

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 3410 of 2004

* Gokul s/o Namdeo Choudhari,
Age 55 years,
Occupation : Ex-service,
R/o 84/63/2, Shriramnagar,
Near Dadawadi, Jalgaon,
District Jalgaon. 425 002. **.. Petitioner.**

Versus

1) Union Bank of India,
Industrial Relations Department,
Department of Personnel,
Central Office,
239, Backbay Reclamation
Vidhan Bhavan Marg,
Nariman Point, Mumbai – 21.
Through Managing Director.

2) Disciplinary Authority,
Dy. General Manager,
Zonal Office, Pune
(Shri. S.G. Wakhare)

3) Appellate Authority,
General Manager (Personnel),
(Mr. K.L. Gopalkrishna)
Central Office.

.. Respondents.

With

Writ Petition No. 3511 of 2004

* Chintamani s/o Dattatray Sohoni,
Age 59 years,
Occupation : Ex-Accountant,
Union Bank of India,
At present dismissed
R/o. 57, Narayan Peth,
Near Ashta Bhuj Temple,
Pune - 411 030. **.. Petitioner.**

Versus

- 1) Union Bank of India,
Industrial Relations Department,
Department of Personnel,
Central Office,
239, Backbay Reclamation
Nariman Point, Mumbai – 400001
Through Managing Director.
- 2) The Disciplinary Authority,
Deputy General Manager,
Union Bank of India,
Zonal Office, Pune
(Shri. S.G. Wakhare)
- 3) Appellate Authority,
General Manager (Personnel),
Union Bank of India,
Central Office, Mumbai 400 021. **.. Respondents.**

Shri. Ajay Deshpande, Advocate, for petitioners.

Shri. S.V. Natu, Advocate, for respondent Nos.1 to 3.

**Coram: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

**Reserved on : 10th AUGUST 2017
Pronounced on : 6th OCTOBER, 2017**

JUDGMENT : (Per R.D. Dhanuka, J)

1) By consent of the parties, both the writ petitions were heard together and are being disposed of by a common judgment.

2) The petitioner in the Writ Petition No.3410 of 2004 has prayed for a writ of certiorari against respondents and has prayed for quashing and setting aside the order of dismissal passed by the Disciplinary Authority dated 30th March 2002, an order dated 25th July 2002 passed by the Appellate Authority and the order dated 22nd October 2002 passed by the Reviewing Authority and seeks an order of reinstatement in service to his original post as Branch Manager with all avenues of promotions and other benefits. The petitioner also seeks an order and direction against respondents to pay subsistence allowance as per Regulation 14 of the Officers and Employees (Disciplinary and Appeal Regulations, 1976) framed by the respondent No.1 Bank.

3) In the Writ Petition No.3511/2004 the petitioner has prayed for a writ of certiorari and has prayed that the order of

dismissal passed by the Disciplinary Authority dated 30th March 2002 as confirmed by the Appellate Authority dated 25th July 2002 and the Reviewing Authority also dated 22nd October 2002 be set aside and seeks an order and direction for reinstatement of the petitioner in service to the original post as Accountant with all avenues of promotions with the period of suspension undergone and other benefits. The petitioner also seeks an order and direction against respondents to pay subsistence allowance.

4) We will first summarize the relevant facts in Writ Petition No.3410 of 2004. On 15th November 1971 the petitioner was appointed as a Clerk with respondent No.1 bank at Mumbai Samachar Marg Branch and was subsequently transferred to Byculla Mumbai Branch. On 1st May 1972 the petitioner was confirmed in service. The petitioner worked in the capacity of Clerk-cum-Cashier at Jalgaon Main Branch. He worked as Head Cashier at Asoda, Head Clerk at Nagpur Main Branch and served as Special Assistant at Solapur and Nashik City Branch.

5) It is the case of the petitioner that from 1st October 1984, the petitioner was promoted to the Officer's Grade, Scale I and was posted at Regional Office Nashik and Jalgaon Branch. The petitioner was promoted as Accountant from 11th June 1990 at Kandari Branch in District Jalgaon. From 10th October 1994, the petitioner was promoted as Grade II and posted at Sindhi Colony Branch at Jalgaon from 23rd May, 1995. He served at the said

Sindhi Colony Branch as Branch Manager upto 20th June, 1998 and was transferred to Regional Office Nagpur and joined on 22nd June, 1998. He was posted as Branch Manager at Wardha on 23rd June, 1998. It is the case of the petitioner that during his period of 30 years service with the respondent No.1, his career was totally unblemished in the respondent No.1 Bank.

6) On 22nd June, 1998 there was an audit carried out by vigilance party of the Sindhi Colony Branch Jalgaon of the respondent No.1. In the said audit it was allegedly pointed out that there was alleged fraud in so far as the Savings Bank Account No.790 opened with the said Sindhi Colony Branch in respect of Rs. Two lakh on 22nd June, 1998. It was alleged in the said audit report that fictitious credit entry of Rs. Two lakh and withdrawal of the said amount from the Savings Bank Account No.790 and credit of the same amount to Current Deposit Account of M/s. Rajesh Enterprises as Cash Memo was observed by the said auditors.

7) In view of the said audit report, the petitioner was suspended by a memo dated 3rd July 1998 when he was on joining leave at Jalgaon. It is the case of the petitioner that on 4th July 1998, the Assistant General Manager, Regional Office, Nashik; Chief Manager, Zonal Audit Office, Pune; and, Chief Manager, Regional Office, Nashik who had been to Jalgaon threatened and frightened the petitioner of immediate arrest by police and

exercising undue influence and giving threats of arrest to the petitioner, obtained some confession from the petitioner.

8) On 1st January, 1999 respondent No.1 lodged a complaint against the petitioners in both these writ petitions with Zilla Peth Police Station Jalgaon. On the said complaint filed by the respondent No.1, offence was registered under sections 408, 409, 420, 467, 468 and 477 read with section 34 of Indian Penal Code. On 3rd December, 1998, the petitioner was granted anticipatory bail. On 23rd March, 1999 the police filed a charge-sheet against the petitioner in the Court of the Chief Judicial Magistrate Jalgaon. A case was registered against the petitioner as Regular Criminal Case No.143/1999.

9) On 16 April 1999, the respondent No.1 served the first Memorandum dated 9 April 1999 alleging that the petitioner had committed acts of omissions while working as Branch Manager at Sindhi Colony Branch, Jalgaon and gave details as statement of allegations. On 7th August, 1999 the petitioner received first charge sheet from respondent No.1 Bank. On 16th August, 1999 the petitioner gave his interim reply and conveyed that since the matter was *sub judice* for trial before the criminal court, detail reply could not be given, as filing of the detailed reply would cause prejudice to the case of the petitioner in the Criminal Court.

10) The petitioner thereafter filed a Writ Petition

No.4827/1999 in this court, *inter alia*, praying for a writ of mandamus and seeking a direction against the respondents therein to stay the departmental enquiry initiated against the petitioner till final conclusion of the criminal case bearing R.C.C. No.143/1999 on the file of the Chief Judicial Magistrate, Jalgaon. This Court granted interim stay in the said writ petition to the departmental enquiry. It is the case of the petitioner that said order was conveyed by the petitioner to the respondents. The respondents, however, proceeded with the enquiry during the period between 5th October, 1999 and 8th October, 1999 and took various documents on record as exhibits.

11) By an order dated 25th January, 2000 passed by this Court in Writ Petition Nos.4814/1999 and 4827/1999 filed by these two writ petitioners, directed the respondents not to proceed with the Departmental Disciplinary Proceeding in so far as it relates to the charge of misappropriation of amount of Rs. Two lakh as also any charge or imputation based on the facts and circumstances surrounding the said alleged temporary misappropriation is concerned. It was however clarified by this Court that the respondents were not prevented from proceeding with other charges of misconduct during discharge of their official duties as against the two petitioners herein.

12) In the mean while, the petitioner filed an application before the learned Chief Judicial Magistrate Jalgaon in Criminal

Case No.143/1991 *inter alia* praying for discharge from the criminal case on the ground that he was already relieved from duties two days before from the Branch and had proceeded to join at Nagpur and also on the ground that there was no evidence against him. By an order dated 23rd April, 1999, the said application filed by the petitioner came to be rejected by the learned Chief Judicial Magistrate. The petitioner thereafter filed Criminal Revision Application against the said order before the learned Sessions Judge at Jalgaon bearing criminal Revision No.376/1999. By a judgment and order dated 9th May, 2000 the learned Additional Sessions Judge discharged the petitioner from the offence and from all the charges under sections 408, 409, 420, 467, 468, 477 read with section 34 of the Indian Penal Code. The respondent filed Criminal Application No.758/2001 against the said order of the Additional Sessions Judge in this Court. The criminal case filed by the respondents against the petitioner in Writ Petition No.3511/2004 is continued. The petitioner in Writ Petition No.3410/2004 however was acquitted of the offences holding that there was no misappropriation at all by the petitioner in that writ petition.

13) It is the case of the petitioner that in view of the judgment of this Court in Writ Petition No.4827/1999 the respondents by letter dated 8th December, 2000 decided to hold departmental enquiry with prejudicial and revengeful attitude excluding the charge of misappropriation of Rs. 2 lakh. According

to the petitioner the said second preliminary enquiry was conducted by Shri. A.B. Dhavale as per charge-sheet which was unwarranted. On 14th July, 1999 charge sheet was given consisting of same three grounds. The regular enquiry was conducted by Shri. N.K. Kulkarni who was appointed as third Inquiring Authority Officer.

14) It is the case of the petitioner that the departmental enquiry was started against him without any specific allegations. The Disciplinary Authority issued Articles of Charge which consist of three grounds i.e. (1) acting in a manner unbecoming of a Bank officer; (2) failure to discharge his duties with utmost honesty, integrity, devotion and diligence; (3) failure to take all possible steps to ensure and protect the interest of the Bank. It was clarified by the respondent that memo dated 9th April, 1999 will form a part of statement of allegations for those articles of charges.

