enquiry against both of them was not conducted jointly and even though the other Joint Custodian of the cash being the manager namely Bijay Kumar, has also been found guilty of negligence, he has been visited with the punishment of reduction of pay by one stage for two years without earning any increment during such period of reduction, which shall not however have any effect on future increments. However, when it came to the writ petitioner, who was a Joint Custodian Cashier/Clerk, the authorities have imposed the punishment of compulsory retirement by treating the period of suspension from 14-03-2002 as period spent on suspension, but, however, directing that the period of suspension shall be treated as continuous service for the limited purpose of pension, if entitled. Learned Counsel submits that such a hostile discrimination in between the two employees, who according to the bank were the Joint Custodians and whose liability and accountability was co-extensive cannot be countenanced and it amounts to violation of the principles of treating equally the persons who are equally placed.

10. On behalf of the bank, learned Counsel submitted that there were no violations of any principles of natural justice in the matter of conducting the enquiry.

Ample opportunity was afforded and as a matter of fact, the writ petitioner has participated in the enquiry by cross-examining the witnesses. It is further submitted that the charges were specific but not vague and that the writ petition is not the remedy in which the question of fact, which is involved, cannot be gone into. If the writ petitioner is aggrieved by the orders, he ought to have moved the Industrial Tribunal, which could have adjudicated the questions of fact. The High Court, in exercise of the jurisdiction under Article 226 of the Constitution, cannot go into the factual aspects and the appreciation of evidence is not permissible by the High Court.

11. Both the learned Counsel appearing for the writ petitioner and the bank have relied upon the authorities in support of their contentions, which shall be referred to hereinafter.

12. The points that arise for consideration are:-

- 1) Whether the action of the respondent/management in rendering the punishment of compulsory retirement, is based on legally valid grounds or whether the findings are utterly perverse warranting interference by the High Court under Article 226 of the Constitution of India?
- 2) Whether the petitioner, at best, can be visited with the punishment that was inflicted on the another Joint Custodian Cashier, as contended?

13. The admitted facts are that the writ petitioner joined the respondent/bank in the year 1979 as a sub-staff. In 1983, he was promoted as Clerk. In 1988, he was appointed as Cashier at Kovvur Branch, West Godavari District. Alleging that the writ petitioner acted in a manner which amounted to gross misconduct, the petitioner was suspended on 14-03-2002. The charge memo was issued on 18-04-2002 setting out the charges which have been stated supra. The explanation was given by the petitioner on 17.06.2002. It was not accepted and a regular departmental enquiry was ordered by appointing Sri Vasudeva Rao as Enquiry Officer. The Enquiry Officer has submitted his report on 06.11.2002, to which the writ petitioner offered his remarks on 06.01.2003. The disciplinary authority issued the proceedings proposing the punishment of compulsory retirement on 17.03.2003 to which the writ petitioner gave a reply on 24.04.2003. On 05.07.2003, the impugned proceedings imposing the punishment were issued. On 29.09.2003, the petitioner preferred an appeal to the first respondent being the appellate authority and the said appeal was dismissed on 25.11.2003. On 19.04.2004, the writ petition is filed.

14. It is not in dispute that there is no accusation against the writ petitioner that he is guilty of any misappropriation of the funds of the bank or his alleged acts

have resulted in any serious loss to the bank. As per the Memorandum of Settlement on Disciplinary Action and the Procedure for Workmen, that is applicable, the expression *gross misconduct* has been categorised into Clause 5(a) to 5(u). Insofar as the alleged acts of omissions and commissions that are alleged against the petitioner are concerned, he is said to have committed gross misconduct as per clause 5(j) of bipartite settlement, which reads as under:-

“doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss”

15. This act is liable to be treated as a major misconduct inviting major penalties. The term minor misconduct has been defined to mean different acts of omissions and commissions which have been mentioned in sub-clauses (a) to (p) of clause 7. As per clause 7(c), neglect of work, negligence in performing duties, has been shown to be a minor misconduct.

16. Learned Counsel appearing for the petitioner submits that a perusal of the allegations on the face of it shows that it was only a minor misconduct which at best amounts to negligence in performing duties by the writ petitioner who was the Joint Custodian Cashier, but admittedly it did not involve any serious loss to the bank, nor did it, in any way, was prejudicial to the interest of the bank. Upon perusing the material on record including the charges, the report of the Enquiry Officer and the other proceedings that are passed by the authorities, I have no hesitation in observing that even if what is alleged is to be taken as proved, the said acts constitute a minor misconduct, but it cannot be said to be a major misconduct, for the reason that there was no misappropriation of funds of the bank nor was any loss caused to the bank. For the sake of clarity, the charges may briefly be noticed.