15) The Disciplinary Authority gave revised charge sheet dated 1st February, 2001 to the petitioner. It is the case of the petitioner that statement of allegations were the same however only serial numbers of the charges and grounds were changed. In the statement of allegations filed by the respondents against the petitioner it was alleged that Savings Bank Account No.790 was opened in the name of Suresh Shankar Patil on 26th August, 1996 and the petitioner had introduced him without seeing him. There

was undated fictitious entry of Rs. 2 lakh not backed by cash deposit or credit in any manner. It was further alleged that Current Deposit Account was opened by the petitioner in the name of M/s Rajesh Enterprises on 19th October, 1997 with Rajesh Damodar Mahajan as proprietor.

16) At that time, the petitioner in Writ Petition No.3511/2004 was officiated as Branch Manager as the petitioner was transferred and was relieved on 20th June, 1998. The petitioner in Writ Petition No.3511/2004 had passed a withdrawal form of Rs. 2 lakh in Savings Bank Account No.790 on 22 June 1998. It is the case of the petitioner that the petitioner in Writ Petition No.3511 of 2004 had made credit entry of Rs. 2 lakh in the account of M/s Rajesh Enterprises under the instructions of the petitioner. The petitioner filed reply to the Articles of charges and allegations and gave explanation of the items mentioned in the statement of allegations.

17) One Shri. S.B. Vyas was appointed as Presenting Officer by the respondents. The petitioner was given assistance through Mr. D.G. Patil. On 1st November, 2001 Shri. S.B. Surve who had investigated the matter and had submitted his report was examined as a witness. The respondent examined two witnesses namely Shri. S.B. Surve as MW 1 and Shri. U.B. Thakur as MW 2 who were cross-examined by the petitioner. The petitioner also entered the witness box before the Inquiring Authority. The

Presenting Officer submitted the written brief before the Inquiring Authority. The petitioner also filed his written brief on 26 December 2001 and denied the contents of the submissions made by the Presenting officer in his written brief. It is the case of the petitioner that before even filing of the written brief by the petitioner within time granted by the Inquiring Authority, the Inquiring Authority submitted its finding against the petitioner.

18) On 4th February, 2002 the Disciplinary Authority of the respondent No.1 forwarded copy of report of the Inquiring Authority. The petitioner filed his representation contending that the Inquiring Authority was prejudiced and had submitted its finding without even considering the written brief directed to be filed by the Inquiring Authority, though the petitioner had filed such written brief within the time prescribed by the Inquiring Authority.

19) On 30th March 2002, the Disciplinary Authority, Deputy General Manager, West Zone Division, II (West) Zonal Office Pune passed the dismissal order against the petitioner from service. It is the case of the petitioner that the said order was passed by the Disciplinary Authority without giving any show cause notice and without giving any reasons for his conclusions. Being aggrieved by the said order passed by the Disciplinary Authority, on 30th May, 2002 the petitioner preferred an appeal to the Appellate Authority on various grounds. On 25th July, 2002 the

Appellate Authority, General, Manager (Personnel) passed an order dismissing the said appeal filed by the petitioner.

20) It is the case of the petitioner that the said Appellate Authority passed the order mechanically without application of mind and without giving personal hearing to the petitioner. The Appellate Authority also did not consider any grounds, points and contentions raised by the petitioner during the course of arguments and also in the written brief and dismissed the said appeal. The petitioner thereafter filed review petition on 12th August, 2002, before the Chairman and Managing Director of the respondent no.1 raising all the points and contentions. It is the case of the petitioner that on 22nd October, 2002, the Reviewing Authority passed an order dismissing the said review application mechanically without giving any personal hearing to the petitioner and without considering any submissions and contentions raised by the petitioner in the review petition. Being aggrieved by the order passed by the Disciplinary Authority, the Appellate Authority and the Reviewing Authority, the petitioner filed this writ petition for various reliefs.

21) Mr. A.S. Deshpande, learned counsel for the petitioners, invited our attention to various annexures to the writ petition including the order passed by this Court on 25th January, 2000 in Writ Petition No.4814/1999 and Writ Petition No.4827/1999 which were filed by the petitioners challenging the

Departmental Enquiry proceedings and also invited our attention to the papers and proceedings before the Inquiring Authority including the evidence recorded by the Inquiring Authority. It is submitted by the learned counsel that though by order dated 20th January, 2000 passed by the Division Bench of this Court in Writ Petition No.4814/1999 and Writ Petition No.4827/1999, the respondent No.1 Bank was directed not to proceed with the Departmental Disciplinary proceeding against the writ petitioners herein as far as charges relates to the misappropriation of amount of Rs. two lakh as also any charge or imputation based on the facts and circumstances surrounding the said alleged temporary misappropriation, during the period between 5 October 1999 and 8 October 1999, the Inquiring Authority had exhibited more than 250 documents.

22) It is submitted that the petitioner had informed the respondent about the *ex parte* stay order granted by this Court on 18th October, 1999. On 9th October, 1999 the petitioner in Writ Petition No.3511/2004 had served copy of the writ petition upon the respondent No.1 Bank. He submits that prior to 9th October, 1999 the respondent no.1 Bank was orally informed about the *ex parte* stay granted by this Court. It is submitted that though the Division Bench of this Court in the said order dated 25th January, 2000 had granted *ex parte* stay of not to proceed with the departmental enquiry relating to the charge of misappropriation of amount of Rs. two lakh, the respondent No.1 proceeded with the

enquiry also in respect of the said charge of misappropriation of amount of Rs. 2 lakh and the alleged temporary misappropriation. He submits that the entire enquiry proceeding was thus vitiated on this ground alone being conducted and proceeded in respect of the said charge of misappropriation of amount of Rs. 2 lakh.

23) It is submitted by the learned counsel for the petitioner that the petitioner was already discharged by the learned Sessions Court by order dated 9th May, 2000. Criminal Application No.758 of 2001 filed by the respondent No.1 Bank came to be dismissed by this Court on 20th July, 2009. He submits that in any event criminal proceedings filed against the petitioner came to an end on 28th July, 2009, when Criminal Application No.758/2001 filed by the respondent No.1 Bank came to be dismissed.

24) It is submitted by the learned counsel that Mr. N.K. Kulkarni, Chief Manager Pune City Branch was appointed as Inquiring Authority who had himself conducted audit of the respondent No.1 Bank of the concerned branch during the period 1996-97 and did not find any misappropriation or fraud alleged to have been committed by the petitioner.

25) In so far as the allegations against the petitioner that he had allowed the account to be opened in *benami* name is concerned, it is submitted by the learned counsel that the alleged

benami account was Savings Bank Account No.790 in the name of Shri. Suresh Shankar Patil and Current Deposit Account in the name of M/s Rajesh Enterprises. He submits that both the accounts were referable to the alleged temporary misappropriation for which Regular Criminal Case No.143/1999 was tried against the petitioner. He submits that in view of the order dated 25th January, 2000 passed by this Court in Writ Petition No.4827/1999 and Writ Petition No.4814/1999, the charge of misappropriation of Rs. 2 lakh was required to be excluded.

26) It is submitted that the petitioner had opened the alleged *benami* account of Shri. Suresh Shankar Patil i.e. Savings Bank Account No.790 at the request of the landlord Shri. S.G. Sanap who had sizable transactions in his bank account opened with the respondent No.1. It is the case of the petitioner that the said landlord had assured the petitioner to provide photographs of the account holder, but it was not provided by him. The said Saving Bank Account No.790 was being operated regularly from 1996 and there was nothing objectionable as per the audit report. He submits that there were substantial transactions in the said account and being a savings bank account, amount of the account holder was to be deposited in the said account. He submits that there was no question of parting of any money of the Bank to the said account holder.

27) The learned counsel for the petitioner invited our

attention to the evidence of MW-1 Shri. S.B. Surve, who was cross-examined by the representative of the petitioner. It is submitted that in his deposition, the said witness (MW-1) had stated that though he had visited at the given address of Shri. Suresh Shankar Patil he was not available. He submits that at the same time when the said witness was examined in the case of the enquiry against the petitioner in Writ Petition No.3511 of 2004, he categorically deposed that he had not visited Mr. Suresh Shankar Patil on the address available on the Bank record. he submits that the petitioner in Writ Petition No.3511 of 2004 was discharged on merits which order attained finality.

28) In so far as current deposit account in the name of M/s Rajesh Enterprises is concerned, it is submitted by the learned counsel for the petitioner that the said account was opened with due introduction of Shri. Mohan Sinh Purohit, Current Deposit Account holder, who was Proprietor of M/s Murari Sales. It is submitted that the Shop Act licence of the said firm - M/s Murari Sales was on record in the enquiry proceeding of the petitioner in Writ Petition No.3511/2004 as one of the exhibits. The petitioner had practically no role to play in opening the said account. He submits that the said account in the name of M/s Rajesh Enterprises continued to be operated regularly even after the incident of alleged temporary misappropriation of Rs. 2 lakh. He submits that the said witness, MW-1 admitted in his cross-examination that the petitioner was not associated with opening of

the account of M/s Rajesh Enterprises.

29) It is submitted that the petitioner was not at all concerned with the opening of the account of Rajesh Dattatraya Mahajan i.e. M/s Rajesh Enterprises and the said account was opened by the Accountant Mr. Chintamani Datta Sohoni, who is the petitioner in Writ Petition No.3511/2004. He submits that the loose cheques were given by the petitioner as per bank's practice. The accounts of Mr. S.S. Patil and Mr. Rajesh Dattatraya Mahajan (M/s Rajesh Enterprises) were not the *benami* accounts but were opened by the petitioner in due course of business. It is submitted by the learned counsel for the petitioner that it was the established practice of respondent No.1 Bank that pay-in-slips were not strictly insisted and the signature of the customer was also not insisted by the Bank on the pay-in-slip.

30) In so far as the allegations of the Bank against the petitioner that the petitioner had transferred amounts from one account to another by way of cash/transfer/ clearing in an unauthorized manner and the petitioner was allegedly manipulating the accounting procedure is concerned, it is submitted by the learned counsel that all such transactions done by the petitioner were at the instance of the concerned parties who never objected to such transaction carried out by the petitioner. He submitted that on the contrary all such customers gave in writing before the Inquiring Authority that they did no

have any grievance about the transaction carried out in their accounts and whatever had been done by the petitioners were done as per their requests and they had confirmed those transactions.

31) In support of this submission, the learned counsel invited our attention to some of the documents on record purportedly showing confirmation of the transactions by those account holders in whose accounts various transactions were carried out by the petitioner.

32) The learned counsel for the petitioner invited our attention to the deposition of the witness (MW-1) in the enquiry proceedings of the petitioner in Writ Petition No.3511/2004. He deposed that filling up of pay-in-slip for customer by the bank employee is a routine practice which is being followed all over the India. The said witness also deposed that at times instructions on telephone are also honoured by the Bank. It is submitted by the learned counsel that it is not the case of the respondent No.1 Bank that any loss was suffered by the respondent No.1 due to any of such transactions carried out by the petitioner in some of the accounts of the customers of the Bank. In support of this submission, learned counsel invited our attention to part of the cross-examination of the witness examined by the Bank and would submit that, the said witness had categorically admitted that neither any complaint was received from any of the customers of

the Bank nor any loss was suffered by the Bank due to the transactions carried out by the petitioner in those accounts.

33) Learned counsel for the petitioner submitted that on the contrary, because of the helping attitude of the petitioner to large number of the customers of the Bank, there was no any personal gain to the petitioner for carrying out such transactions by helping the customers of the Bank but, on the contrary the business of the respondent Bank had substantially increased by such efforts made by the petitioner.

34) In so far as allegation of the Bank against the petitioner that he had used his relatives' accounts for *benami* deposits, for tapping unaccounted money of the Bank against the rules and procedure of operating those accounts himself without authority is concerned, it is submitted by the learned counsel for the petitioner that the respondent did not examine any of its customers to substantiate these allegations levelled against the petitioner. He invited our attention to some of the writings annexed at pages 317 to 327 of the petition and would submit that not a single account holder had made any complaint in this regard to the Bank against the petitioner which would indicate that all such transactions carried out by the petitioner were on instructions of those relatives and with their consent. He submitted that no relative or others customers or clients of the Bank would have permitted the petitioner to carry out transaction in their account without their

knowledge or consent. He submits that all the transactions carried out by the petitioner in various accounts were carried out in good faith. The petitioner was not benefited financially in any manner whatsoever by carrying out such transactions.

35) In so far as the allegation of the respondent against the petitioner that he had signed most of plain debit and credit vouchers and allowed loose cheques is concerned, it is submitted that debit/credit cum advise vouchers were exhausted and thus plain vouchers were required to be used and signed. It is submitted that as against annual consumption of 1000 Savings Bank cheque books only 950 cheque books were supplied to the bank in the month of November 1997 and thereafter were supplied on 23rd August, 1999. Petitioner had sent requisition to the Head Office but was of no avail. He submitted that to overcome the said acute shortage of the cheque books, in stead of issuing cheque books, the customers were issued loose cheques by the petitioner as per their requirement and thus the same could not be faulted with by the petitioner in this situation.

36) In so far as the allegation of the respondent bank that the petitioner had misused the POB account and had availed loan towards advances without following the requisite procedure is concerned, it is submitted by the learned counsel for the petitioner that Dr. Kabra who was an esteemed customer of the branch since long had submitted USD 350 and Traveler's Cheques of USD 300.

Although the branch of the respondent did not have facility of exchange of foreign currency, the said Dr. Kabra was paid Rs.26,000/- against said foreign currency in anticipation of getting the currency exchanged from State Bank of India. The travel currency was remitted to IFB Branch Pune, however, the currency could not be exchanged from State Bank of India.

37) It is submitted that the said Dr. Kabra was actually returned the amount in the first week of April. The petitioner deposited the amount of Rs.44,200 from his own account to wipe out the entry for annual closing on 1st March, 1998 and received money from Dr Kabra in April first week. Learned counsel placed reliance on a communication made by Dr. Kabra in this regard which was filed before the Inquiring Authority. He submitted that the petitioner had an amount of Rs.1,20,256.21 in his Savings Bank Account No.130 on the given date and thus it was indicating the fact that the petitioner has not received any amount out of it. He submitted that the petitioner had tried to help Dr. Kabra. Neither any loss was caused to the bank of any nature whatsoever nor there was any personal gain to the petitioner.

38) In so far as the allegation of the respondents that the petitioner had availed National Saving Certificates loan on three occasions without prior permission of the Regional Office and had availed loan against the National Saving Certificates without holding such certificates actually is concerned, it is submitted by

the learned counsel for the petitioner that it was not the case of the respondent in the charge-sheet that prior sanction of the Regional Office was required for availing National Saving Certificate loan. He submitted that those loans had been sanctioned by the Regional Office. No such objection was raised in the earlier audit reports. In support of this submission, the learned counsel for the petitioner invited our attention to a portion of the cross-examination of the witness (MW-1). He submits that when the petitioner had availed of the loan from the respondent bank, the original National Saving Certificates were already possessed by the petitioner and thus no illegality was committed by the petitioner on this Court.

39) In so far as the allegation of the respondent bank that the petitioner had availed vehicle loan but the Bank's lien was not registered with RTO office by the petitioner is concerned, it is submitted that though the petitioner had not registered the charge of the Bank with the RTO, in the insurance policy obtained by the petitioner in respect of the said vehicle, joint names of the petitioner and the Bank were given. No such objection was raised in the earlier audit reports of the years 1996 and 1997. He submits that the petitioner was under a *bona fide* impression that the incorporation of the name of the Bank in the insurance policy was good enough. He submitted that the petitioner had deposited TTO forms with the Bank on the basis of which his successor got charge recorded on 26 October 1998. He submits that his client accepts

the lapse on his part in so far as these allegations are concerned which occurred bona fide.

40) In so far as the allegations of the respondent against the petitioner that he did not submit relative Bills of construction nor created mortgage against the housing loan of Rs. 1.80 lakh is concerned, it is submitted by the learned counsel that both the witnesses examined by the bank had admitted that the mortgage was to be executed after completion of the construction as per the undertaking given by the petitioner and as per the sanctioned advice. He submitted that the successor Branch Manager by his letter dated 10 August 1999 had certified the submission of Bills, Invoices, cash Memos etc. to the tune of Rs.1.20 lakh. He submits that there is no substance in these allegations made by the respondent.

41) In so far as the allegation of the respondent against the petitioner that the petitioner had availed the salary advance without prior permission of the Regional Office is concerned, it is submitted that the witnesses examined by the respondent had categorically admitted in their cross examination that the petitioner was employee and entitled to avail salary advance. He submits that in any event no such charges were levelled against the petitioner in the charge-sheet issued to the petitioner.

42) In so far as allegation of the respondents regarding

excess utilization of Rs.14,222/- which the petitioner had adjusted on 31st March, 1998, constitute mis-utilization of the funds of the bank is concerned, the learned counsel invited our attention to the letter dated 30th August, 1999, addressed by Dr. K.R. Kabra to the Manager of the respondent informing the Bank that he had requested the petitioner to encash the Traveler's cheque of USD 300 and currency USD 350 and on his request the petitioner had encashed those Traveler's cheques and had paid Rs.26,000/- to him. In the said letter said Dr. Kabra informed the Bank that the entire amount of Rs.26,000/- was received by him and he had no complaint against the respondent No.1 Bank or against the petitioner. The petitioner has no *mala fide* intention. He submitted that in view of this letter addressed by Dr. Kabra there is no substance in this allegation made by the respondents.

43) In so far as the allegation of the respondent against the petitioner that he had purchased 500 nameplates in bulk without prior approval of the Regional Office is concerned, it is submitted by the learned counsel for the petitioner that the witness examined by the respondent (MW-1) categorically admitted that the cost of the nameplates was debited to the respective borrower's accounts and the same was never borne by the Bank. He further deposed that there was no complaint of the borrowers regarding entry against the said head. The said witness, however, deposed that the amount of Rs.50 to Rs.150/- debited to the account of the borrowers was much more than the actual cost. Learned counsel

for the petitioner submitted that in any event the petitioner was not benefited in this process in any manner whatsoever and in any event he could not have been dismissed on such trifle irregularity.

44) It is submitted by the learned counsel for the petitioner that, the petitioner was directed to submit written brief within 10 days of the submissions of the written brief by the presenting officer. There was delay on the part of the Presenting Officer to submit his written brief. The petitioner had filed his written brief within 10 days of receipt of the written brief from the Presenting Officer. He submits that the fact that the Inquiring Authority did not wait for the submission of the written brief by the petitioner, though time to submit written brief had not expired has rendered various findings against the petitioner without considering said written brief of the petitioner. He submits that it clearly indicates the prejudiced, biased and predetermined mind of the Inquiring Authority against the petitioner.

45) It is submitted that though in the order passed by the Disciplinary Authority, it was mentioned that he had considered written brief filed by the petitioner, the written brief ought to have been considered by the Inquiring Authority at the first instance and not by the Disciplinary Authority before findings were recorded by the Inquiring Authority against the petitioner.

46) The learned counsel for the petitioner invited our

attention to the order passed by the Appellate Authority and also by the Reviewing Authority and would submit that both the orders were passed without application of mind and the alleged reasons recorded in those orders were in verbatim of the reasons recorded by the Disciplinary Authority. He submits that the Appellate Authority as well as the Reviewing Authority were bound to apply their mind, to consider the submissions and the grounds raised by the petitioner while passing the impugned orders and could not have passed such orders mechanically.

47) It is submitted by the learned counsel for the petitioner that neither any of the account holders in whose accounts the petitioner had carried out some transactions nor the landlord had been examined by the Presenting Officer before the Inquiring Authority and thus this Court shall draw an adverse inference against the respondents. He submits that such accounts were allowed to be operated by the respondent even after alleged irregularity and misappropriation was alleged against the petitioner. He submits that since the prosecution filed against the petitioner was going on admittedly, the petitioner did not examine landlord or other account holders as his witnesses before the Inquiring Authority.

48) The learned counsel for the petitioner invited our attention to the letter dated 5th February, 2003 annexed at page 289 of the writ petition addressed to the respondent alleging that

subsistence allowance had not been paid to the petitioner as per rules.