17. Charge No.1 pertains to the allegation that the writ petitioner being the Joint Custodian Cashier during the period from 17.09.2001 to 17.10.2001 has taken less cash into joint custody at the end of the day as evident from the cash denomination book, than the amount that should have been taken into joint custody as per the closing cash balance in the cash scroll summary, detailed as hereunder:-

Sl. No.	Date	Cash Balance as per cash scroll summary Rs.	Cash Balance as per Denomination Book Rs.	Amount not accounted for Rs.
1.	17.09.2001	23,52,072.13	23,48,072.13	4,000
2.	21.09.2001	34,73,101.93	34,67,101.93	6,000
3.	01.10.2001	16,02,379.76	16,01,379.76	1,000
4.	03.10.2001	18,89,651.86	18,86,651.86	3,000

5.	04.10.2001	21,17,939.86	21,12,939.8	5,000
6.	05.10.2001	24,15,212.36	23,90,212,36	25,000
7.	10.10.2001	16,89,092.56	16,84,092.36	5,000
8.	11.10.2001	22,55,856.86	22,45,856.86	10,000
9.	12.10.2001	16,19,018.76	16,09,018.76	10,000
10.	13.10.2001	13,50,430.26	13,35,430.26	15,000
11.	15.10.2001	22,59,603.51	22,34,603.51	25,000
12.	16.10.2001	23,55,226.61	23,30,226.61	25,000
13.	17.10.2001	17,84,563.31	17,44,563.31	40,000

18. Charge No.2 pertains to certain alterations said to have been made by the petitioner in the totals of cash denomination book so as to make it agree with the balance in cash balance in the scroll summary as under:-

Date	Cash Balance as per GLB Rs.	Altered figure as per Denomination Book Rs.	Actual total is Denominations Rs.	Difference Rs.
11.09.2001	33,74,735.33	33,74,735.33	33,73,735.33	1,000
18.10.2001	14,48,155.31	14,48,155.31	14,08,155.31	40,000

19. Similarly allegation No.3 pertains to certain alterations said to have been made by the petitioner in the transactions dated 17.09.2001, 18.09.2001, 19.09.2001, 06.10.2001, 16.10.2001 and 18.10.2001.

20. The fourth charge is in respect of the allegation that the charge-sheeted Officer has received cash of Rs.1800/- each in the following four ASB accounts on 03.11.2001 but has not accounted for the same in the bank's book. Insofar as the fourth charge is concerned, the Enquiry Officer found that even though credits were not made on 03.11.2001 in the above ASB accounts, the said credits were made on 10.11.2001.

21. The contention of the charge-sheeted employee is that in the present computer environment, cash can be closed at any time and the cashier can leave the branch. But as per the software, without balancing of cash perfectly, the computer will not allow the day end operations.

22. The Enquiry Officer, after perusing the records and taking the oral and documentary evidence into consideration, negated the contention of the petitioner and held that charges as alleged against the employee were proved.

23. The disciplinary authority came to the conclusion that the exhibits which

are General Ledger Report, Cash on Hand (cash scroll summary of relevant dates) are computer generated sheets and the information contained therein is infallible. Insofar as the fourth charge was concerned, the customer by name Nageshwar Rao who is said to have made deposits on 03-11-2001 but was not credited to his account till 10-11-2001. The said Nageshwar Rao has not been examined during the departmental enquiry. However, that fact is spoken to by the Management Witness No.1, who has been cross-examined by the delinquent but nothing was elicited to substantiate the defence. The disciplinary authority accepted the report and proposed and imposed the punishment of compulsory retirement as laid down in clause 6(c) of Memorandum of Settlement on Disciplinary Action Procedure dated 10-04-2002.

24. The contention of the learned Counsel appearing for the writ petitioner that the charges are not specific and vague do not stand to scrutiny for the reason that there are specific imputations that are made against the charge-sheeted employee. Similarly, the contention of the writ petitioner that a reading of the charges show the closed mind of the authorities or it was a pre-judgmental charge-sheet is also not correct for the reason that a perusal of the charges do not show that the authorities have come to any conclusion even before the enquiry was conducted.