49) The learned counsel for the petitioner invited our attention to the letter addressed by the landlord Mr. S.G. Sanap to the respondent No.1 which was received by respondent No.1 on 7 December 1998 conveying that as per his instructions, the respondent No.1-Bank had transferred Rs.1.62 from his Recurring account to Savings Bank Account No.790 and he had no objection for the said transaction. It was stated in the said letter that he had instructed the respondent No.1 to credit the proceeds of some of his cheques to the savings bank account No.790 which was opened in the name of Mr. Suresh Shankar Patil. The landlord further stated in the said letter that he had no claim or complaint against the Bank or its officials.

50) The learned counsel also invited our attention to the affidavit of the said Mr. S.G. Sanap dated 26th March, 2001 annexed at page 318 of the writ petition stating that he had no objection or any complaint against the conduct of the Bank or its officials. In the said affidavit the said landlord made similar statements which were made in the letter which was received by the respondent No.1 Bank on 7th December, 1998. He also invited our attention to the letter dated 24th July, 1998 from Mr. N.K.P. Das to the respondent No.1 Bank informing that he had deposited Rs. one lakh with respondent No.1 under Suraj Jama Yojana and

was issued four deposit receipts by the Bank. He did not have any savings bank account with the respondent No.1 and had requested the Bank to credit the said amount to the Savings Bank Account No.161 of M.P. Choudhari who had withdrawn the said amount and had paid to him. In the said letter it was mentioned that he had received entire amount with interest and he had no claim against Mr. M.P. Choudhari and the Bank.

51) Learned counsel for the petitioner also invited our attention to the letter received by the bank from M.P. Choudhari on 25 November 1998 stating that he had opened Savings Bank Account No.161 with respondent No.1 Bank and some transactions had taken place in his account. He confirmed all the withdrawals and deposits from the account from time to time and that the same were effected as per his instructions. He also confirmed all the debits from his savings bank account by way of transfer to various accounts and he had no claim against anybody as well as the Bank. He also invited our attention to the affidavit dated 26 March 2001 filed by M.P. Choudhari stating that he had no complaint of whatsoever against the respondent No.1 Bank. He also confirms the contents of his letter dated 25 November 1998 received by the Bank. He also referred to the letter received by the bank on 25 November 1998.

52) Learned counsel for the petitioner invited our attention to the letter from the father of the petitioner, N.V.

Choudhari received by the bank on 25th November, 1998 stating that he had no complaint against the Bank. He also invited our attention to the letters addressed by Kiran Uttamrao Patil, Umesh Narayan Choudhary, Dr. Jiyaram S. Udassi, and R.K. Mondhwani received on 25th November, 1998 by the respondent No.1 Bank stating that they have no complaint of any nature whatsoever against the petitioner as well as against the Bank. They had received entire amount with interest from the petitioner. It is submitted by the learned counsel for the petitioner that the Central Vigilance Commission has issued Circular dated 16 September 1999 prescribing the instructions required to be followed by public sector banks while conducting departmental inquiries. He submits that none of those norms, instructions have been followed by the respondent Bank while conducting the inquiry against the petitioner. The respondent No.1 had also not amended the rules.

53) Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of **Om Prakash Bhatnagar v. Madhya Pradesh Electricity Board and Others, AIR 2017 SC 2564** and in particular paragraphs 6 and 7 and would submit that since the petitioner was acquitted in the criminal proceedings and the order of acquittal having been accepted by the employer, the employer could not have dismissed the petitioner from services on the ground of alleged proof of same charges which were subject matter of the criminal proceedings.

54) Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of **S. Bhaskar Reddy and another v. Superintendent of Police and Another, (2015) 2 SCC 365** and in particular paragraphs 15 to 17 in support of his submissions that since the facts and evidence in the criminal proceedings and in the departmental enquiry against the petitioner were the same, and in view of the petitioner having been acquitted honourably in those criminal proceedings for the same charges, the bank could not have dismissed the services of the petitioner in spite of the fact that the petitioner was honorably acquitted in the criminal proceedings.

55) The learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of **Allahabad Bank and Others v. Krishna Narayan Tewari, AIR 2017 SC 330** and in particular paragraphs 7 to 9. He submits that since the respondent-Bank had admittedly not suffered any loss due to the alleged misappropriation by the petitioner, the respondent bank could not have dismissed the petitioner from his services. He also placed reliance on the judgment of the Supreme Court in the case of **State Bank of India and others vs. D.C. Aggarwal and another (AIR 1993 SC 1197)** and in particular paragraphs 3 and 6 in support of the said submission.

56) Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of **Deputy**

Commissioner, KVS v. J. Hussain (AIR 2014 SC 766) and in particular paragraphs 6,7 and 9 to 13 and would submit that the punishment of dismissal inflicted upon the petitioner is in any event shockingly disproportionate and on that ground itself the said punishment of dismissal deserves to be set aside. He submits that the witnesses examined by the Bank categorically admitted that there was no irregularity committed by the petitioner nor any loss was caused to the Bank or there was no financial enrichment to the petitioner. He submits that on the contrary the petitioner had committed acts for betterment of the respondent Bank and in good faith.

57) It is submitted that the petitioner had shown indulgence to the customers of the Bank for the benefit of the Bank and not for his personal benefit. He submits that since the cheque books were not available, the petitioner had issued loose cheques to the customer to avoid any inconvenience to the customers. He had also issued withdrawal slips and had permitted withdrawal of more than Rs.5,000/- in these circumstances and thus the same could not have been considered as breach of duty as and by way of alleged misconduct on the part of the petitioner.

58) Learned counsel for the petitioner submits that the respondent did not file any affidavit-in-reply in these two petitions controverting the facts pleaded by the petitioners and thus the allegations of facts mentioned in the petition by the petitioner are

deemed to have been admitted. In support of his submission, the learned counsel placed reliance on the judgment of the Supreme Court in the cases of **Lohia Properties (P) Ltd. v. Atmaram Kumar (1993) 4 SCC 6**) and in particular paragraphs 17 and 18. In support of the same submission he also placed reliance on the judgment delivered by the Division Bench of this Court in the case of **Kazi Moinuddin s/o. Kazi Anwaruddin v. The State of Maharashtra and others (1996 (4) Bom. C.R. 496)** and in particular paragraph 1 thereof.

59) It is submitted by the learned counsel that the petitioner shall be granted benefit of the Circular dated 10th January, 2014 issued by the Central Vigilance Commission and this Court shall set aside the impugned orders passed by the Disciplinary Authority, Appellate Authority and the Reviewing Authority with all consequential benefits.

FACTS AND SUBMISSIONS OF WRIT PETITION NO.3511 OF 2004 :

60) Learned counsel for the petitioner invited our attention to the charges leveled against the petitioner by the respondents and also various portions of the cross examination of the witnesses examined by the Bank. He submits that the

witnesses of the Bank admitted that the petitioner in this case was working in the branch when the Savings Bank Account No. 790 was opened. The said witness had agreed that the petitioner was not connected with the opening of the said account. He had also agreed that introduction of the account of M/s. Rajesh Enterprises was M/s Murari Sales who was one of the Current Account holders of the Bank. He submits that the witnesses examined by the Bank also admitted that there was no monetary loss caused to the Bank and there was credit balance in the account which was adjusted against the over draft facility. He submits that in this case the written brief submitted by the petitioner was considered by the Inquiring Authority. He submits that rest of the arguments advanced by the petitioner in Writ Petition No.3410/2004 shall be considered as arguments in this writ petition also.

Submissions of the respondents :

61) Mr. S.V. Natu, learned counsel for the respondent Bank, on the other hand, submits that in view of the order passed by the Division Bench of this Court in Writ Petition No.4814 of 1999 and Writ Petition No.4827 of 1999 directing the respondent not to proceed with the departmental disciplinary proceeding relating to the charges of misappropriation of amount of rupees two lakhs as also any charge or imputation based on the facts and circumstances surrounding the said alleged temporary misappropriation, the respondent had issued memorandum dated

1st February, 2001 and after referring to the order passed by the Division Bench of this Court on 25th January, 2000 and informing the petitioner that the respondent had decided to proceed with the departmental enquiry against the petitioner for various charges, allegations leveled against him in terms of articles of charge dated 17th July, 1999 excluding the allegation relating to the misappropriation of rupees two lakhs.

62) It is submitted by the learned counsel that in view of the said order passed by this Court, the Inquiring Authority did not consider any allegations relating to misappropriation of rupees two lakhs in the inquiry report. He submits that it is not the case of the petitioner nor the same is demonstrated before this Court by the petitioner that in the inquiry report the Inquiring Authority had considered such allegations relating to misappropriation of Rs. two lakh in spite of the order dated 25th January, 2000 passed by this Court nor the same is considered by the Disciplinary Authority while inflicting punishment upon the petitioner. He submits that the charges which were the subject matter of the charge-sheet dated 17th July, 1999 were to be read with the statement of charges and allegations. He submits that the respondent no.1 was allowed to proceed with enquiry in respect of other charges. He submits that in the charge sheet at page 68, Articles of Charge were broad heads of charges leveled against the petitioner which were subject matter along with the statements of allegations and charge.

63) In so far as the submission of the learned counsel for the petitioner that the petitioner was honourably acquitted in the criminal proceedings filed against the petitioner in respect of the same charges leveled by the respondent against the petitioner, and thus the services of the petitioner could not have been dismissed on that ground is concerned, he submits that the criminal proceedings were initiated against the petitioner only in respect of misappropriation of rupees two lakhs and not in respect of several other charges which were leveled against the petitioner and were indicated in the statement of allegations and charge. He submits that the respondent has not terminated the services of the petitioner on the ground that the petitioner had misappropriated the amount of rupees two lakhs but has been terminated in view of the other charges leveled against the petitioner having been proved.