25. The findings of the Enquiry Officer which ultimately found favour with the disciplinary authority are the questions of fact. It is based on appreciation of evidence. The scope of exercising the jurisdiction under Article 226 of the Constitution of India by the High Court is well settled and there are catena of authorities on the aspect.

26. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in ***Oryx Fisheries (P) Ltd. V. Union of India***^[1]. In the case before the Hon'ble Supreme Court, the following is the show cause notice:

"Sub: SHOW CAUSE NOTICE

Your attention is invited to our HQ's letter No. IV/53/06-MS/HO dated 25.10.2007 and subsequent joint meeting with the buyer held at our Head office on 5th September, 2007 on the trade complaint received from M/s Cascade Marine Foods LLC, Sharjah.

At the meeting it was convincingly proved that the cargo shipped by you to the above mentioned buyer was defective and you have not so far settled the complaint. Therefore, in exercise of the powers vested in me vide Office Order Part-II No. 184012005 dated 25.11.2005 read with Rule 43 of the MPEDA Rules, I hereby call upon you to show cause why the Certificate of Registration as an Exporter granted to you should not be cancelled for reasons given below:

1. It has been proved beyond doubt that you have sent substandard material to M/s Cascade Marine Foods, LLC, Sharjah.
2. You have dishonoured your written agreement with M/s Cascade

Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of defective cargo sent by you and have now evaded from the responsibility.

3. This irresponsible action have brought irreparable damage to India's trade relation with UAE.

Your reply should reach the undersigned within 10 days from the date of receipt of this letter failing which it will be presumed that you have no explanation to offer and we will proceed with action for cancellation of your registration certificate without further notice to you. If ultimately a decision is reached to deregister you under the provisions of the MPEDA Rules, it will automatically entail de-registration under Registration Exporters' policy also."

In the above case, the Hon'ble Supreme Court held as under:

"It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

In the present case, from the show-cause notice it is clear that the third respondent, Deputy Director, MPEDA HAS demonstrated a totally closed mind at the stage of show cause notice itself. Such a closed mind is inconsistent with the scheme of Rule 43 of the MPEDA Rules.

It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair

procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show cause notice itself.”

27. In the instant case, the articles of charges which are extracted supra are not on the lines of the show cause notice which was before the Hon’ble Supreme Court.

28. The learned counsel for the respondent-Bank contended that the punishment imposed against the writ petitioner cannot be interfered with and the writ petition cannot be entertained. In support of his contentions, the learned counsel relied upon the following decisions:

29. In ***A.P.Foods v. S.Samuel***^[2] after referring to several authorities on the subject, the Hon’ble Supreme Court held that a writ petition under Article 226 of the Constitution of India should not be entertained when the statutory remedy is available under the Act unless the exceptional circumstances are made out.

30. In ***Diwan Singh v. LIC***^[3] after referring to several authorities on the subject, the Hon’ble Supreme Court observed that it is consistently held that in the matters of embezzlement of amount howsoever small it may be, no sympathy should be shown by the courts.

31. In ***Principal Secy.Govt.of A.P v. M.Adinarayana***^[4] the Hon’ble Supreme Court held that if the findings recorded by the Tribunals or of the disciplinary authorities are found to be perverse which are not based on the legal evidence, then the Administrative Tribunal or the Court is empowered to treat such flaw as a legal flaw and quash the impugned action.

32. In ***P.D.Agrawal v. SBI***^[5] the Hon’ble Supreme Court observed that as disputed question of facts are involved and alternative remedy is available under the Industrial Disputes Act, the High Courts should not have entertained the writ

petition and should have directed the writ petitioners to avail the statutory remedy.

33. In ***Coimbatore District Central Coop.Bank v. Employees Assn.***^[6] the Hon'ble Supreme court held as under:

“It is clear that the Indian legal system has accepted the doctrine of proportionality. With the rapid growth of Administrative Law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by Courts. If an action taken by any authority is contrary to law, improper, unreasonable, irrational or otherwise unreasonable, a Court of Law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the 'doctrine of proportionality'.

'Proportionality' is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise - the elaboration of a rule of permissible priorities. de Smith states that 'proportionality' involves 'balancing test' and 'necessity test'. Whereas the former ('balancing test') permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter ('necessity test') requires infringement of human rights to the least restrictive alternative.