64) It is submitted that merely because in respect of one of the charges the petitioner was acquitted, the respondent was not prohibited from conducting the inquiry in respect of the other charges leveled against the petitioner and to inflict punishment on such charges having been proved against the petitioner. It is submitted that the judgments of the Supreme Court in the case of *Om Prakash Bhatnagar (supra)* and in the cases of *S. Bhaskar Reddy and others (supra)* are clearly distinguishable in the facts of these petitions and would not assist the case of the petitioners. It

is submitted by the learned counsel for the respondent no.1 that several acts of misappropriation and misconduct committed by the petitioner were covered by the charge of 'acting in the manner unbecoming of a bank officer'. The respondent Bank thus rightly inflicted the punishment of dismissal in view of different acts falling under the said charge having been proved against the petitioner. He submits that the Article of charges thus remained the same though the respondent did not consider the allegation of misappropriation of rupees two lakhs by the petitioner.

65) In so far as the instructions issue by the Central Vigilance Commission relied upon by the learned counsel for the petitioner is concerned, it is submitted by the learned counsel for the respondent that the respondent had already completed the enquiry within a year from the date of its commencement. There was no case of delay alleged by the petitioner in conducting the enquiry by the Inquiring Authority appointed by the respondent. He submits that the said instructions would have applied in the event of enquiry if conducted by officer approved by the Central Vigilance Commission. The purpose of such instructions issued by the Central Vigilance Commission was totally different.

66) It is submitted that in any event no such grievance was ever raised by the petitioner before the Inquiring Authority or before the Disciplinary Authority. He placed reliance on Note 3.2.2 of the said instructions which provided that if rules are in

conflict with the instructions, the rules must be modified with immediate effect and would submit that the instructions thus issued by the Central Vigilance Commission are not mandatory with immediate effect.

67) The learned counsel for the respondent invited our attention to some of the portions of the oral evidence led by the both the parties and would submit that the misappropriation and misconduct on the part of the petitioner was duly proved before the Inquiring Authority. Mr. Sanap was operating his own savings account and did not accept any entries made in the Account No.790. The photograph of Mr. Patil was never filed on record by the petitioner in Writ Petition No.3410/2004. The petitioner in the said petition had never seen Mr. Patil operating the bank account. The petitioner knew very well that Mr. Sanap was operating the account of Mr. Suresh Shankar Patil but no action was taken against Mr. Sanap for operating the account of Mr. Suresh Shankar Patil.

68) It is submitted that the said transaction was not an isolated transaction. In last 2 years before the suspension of the petitioner large number of transactions were carried out by the petitioner unauthorizedly and in breach of the norms. He submits that merely because the transactions were carried out illegally for years together, the same cannot be considered as legalized as per the prevailing practice of the Bank. He submits that it is not the

case of the petitioner that those various entries of debit and credit to various accounts of the account holders without their prior permission were permitted in accordance with law and norms.

69) It is submitted that the letters and affidavits obtained from the said clients subsequently by the petitioner could not absolve the petitioner from his misconduct and liability. It is submitted that the Bank would have been vicariously liable for such misconduct and misappropriation in the accounts of various customers of the bank. Not a single authorization was produced by the petitioner for withdrawal of amount from various accounts and for debit/credit various accounts to various accounts before carrying out such transactions by the petitioner. He submits that using money of the clients without their authority in writing by the petitioner as an officer of the Bank amounts to serious act of misconduct and thus such serious acts on the part of the petitioner having been proved before the Inquiring Authority, the Disciplinary Authority was justified in passing an order of dismissal of the petitioner from his services.

70) Learned counsel for the respondent placed reliance on the judgment delivered by this Court in the case of **Niraj Kumar Singh v. Union Bank of India (2008(2) Bom. C.R. 237)** and in particular paragraphs 8 to 12 and would submit that strict rules of evidence and standard of proof in criminal proceedings are not applicable to departmental proceedings. He submits that

departmental proceedings are decided on the preponderance of probability whereas in criminal trial it has to be proved beyond any reasonable doubt. He submits that in the said judgment, the Division Bench of this Court considered the allegations of withdrawal of money from the accounts of others by the employee as a serious matter and the Court did not take such charge lightly so as to disturb the findings of fact.

71) It is submitted that the Inquiring Authority had followed the norms prescribed for conducting departmental enquiry against the petitioner and after giving full opportunity to the petitioner and considering the evidence placed on record had rightly rendered various findings of misconduct and misappropriation on the part of the petitioner. He submits that it is not the case of the petitioner that the Inquiring Authority had violated any principles of natural justice or any other provision of law. It is submitted that since the findings rendered by the Inquiring Authority and the orders passed by the Disciplinary Authority, the Appellate Authority and the Reviewing Authority are not perverse, the same cannot be interfered with by this Court under Articles 226 and 227 of the Constitution of India.

72) It is submitted by the learned counsel for the respondent that the petitioner had made unauthorized use of the money of the clients of the bank. He had signed various vouchers unauthorizedly allowing various transactions. Mr. Sanap had not

accepted the transfer of various amounts in the accounts of other clients. He submits that amount of Rs.26000/- had been debited by the petitioner POB Account, foreign exchange by giving voucher dated 19th February, 1990. The said voucher was signed by the petitioner. Balance amount of Rs.14,220/- was debited to Savings Bank Account No.130 of the petitioner on 31st March, 1999 and credited to POB account. This voucher was signed by Mr.Sohoni, who is petitioner in Writ Petition No.3511/2004.

73) It is submitted by the learned counsel for the respondent that the petitioner had availed loan from respondent No.1 Bank and had purchased National Saving Certificates on the same date. He had abused his position by utilizing the money of the Bank without sanction from the Regional Office and in investing the said amount in National Saving Certificates.

74) Learned counsel for the respondent invited our attention to the enquiry report and more particularly the analysis of evidence by the Inquiring Authority in the said enquiry report while rendering various findings against the petitioner. It is submitted that the petitioner had also availed housing loan without payment of margin money and illegally debited to the said amount of the account of his father and credited the amount to his account without any authority. It is submitted that the petitioner was held guilty of all the charges levelled against him excluding the charge of misappropriation of Rs. 2 lakh in respect of which

the Division Bench of this Court had not permitted the respondents to proceed with.

75) In so far as the submissions of the learned counsel for the petitioner that the Inquiring Authority had not considered the written brief note filed by the petitioner is concerned, it is submitted by the learned counsel for the respondent that in this case the petitioner was issued show cause notice and the charge-sheet and the statement of charges and allegations. He was also allowed to lead evidence to cross examine the witnesses examined by the respondent. All the documents relied upon by the respondent were submitted to the petitioner. The petitioner was also allowed to submit documents proposed to be relied upon by him. It is submitted that filing of written brief was not a statutory or crystallized right but was permitted by the Inquiring Authority for the purpose of the convenience of the Inquiring Authority. He submits that the Inquiring Authority also has not considered the written brief filed by the petitioner in the enquiry report. It is not the case of the petitioner that the Inquiring Authority has considered the brief note of the respondent and did not consider the brief note of the petitioner. He submitted that the entire evidence led by both the parties has been considered in detail by the Inquiring Authority and has held the petitioner guilty of all the charges levelled against him.

76) In so far as the loan obtained by the petitioner against

National Saving Certificates is concerned, it is submitted by the learned counsel for the respondent that no prudent man would have purchased National Saving Certificates and would have obtained loan on the same day. He submitted that in fact the petitioner has invested in National Saving Certificates by using bank's money which was *ex facie* an act of misconduct and misappropriation of bank's money.

77) In so far as the submission of the learned counsel for the petitioner that the reasons given by the Appellate Authority and the Reviewing Authority are in *verbatim* of the reasons recorded by the Disciplinary Authority is concerned, it is submitted by the learned counsel that since the Appellate Authority as well as the Reviewing Authority have upheld the findings recorded by the Inquiring Authority and since the petitioner himself has admitted various acts of misappropriation and misconduct though contending that the same were for the benefit of the Bank and its customers, the petitioner was not prejudiced in any manner whatsoever even if the reasons recorded by the Appellate Authority and the Reviewing Authority were the same as are recorded by the Inquiring Authority and the Disciplinary Authority. He submits that the Appellate Authority as well as the Reviewing Authority rightly confirmed the findings of the lower authority and have not passed any cryptic order as sought to be canvassed by the petitioner.

78) It is submitted by the learned counsel for the respondent that the petitioner could not have done money lending business by debiting and crediting the accounts of various customers of the Bank under the guise of helping them out while acting as Branch Manager of the respondent. All the acts of the petitioner were required to be carried out strictly in accordance with the norms and within his powers permissible in law.

79) In so far as submissions made by the learned counsel for the petitioner in Writ Petition No.3511/2004 is concerned, it is submitted by the learned counsel for the respondent that the petitioner in that writ petition was not discharged in the criminal proceeding. There was no reference to the misappropriation of Rs. two lakh in the enquiry report also in respect of this petition. He submits that the oral and documentary evidence in respect of both the matters were common. He submits that the detail submissions already made by him in Writ Petition No.3410/2004 shall be considered as the submissions in this matter.

80) In so far as the submissions of the learned counsel for the petitioner that, since affidavit-in-reply is not filed by the respondent in any of these two writ petitions and thus the factual statements made in the petition shall be deemed to have been admitted is concerned, it is submitted by the learned counsel for the respondent that both these petitions are filed basically under Article 227 of the Constitution of India thereby impugning the

findings of fact recorded by the Inquiring Authority, the decisions taken by the Disciplinary Authority and the orders passed by the Appellate Authority and the Reviewing Authority. The Disciplinary Authority had taken a decision based on the enquiry report which was submitted considering the oral and documentary evidence led by both the parties.

81) It is submitted that the petitioner in both the matters have challenged those proceedings and the findings based on the documents on record. These proceedings are not original proceedings but are based on the findings of fact and the view taken by the authorities below. Since the petitioners are not allowed to introduce any new facts in these writ petitions, even if the respondents have not filed any affidavit-in-reply to the writ petitions, there cannot be any deemed admission on the part of the respondent.

82) The petitioner cannot rely upon any new facts which were not on record before the authorities below. The learned counsel accordingly distinguished the judgments relied upon by the learned counsel for the petitioner in the case of Lohia Properties (P) Ltd. (*supra*) and the judgment delivered by Division Bench of this Court in the case of Kazi Moinuddin s/o. Kazi Anwaruddin (*supra*).