The doctrine has its genesis in the field of Administrative Law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no 'pick and choose', selective applicability of Government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a 'sledge- hammer to crack a nut'. As has been said many a time; "Where paring knife suffices, battle axe is precluded

The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix in each case. It cannot be put in a straight-jacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the Court must be satisfied that a case has been made out for exercise of power of judicial review. The Court observed that we are not unmindful of the development of the law that from the doctrine of 'Wednesbury unreasonableness', the Court is leaning towards the doctrine of 'proportionality'. But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the Act was enacted.”

34. The learned counsel for the petitioner submits that the punishment

imposed against the petitioner is improper and arbitrary, and while similarly situated person was imposed lesser punishment for the same misconduct, imposing severe punishment for same conduct against the petitioner cannot be sustained. In support of his contentions, the learned counsel for the petitioner further relied upon some more decisions of the Hon'ble Supreme Court. In **Director General of Police v. G.Dasayan**^[7] wherein, the Head Constable along with two others were charged with identical charges. The disciplinary authority did not agree with the findings of the enquiry officer in so far as the two other delinquents are concerned, but the Head Constable who was also charged along with the respondents therein was compulsorily retired by the disciplinary authority. The Hon'ble Supreme Court held that the respondents therein should also be imposed punishment of compulsory retirement as was done in the case of Head Constable.

35. In **Anand Regional Coop.Oil Seeds growers' Union Ltd v. Shaileshkumar Harshadbhai Shah**^[8] identical allegations were made against 7 persons, but the Management did not take serious note of misconduct committed by 6 others although they were similarly situated. The management allowed them to take the benefit of voluntary retirement scheme. The Hon'ble Supreme Court held that having regard to the pecuniary facts and circumstances of the case, the 1st respondent should be treated on a similar footing and allow the 1st respondent the benefit of taking voluntary retirement from the month in which the other workmen were given the benefit thereof.

36. The above two authorities were referred to by the Hon'ble Supreme Court in **Rajendra Yadav v. State of M.P.**^[9] and it was held at para-9 as under:

“The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.”

37. In **Lucknow Kshetriya Gramin Bank v. Rajendra Singh**^[10] the Hon'ble Supreme Court held as under:

“When charge(s) of misconduct are proved in an enquiry the quantum of punishment to be imposed in a particular case is

essentially the domain of the departmental authorities. 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. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

However, the judicial review of the quantum of punishment is available with a very limited scope. The court would frown upon only when the penalty imposed appears to be so disproportionate to the nature of misconduct that it is shocking to the conscience of the court. Even in such a case when the punishment is set aside as shockingly disproportionate, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

When it is found that the employee concerned and the co-delinquent are equally placed, imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine of equality enshrined in Article 14 of the Constitution. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. Even if the nature of misconduct committed by the two set of employees is same, the conduct of one set of employee accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.”

38. In ***Union of India v. Gyan Chand Chattar***^[11] after referring to the decisions in *Surath Chandra Chakrabarty v. State of W.B.* {(1970) 3 SCC 548}, *State of A.P. v. S.Sree Rama Rao* {AIR 1963 SC 1723} and *Sawai Singh v. State of Rajasthan* {AIR 1986 SC 995}, the Hon'ble Supreme Court held as under:

“In view of the above, law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the

same should be based on conjunctures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.”

39. In ***State of Uttaranchal v. Kharak Singh***^[12] the Hon’ble Supreme Court laid down the following basic principles regarding conducting of departmental enquiries:

“i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer /department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

40. The authorities referred to above clearly lays down that the High Court cannot sit in appeal and function as a Court of appeal over the findings of the disciplinary authority unless it is shown that the findings are utterly perverse, or that they are not based on any legal evidence.

41. From the material on record, it can be concluded that the principles of natural justice were followed in true letter and spirit and the oral and documentary evidence on record has been properly appreciated by the Enquiry Officer. The findings are based on legal evidence but are not the outcome of any surmises or conjectures. The nature of the allegations is such that the documents speak for themselves. There are mistakes in the totalling and there are certain over-writings and corrections which are apparent on the face of the record.