83) The learned counsel for the respondent distinguished

the judgment of the Supreme Court in the case of Allahabad Bank and others (supra) relied upon by the learned counsel for the petitioner on the ground that the findings recorded by the Disciplinary Authority and affirmed by the Appellate Authority in that case were based on no evidence whatsoever and such findings were upheld by the Appellate Authority. The High Court accordingly observed that the Appellate Authority has not applied its mind independently and simply cut and pasted the findings of the Disciplinary Authority while dismissing the appeal. He submits that facts before the Supreme Court in that judgment were totally different. In this case, the Inquiring Authority has analyzed the documentary as well as oral evidence and had rendered the finding.

84) The learned counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of **Central Industrial Security Force and others v. Abrar Ali, AIR 2017 SC 200** and in particular paragraphs 8 and 9 and would submit that this Court cannot act as an appellate authority in the disciplinary proceedings and cannot reappreciate the evidence before the Inquiring Authority unless the findings are perverse, unless the enquiry is not held by a competent authority or is not held in accordance with the procedure prescribed, the same is in violation of principles of natural justice etc. He submits that since the findings recorded by the Inquiring Authority are not perverse and the orders passed by the Disciplinary Authority, the Appellate

Authority and the Reviewing Authority are not perverse, this Court cannot reappreciate the findings of fact and cannot reappreciate the evidence before the Inquiring Authority in this writ petition.

85) Learned counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of **Avinash Sadashiv Bhosale v. Union of India and others AIR 2012 SC (Supp) 755** and in particular paragraphs 38 and 39 and would submit that in criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by Court of law where in a departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. He submitted that acquittal of petitioner in the criminal proceeding therefore does not *epso facto* absolve from the liability under the departmental jurisdiction of the respondent.

86) Learned counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of **General Manager, Punjab and Sind Bank and others v. Daya Singh, 2010 AIR SCW 5447** and in particular paragraphs 17 and 18 and would submit that since the petitioner himself had admitted various acts of misappropriation and misconduct, Inquiring Authority could not have taken any other view. He submits that since findings rendered by the Inquiring Authority were based on

evidence, the same cannot be considered as perverse. Strict rules of evidence are not applicable to the departmental enquiry proceedings. This Court, therefore, cannot exercise the jurisdiction of judicial review and cannot interfere in the findings of fact arrived at in the departmental enquiry proceedings since the same are neither *mala fide* nor perverse.

87) Mr. Deshpande, learned counsel for the petitioners, in both these petitions in rejoinder submits that since the learned Inquiring Authority had issued directions to both the parties to file written brief and since the petitioner had filed such written brief within the time prescribed by the learned Inquiring Authority, a right was vested in the petitioner to file such written brief and thus the Inquiring Authority was bound to consider the same before submitting any enquiry report to the Disciplinary Authority. He submits that non consideration of such written brief would be thus fatal and on that count this Court can set aside the entire decision of the Disciplinary Authority and also the enquiry report submitted by the Inquiring Authority.

88) It is submitted that the that cross-examination of the witnesses of the respondents has not been at all considered by the Inquiring Authority in the enquiry report. The witnesses examined by the respondents had conceded the prevailing practice in the respondent Bank which were followed by the petitioner. He submits that charges levelled in the charge-sheet against the

petitioner had been accepted by the Inquiring Authority as gospel truth. He submits that since the findings rendered by the Inquiring Authority are perverse, this Court has ample power to interfere with such perverse findings. He submits that the evidence of the witnesses examined by the respondent itself had proved the case of the petitioners which could not have been ignored by the Inquiring Authority. He submits that the conclusions drawn by the Inquiring Authority which are accepted by the Disciplinary Authority are totally perverse and arbitrary. The Inquiring Authority had failed to accept admissible evidence and has rendered perverse finding.

89) It is submitted by the learned counsel for the petitioner that the petitioner was holding National Saving Certificates in hand on the date of availing the loan. There was no allegation of misappropriation against the petitioner by the respondents that before the Inquiring Authority. It is submitted that the Inquiring Authority himself had verified the account of respondent No.1 Bank at the relevant time and had not found any misappropriation on the part of the petitioner and thus could not have rendered any different finding against the petition when he acted as Inquiring Authority. He submits that respondent No.1 Bank had also not examined Mr. Sanap and the partner of M/s Rajesh Enterprises and thus adverse inference ought to have been drawn against the Bank by the Inquiring Authority and also shall be drawn by this Court. He submits that most of the amounts were

withdrawn by Mr. Sanap from the account of Mr. Suresh Shankar Patil and for which the petitioner was not responsible at all.

Reasons & Conclusions:-

90) There is no dispute that in the order dated 20.1.2000 passed by this Court in Writ Petition No.4814 of 1999 and Writ Petition No.4827 of 1999, this Court had directed the respondent No.1 Bank not to proceed with departmental disciplinary proceeding against the writ petitioners herein as far as charges relating to misappropriation of amount of Rs.2 lakh as also any charge of imputation based on the facts and circumstances surrounding the alleged temporary misappropriation during the period from 5.10.1999 and 8.10.1999 are concerned. We have perused the revised charge-sheet issued by the respondent No.1 upon the petitioners. The respondent No.1 has clearly excluded the said charge on which this Court had directed the respondent No.1 not to proceed with departmental disciplinary proceeding against the petitioners and did not decide any allegation against petitioners in respect of the said charge in the enquiry proceeding as well as while taking action against the petitioners by the respondent No.1.

91) We are thus not inclined to accept the submission of the learned counsel for the petitioners that the respondent No.1 proceeded with the said allegation in the enquiry proceedings and

had taken action against the petitioners in respect of the said charge also in spite of the order passed by the Division Bench of this Court or even otherwise.

92) In so far as the submission of the learned counsel for the petitioners that the learned Session Court had already discharged the petitioner in the Writ Petition No.3410 of 2004 in Criminal Application No.758 of 2005 filed by the respondent No.1 and those proceedings had come to an end on 28.7.2009 and thus no cognizance of those charges could be taken by the respondent No.1 against the petitioner in Writ Petition No.3410 of 2004 is concerned, a perusal of the record indicates that respondent No.1 has not considered allegations which were subject matter of the said criminal application against the petitioners in Writ Petition No.3410 of 2004 or while conducting enquiry or even thereafter. Be that as it may, the respondent No.1 was independently entitled to proceed with the departmental enquiry and to take an action against the petitioners in respect of several other charges levelled against the petitioners in the charge-sheet. The entire enquiry proceedings that proceeded against the petitioners was in respect of the other charges, which were not the subject matter of the said criminal proceedings. There is thus no merit in the submission of the learned counsel for the petitioners.

93) In so far as the submission of the learned counsel for the petitioners that Mr.N.K.Kulkarni, Chief Manager, Pune City

Branch, who was appointed as Enquiring Authority had himself conducted audit of respondent No.1 during the relevant period and had not found any misappropriation or fraud alleged to have been committed by the petitioners is concerned, there is no merit in the submission of the learned counsel for the petitioner. The audit was subsequently carried out of the said branch by the vigilance party on 22.6.1998 and then it was found that various misappropriations of the funds and fraudulent transactions were carried out by the petitioners.

94) In so far as the submission of the learned counsel for the petitioners that the Saving Bank Account No.790 was opened by the petitioner in Writ Petition No.3410 of 2004 at the instance of the landlord Mr.S.G.Sanap, who had sizable transactions in his Bank account and who had assured the petitioner for providing photograph of the account holder, but had not provided photograph to the petitioner or that there was nothing objectionable found in the said account as far as audit report is concerned, both the petitioners have admitted that the photograph of the said account holder was never provided by the account holder. The petitioners could not have ignored the mandatory procedure for opening an account at the request of the landlord of the building in which the branch of the respondent No.1 was situated or otherwise. There were large number of transactions in the said account, even according to the petitioners, being carried out regularly from 1996.

95) In our view, the petitioners being responsible officers of the Bank were bound to follow the requisite procedure and guidelines while opening a Bank account and thereafter while allowing such account holder to operate the Bank account, which was a benami account of Mr.Suresh Shankar Patil. It is not the case of the petitioners that they had ever met Mr.Suresh Shankar Patil at any point of time while opening his Bank account. The witness examined by the respondent No.1 Mr.S.B.Surve (MW-1) in his evidence deposed that though he had visited at the given address of Mr.Suresh Shankar Patil, the said person was not available at that address.

96) In so far as current account in the name of M/s.Rajesh Enterprises is concerned, the said account was also opened with alleged introduction of Mr.Mohan Sinh Purohit, who was having Current Deposit Account with respondent No.1. The whereabouts of M/s.Rajesh Enterprises was also not known. The said account was also operated regularly. According to the petitioners in Writ Petition No.3410 of 2004, the said account was not opened by him, but was opened by the petitioner in Writ Petition No.3511 of 2004. In our view, the Enquiry Officer had rightly rendered a finding that those accounts were not opened in due course of business by the petitioner.

97) In so far as the alleged established practice pleaded by

the petitioners before this Court that pay-in-slips were not strictly insisted and signature of the customer was not insisted on pay-in-slip is concerned, the said statement was contrary to the practice prevailing in the respondent Bank and also contrary to the norms prescribed by the Reserve Bank of India and also by the respondent No.1.

98) In so far as the submission of the learned counsel for the petitioner that the petitioners had transferred various amounts from one account to another at the instance of the concerned parties, who never objected to such transactions carried out by the petitioners and thus no action against the petitioners in respect of those transactions carried out at the instance of the concerned parties could have been taken by the respondent No.1 against the petitioners is concerned, it is not the case of the petitioners that as a Branch Manager or as a Cashier respectively, the petitioners were authorized to carry out such transactions on behalf of the customers of the Bank, who had their accounts with the Bank.

99) The Bank accounts were opened for the benefit and convenience of the account holders and the same ought to have been operated and could have been operated only by the account holders and not by the staff members including the Branch Manager or Cashier under the guise of additional facilities having been provided to the customers so as to increase the cliental of the respondent No.1 Bank. Those clients, whose alleged letters were

produced by the petitioners on the record, purported to have given no objection to the petitioners for carrying out those transactions on behalf of the petitioners were not examined as witnesses in enquiry proceedings. In our view, even otherwise such alleged letters produced by the petitioners during the course of enquiry proceedings would not regularize the serious breaches and misconduct committed by the petitioners during the course of their duties as Branch Manager and Cashier respectively. The respondent No.1 Bank had not accepted such 'no objection' alleged to have been placed on record by the petitioners and given their *post-facto* sanction to the unauthorized transactions carried out by the petitioners in their accounts.

100) During the course of cross-examination of the witness examined by the Bank, the petitioners had asked various questions about the general practice being followed by the Bank such as filling the pay-in-slips for customers by Bank employee as a routine practice on instructions from the customers on telephone. Based on the deposition of the witness examined by the Bank, who admitted that at the relevant times, instructions on telephone were also given to fill up pay-in-slips for those account holders. The learned counsel for the petitioners vehemently urged before this Court that the said practice to fill up pay-in-slips by the employees of the Bank on telephonic instructions from the customers was established and no breaches or irregularities were committed by the petitioners. The learned counsel for the petitioners could not

point out any such alleged practice permitted under the Reserve Bank of India's guidelines or the service conditions of the respondent No.1.

101) The respondent No.1 did not permit the petitioners to show such indulgence or to provide such facilities to the customers based on alleged telephonic instructions. The only submission of the learned counsel for the petitioners in respect of these allegations was that since no loss was ultimately suffered by the respondent No.1 Bank nor any complaint was received from any of the customers of the Bank, no action by the respondent No.1 could have been taken against the petitioners in respect of such acts on the part of the petitioners.

102) In our view, merely because there was no loss suffered by the respondent No.1 Bank or no complaints were received by the respondent Bank from the customers, who were allegedly obliged by the petitioners by overlooking the norms and guidelines, since the acts done by the petitioners were *ex-facie* beyond the guidelines, the service conditions and banking principles, it amounted to serious misconduct. If the respondent No.1 Bank would have received any complaints from any customers in view of various transactions carried out by the petitioners in the accounts of various customers and if any action would have been initiated against respondent No.1 Bank, the respondent No.1 Bank would have been also made liable for the

breaches, misappropriations and fraudulent transactions carried out by the petitioners in the accounts of those customers. Those customers were the customers of the respondent No.1 Bank and not of the petitioners.

103) Any transaction in the account of those customers opened with respondent No.1 Bank could have been carried out only by the account holders and not by the petitioners, as carried out by the petitioners in this case. Even if there is no loss suffered by the respondent No.1 Bank by such illegal transactions carried out by the petitioners in some of the accounts of the customers of Bank or even if no complaints were made by such customers to the Bank challenging those transactions, fact remains that those illegal transactions were carried out by the petitioners, based on the alleged instructions on telephone of the customers. The respondent No.1 was not prevented from taking any action against the petitioners for committing such transactions illegally and without any authority. The petitioners have admittedly carried out such transactions in various accounts of the customers of the Bank. In our view, even if there was no personal gain to the petitioners as claimed by the petitioners, during the course of the argument before this Court under the guise of providing help to the customers of the Bank or even if the business of the respondent No.1 had increased due to such additional alleged help provided by the petitioners, the fraudulent transactions carried out by the petitioners in violation of banking norms and Reserve Bank of

India's guidelines, such unauthorized transactions carried out by the petitioners could not have been overlooked.

104) In so far as the submission of the learned counsel for the petitioners that the respondent No.1 Bank had not examined any of the customers to substantiate the allegation made against the petitioners that they had used their relatives' accounts or benami deposits for tapping-in account money of the Bank against the rules and procedures of operating those accounts without authority is concerned, the petitioners have not denied such transactions as is apparent from the questions asked by the petitioners' Advocate to the witness examined by the respondent No.1 Bank. We are not inclined to accept submission of learned counsel for the petitioners that such transactions carried out by the petitioners in various accounts were carried out in good faith. This Court has to consider whether such transactions could have been at all carried out by the petitioners holding the post of Branch Manager and Cashier at the relevant time, within the Banking norms, Reserve Bank of India's guidelines and service conditions or not, in respect of the facts whether the petitioners were personally benefited financially by carrying out such unauthorized transactions or not, or whether the respondent No.1 Bank had suffered any loss by such unauthorized transactions carried out by the petitioners or not.

105) In so far as the submission of the learned counsel for

the petitioners that in view of the shortage of the cheque-books during the relevant period, to overcome the said problem, instead of issuing cheque-books, the customers were issued loose cheques by the petitioners as per their requirements and thus the same could not be faulted with by the petitioners is concerned, the respondent No.1 Bank did not authorize the petitioners to issue any loose cheques purported to have been issued by the petitioners under the guise of alleged shortage of the cheque-books. Similarly, the respondent No.1 had not authorized the petitioners to use and sign the plain vouchers on the ground that the debit/credit advice vouchers were exhausted as canvassed by the learned counsel for the petitioners. It is not the case of the petitioners that the petitioners had taken permission of the respondent No.1 to use plain vouchers or to issue loose cheques to the customers due to alleged shortage as sought to be canvassed by the petitioners. A perusal of the record clearly indicates that the petitioners on their own without any authority and without even seeking any permission to permit the petitioners to use and sign plain vouchers or to issue loose cheques to the customers for want of alleged shortage and committed breach of banking norms, Reserve Bank of India's guidelines and the service conditions.

106) In so far as the submission of the learned counsel that Dr.Kabra had been actually returned the amount in the first week of April or that the petitioner deposited Rs.44,200/- from his own account to wipe out the entry for annual closing on 1.3.1998 is

concerned, in our view since the respondent No.1 admittedly did not have facility for exchange of foreign currency, the petitioners could not have exchanged the foreign currency with the Indian currency by making all sorts of adjustment as sought to be done by the petitioners.

107) In our view, the petitioners could not have provided any facilities to the customers of the respondent No.1 Bank, which were not available with the respondent No.1 and that also by approaching the other party for such facilities and making on account payment to the said Dr.Kabra against the said foreign currency in anticipation of getting currency exchanged from State Bank of India. Admittedly, the petitioner in Writ Petition No.3410 of 2004 had deposited the amount of Rs.44,200/- subsequently in the Bank account. We are not inclined to accept the submission of the learned counsel for the petitioners that since the petitioner in Writ Petition No.3410 of 2004 had not received any amount out of the said transaction of exchange of foreign currency from Dr.Kabra or no loss was caused to respondent No.1 of any nature whatsoever nor any personal gain to the petitioner, no action could have been taken by the respondent No.1 against the petitioner in the Writ Petition No.3410 of 2004 on that ground. In our view, this act on the part of the petitioner in Writ Petition No.3410 of 2004 was a serious misconduct and breach of the Reserve Bank of India's guidelines, banking norms and also the service conditions.

108) The petitioners had carrying out these transactions unauthorizedly while in service with the respondent No.1 Bank under the guise of helping the customers of respondent No.1 Bank in their capacity as Bank Manager or Cashier and not as a proprietor of their business firm. The petitioners could not have carried out such personal transactions of foreign currency exchange without any specific authority and permission of the respondent No.1 Bank, even if Dr.Kabra may be a regular customer of the respondent No.1 Bank. The question as to whether the petitioner in Writ Petition No.3410 of 2004 was personally benefited by such alleged help provided to Dr.Kabra or whether any loss was suffered by respondent No.1 Bank or not, cannot be a ground for not taking any action against the petitioners on the ground of serious misconduct and other charges mentioned against them in the charge-sheets.

109) In so far as the loan availed by the petitioner in Writ Petition No.3410 of 2004 against the National Saving Certificates is concerned, the witness examined by the Bank has proved that the petitioner in Writ Petition No.3410 of 2004 had availed of the loan first and thereafter had invested the said amount in the National Saving Certificates and thus the loan taken by the petitioner was not against security of National Saving Certificates, but such investment in National Saving Certificates was done by the petitioner out of the loan amount. The said transaction was also illegal and contrary to the banking norms, Reserve Bank of

India's guidelines and without authority of the petitioner.

110) In so far as vehicle loan availed of by the petitioner is concerned, admittedly, the Bank's lien was not registered with RTO Office by the petitioner, which was a mandatory condition for availing such loan. Merely because no such objection was raised in the earlier audit reports of the years 1996 and 1997, it cannot be contended by the petitioner in Writ Petition No.3410 of 2004 that there was no fault on the part of the petitioner or breach of the conditions of loan or banking norms. The petitioner was working with the Bank for several years and was holding the post of the Branch Manager and thus cannot be allowed to contend that he was under *bonafide* impression that incorporation of the name of the Bank in the Insurance Policy was good enough.

111) In so far as the submission of the learned counsel for the respondent that the petitioner was required to submit the relative Bills of construction or was required to create mortgage against the housing loan and against the completed construction and not prior to is concerned, the relative Bills of construction and creation of mortgage was to be created at the time of obtaining housing loan by the petitioner in Writ Petition No.3410 of 2004 and not after completion of the construction. The documents creating mortgage was required to be prepared immediately.

112) In so far as the salary advance availed of by the

petitioner is concerned, it is not in dispute that the said salary advance availed of by the petitioner in Writ Petition No.3410 of 2004 was without prior permission of the Regional Office.

113) In so far as the submission of the learned counsel for the respondent that the alleged action of excess utilization of Rs.14,222/- by the petitioner in Writ Petition No.3410 of 2004 is concerned, the learned counsel for the petitioners placed reliance on the letter dated 30.8.1999 addressed by Dr.Kabra informing that he had no complaint against the respondent No.1 Bank or against the petitioner. In our view, the petitioners could not have permitted encashment of those traveller's cheques without authority and without prior sanction of respondent No.1 Bank. The said act on the part of the petitioner in Writ Petition No.3410 of 2004 was also a serious misconduct and breach of banking norms and Reserve Bank of India's guidelines. Merely because the said Dr.Kabra subsequently gave no objection or informed that he had no complaint against the respondent No.1 Bank or against the petitioner, would not make the transactions carried out by the petitioners authorized and in accordance with law.