42. The contention of the learned Counsel appearing for the petitioner, in my opinion, which is well founded is that the authorities have shown discrimination in dealing with the two set of employees against whom same charges were made for the same period. It is not disputed that when the writ petitioner was a clerk and was

Joint Custodian Cashier, one Bijay Kumar was another Joint Custodian Cashier along with the writ petitioner and he was an employee of the Officer rank. There is no denying the fact that the responsibility, liability and accountability of both the Joint Custodian of cash will be coextensive and one cannot be heard saying that the other joint custodian is alone responsible for improper totalling or entering the figures or making the alterations. Every record that has been produced during the course of enquiry contain the signatures of both joint custodians namely the writ petitioner as well as another joint custodian by name Bijay Kumar. The enquiry in respect of both the employees is on the same set of allegations. The period is also the same. In all fairness, the enquiry against both the employees should have been conducted jointly and simultaneously, preferably by the same Enquiry Officer, so as to maintain the uniformity and consistency. That has not been done. When the enquiry against the writ petitioner was held by one Vasudeva Rao, it is one R.Sethuraman who has conducted the enquiry against Bijay Kumar. When the report against the writ petitioner was submitted on 06.11.2002, the report against Bijay Kumar was submitted on 02.07.2002. Both the writ petitioner and Bijay Kumar have been found guilty of the charges. The punishment that is imposed against Bijay Kumar is that he was visited with the major penalty of reduction of pay by one stage for two years with no increment during the period of such reduction, without, however, affecting future increments. However, the punishment that is inflicted on the writ petitioner is compulsory retirement. In the appeal submitted to the authorities, the writ petitioner has questioned this alleged act of discrimination and the appellate authority rejected his contention observing that the role of the writ petitioner is direct and it is he who is the perpetrator of the said acts and hence he cannot be equated with the other joint custodian of the cash. Even though the appellate authority has tried to justify the demarcation, I find myself to be unable to agree with the said demarcation or treating differently one Joint Custodian Cashier against the other.

43. The observations made by the disciplinary authority insofar as Bijay Kumar is concerned, is to the effect that the said Bijoy Kumar could have easily verified the closing balance in the cash scroll summary on the system so as to ensure that correct cash is kept in the safe. His contention that the cash is verified physically with the Denomination Register was rejected. The Enquiry Officer found that Bijay Kumar was negligent while taking physical cash into joint custody which resulted in taking less physical cash than that should have been taken into joint custody between 17.09.2001 to 17.10.2001. He was also found to have failed to authenticate the alterations in the cash denomination book said to have been made

by the other joint custodian namely the writ petitioner.

44. Following the above authorities and applying the above dicta to the facts of the present case, I feel that ends of justice would be met if the punishment that is inflicted on the Joint Custodian – Bijay Kumar is imposed against the writ petitioner as well. Harsher punishment to the writ petitioner as against the other Joint Custodian amounts to invidious discrimination, which cannot be sustained. When two set of employees are charged with the same accusations and both of them are held guilty and since by the very same nomenclature both of them are joint custodians, they must sink or sail together but it cannot be said that the responsibility of one employee is more heavier than the other. May be it is the writ petitioner who maintained the cash record but since Bijay Kumar was the Officer and a joint custodian and he was also required to sign the relevant papers, there is equal responsibility upon him to cross-check the entries made and verify the totals. He cannot be allowed to say that he merely put his signatures as a joint custodian without verifying the details that are mentioned on the papers or without verifying the physical balances.

45. For the foregoing reasons, I have no hesitation to hold that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Bijay Kumar and at the same time, harsher punishment on the writ petitioner cannot be permitted in law, since they were both involved in the same incident and charges. Therefore, I am inclined to set aside the punishment of compulsory retirement imposed on the writ petitioner and order that he be imposed the same punishment as imposed against the co-delinquent Bijay Kumar, namely, reduction of pay by one stage for two years with no increment during the period of such reduction, without, however, affecting future increments. The petitioner shall be reinstated into service forthwith from the date on which the impugned proceedings of the disciplinary authority dated 05.07.2003 were issued and he be given all consequential benefits from the said date.

46. The Writ Petition is accordingly disposed of. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 21.01.2016

Dsr/Smr

[\[1\]](#) (2010) 13 SCC 427

- [\[2\]](#) (2006) 5 SCC 469
- [\[3\]](#) (2015) 2 SCC 341
- [\[4\]](#) (2004) 12 SCC 579
- [\[5\]](#) (2006) 8 SCC 776
- [\[6\]](#) (2007) 4 SCC 669
- [\[7\]](#) (1998) 2 SCC 407
- [\[8\]](#) (2006) 6 SCC 548
- [\[9\]](#) (2013) 3 SCC 73
- [\[10\]](#) (2013) 12 SCC 372
- [\[11\]](#) (2009) 12 SCC 78
- [\[12\]](#) (2008) 8 SCC 236