114) In so far as the purchase of 500 name-plates without prior approval of the Regional Office is concerned, the witness examined by the Bank had deposed that the amount of Rs.50/- to Rs.150/- debited to the account of the borrower was more than the actual cost. It is an admitted position that the the petitioners had

not obtained prior approval of the Regional Office for purchase 500 name-plates in bulk and for debiting the cost of the name-plates to the accounts of the respective borrowers. Merely because the petitioners were not allegedly benefited of such debits to the accounts of the borrowers and that also at the higher rate or on purchase of the name-plates, such transactions could not be considered as authorized and with authority of law. The large number of monetary transactions have been admittedly carried out by the petitioners based on no authority or instructions of the employer.

115) In so far as submission of the learned counsel for the petitioner in Writ Petition No.3410 of 2004 that though the petitioner was directed to submit a written brief within 10 days of the submission of the written brief by the Presenting Officer and though written brief was submitted by the petitioner in Writ Petition No.3410 of 2004 within 10 days of the Presenting Officer filing a written brief, the Inquiring Authority did not wait for the submission of the written brief by the petitioner in violation of principles of natural justice is concerned, the learned counsel for the petitioner could not point out any provision in the service conditions that the Inquiring Authority was bound to provide opportunity of filing written brief or that the Inquiring Authority was bound to consider such written brief. It is not the case of the petitioner that the Inquiring Authority had considered the written brief filed by the Presenting Officer and did not consider the

Written Brief filed by the Petitioner. The allegation of the prejudice, bias and predetermined mind of the Inquiring Authority against the petitioner are thus totally baseless. The Disciplinary Authority had considered the written brief filed by the petitioner admittedly.

116) In so far as the submission of the learned counsel for the petitioner that the Appellate Authority and Reviewing Authority had passed order without application of mind or that the alleged reasons recorded in the order are in-verbatim recorded by the Disciplinary Authority and thus on that ground both those orders deserve to be set aside is concerned, it is not in dispute that the Appellate Authority as well as Reviewing Authority have confirmed the order passed by the Disciplinary Authority. The Appellate Authority as well as Reviewing Authority have come to the same conclusion as drawn by the Disciplinary Authority. Be that as it may, since the petitioners in both the Writ Petitions had admitted various transactions having been carried out as reflected in the charge-sheets, which were proved in the departmental enquiry and had only contended that there was neither any personal gain to the petitioners nor was any monetary loss to the Bank or that there were no complaints from any of the customers of the Bank or that by providing such alleged help to the customers, turnover of the Bank was enhanced, in our view, no prejudice of any nature was caused to the petitioners even if the Appellate Authority and the Reviewing Authority would have given

some more reasons in addition to the reasons given by the Disciplinary Authority, but has not given such reasons. The onus was on the petitioners to prove that due to alleged violation of principles of natural justice by the Appellate Authority and Reviewing Authority, any prejudice was caused to the petitioners.

117) In so far as submission of the learned counsel for the petitioners that the respondent No.1 bank having not examined the landlord before the Inquiring Authority or any of the account holders in whose accounts the petitioners had carried out the transactions and thus adverse inference should be drawn against the respondent No.1 is concerned, in our view, the petitioners ought to have examined those parties as their witnesses to prove their case. Merely by filing their alleged letters subsequently giving no-objection or making no complaint against the petitioners, would be of no assistance to the petitioners, without those parties having been examined by the petitioners as their witnesses to prove those documents and contents therein. The adverse inference shall be drawn against the petitioners and not against the respondent No.1 Bank for not examining those witnesses.

118) Though the learned counsel for the petitioners invited our attention to the letter dated 5.2.2003 alleging that subsistence allowance had not been paid to the petitioners as per rules, the learned counsel for the petitioners could not demonstrate anything beyond the allegation made in the said matter. In our view, the

letter sent by Mr.S.G.Sanap on 7.12.1998 also would be of no assistance to the petitioners. The petitioners admittedly did not examine said Mr.S.G.Sanap on whose instructions petitioners had carried out various transactions unauthorizedly.

119) In so far as the letter received from Mr.M.P.Choudhari on 25.11.1998 by respondent No.1 Bank confirming that all the withdrawals and deposits from the account from time to time were effected as per his instructions is concerned, the petitioners did not examine the said Mr.M.P.Choudhari. In our view, the account holders themselves have to carry out the operations in their accounts or through their authorized representatives and not by staff of the Bank based on the alleged oral instructions. In our view, the said alleged letter dated 25.11.1998 received by the respondent No.1 Bank and affidavit dated 26.3.2001 filed by Mr.M.P.Choudhari stating that he had no complaint against the respondent No.1 Bank were of no assistance to the petitioners.

120) In so far as letter received by the Bank from the father of the petitioner, Mr.N.V.Choudhari dated 25.11.1998 or by letter alleged to have been addressed by Mr.Kiran Uttamrao Patil, Mr.Umesh Narayan Choudhary, Dr.Jiyaram S. Udassi or Mr.R.K.Mondhwani on 25.11.1998 stating that they had no complaints of any nature against the Bank or against the petitioners are concerned, the same would be of no assistance to the petitioners. The illegal transactions already carried out by the

petitioners from time to time are prior to those letters received by the Bank on 25.11.1998 stating that they had no complaints against the Bank or the petitioners and thus such unauthorized transactions carried out by the petitioners in breach of their duty, banking norms, Reserve Bank of India's guidelines and the service conditions would not be legalized or exonerate the petitioners from serious misconduct.

121) In our view, there is no substance in the submission of the learned counsel that the Inquiring Authority had not followed the instructions issued by the Central Vigilance Commission dated 16.9.1999 while conducting departmental inquiries. In our view, the learned counsel for the respondent No.1 Bank is right in his submission that the purpose of such instructions issued by the Central Vigilance Commission was totally different. There was no case of delay alleged by the petitioners in conducting the inquiry by the Inquiring Authority appointed by the respondent No.1. Admittedly, the Enquiring Authority was not approved by the Central Vigilance Commission and thus those instructions would not apply to the inquiry conducted by the Inquiring Authority against the petitioners. Those instructions and more particularly Note 3.2.2 clearly provided that if rules were in conflict with the instructions, the rules would be required to be modified with immediate effect. It is thus clear that even if those instructions were applicable, the same were not mandatory with immediate effect.

122) The Supreme Court in case of *General Manager, Punjab and Sind Bank & others* (supra) has adverted to its earlier judgment in case of *Bank of India v. Degala Sriramalu*, **(1999) 5 SCC 768**, in which it was held that the strict rules of evidence are not applicable in departmental inquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence upon which a reasonable person acting reasonably and with objectivity may arrive at a finding of holding the gravamen of the charges against the delinquent officer. The perverse finding is one which is based on no evidence or one that no reasonable person would arrive at it. The Supreme Court has also adverted to the judgment in case of *State Bank of India v. Bela Bagchi*, **(2005) 7 SCC 435** in which it is held by the Supreme Court that the bank employee has to exercise higher degree of honesty and integrity. He is concerned with the deposits of the customers of the bank and he cannot permit the deposits to be tinkered with in any manner.

123) In case of *Damoh Panna Sagar Rural Regional Bank v. Munna* **(AIR 2005 SC 584)**, it was held that though the Manager of a bank who had indulged in unauthorized withdrawals, subsequently returned the amount with interest, conduct of unauthorized withdrawals amounted to a serious misconduct. In this case also, the petitioners have not disputed that various amounts were withdrawn and were subsequently deposited by the

petitioners in various accounts of the customers, however, allegedly at their request. In our view, even if the customers had not raised any objection when such withdrawals were made from their account and were subsequently alleged to have been deposited in their accounts, the petitioners cannot be exonerated since such transactions were carried out without any authority given to them by the bank. The principles laid down by the Supreme Court in case of *General Manager, Punjab and Sind Bank & others* (supra) would squarely apply to the facts of this case.

124) The Supreme Court in case of *State Bank of India & others v. S.N. Goyal* (2008) 8 SCC 92 has held that 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. Employees of a bank, in particular the Manager, are expected to act with absolute integrity and honesty in handling funds of customers / borrowers of the bank. Any misappropriation, even temporary, of funds of the bank or its customers / borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, Manager of the bank receiving such amount is required to credit it immediately to the borrower's account. If matter is to be viewed lightly or leniently, it will encourage other bank employees to indulge in such activities thereby undermining entire banking system. In this case also, the petitioners had debited and credited various accounts of the customers without authority based on the alleged oral instructions

from the customers of the bank. In these circumstances, in our view, the disciplinary authority was right in holding the petitioners guilty of various misconducts and breach of duty based on the evidence available on record.

125) The Supreme Court in case of *Disciplinary Authority-cum-Regional Manager & others v. Nikunja Bihari Patnaik (1996) 9 SCC 69*, has held that if each officer / employee is allowed to act beyond his authority, the discipline of the organization / bank will disappear, the functioning of the bank would become chaotic and unmanageable. No officer of the bank can be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organization, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority, that too a course of conduct spread over a sufficiently long period and involving innumerable instances, is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds.

126) It is held that the very discipline of an organization and more particularly, a bank is dependent upon each of its

employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulations / Rules, which constitutes misconduct. No further proof of loss is really necessary. It is held that in that case, in some instances, some acts had profit to the bank, but it was also equally true that in some other instances, the funds of the bank had been placed in jeopardy.

127) In our view, the petitioners could not have exceeded beyond their authority under the guise of helping some of the customers with a view to increase the business of the cliental of the bank. Under the guise of providing such help to the customers, the petitioners could not have been allowed to exceed their authority and put the bank to the risk of suffering any loss or inviting any claims from any of the customers. The Court has to see whether such act was within the authority of the petitioners or not and not whether there was actually any loss suffered or whether any actual complaints were made by any of the customers due to such unauthorized acts of the employees or not. It is not in dispute that the respondent no.1 – bank had not permitted the petitioners to exceed their authority with a view to increase the turnover and cliental of the respondent no.1 – bank. In our view, the petitioners thus under the guise of increasing the business and clientele of the bank could not have exceeded their powers and authority given to them by the bank and under the Reserve Bank of India guidelines. In our view, with these facts at hand, no sympathy can be shown

by this Court in favour of the petitioners.

128) In our view, even if there were no complaints made by the customers during the period when such unauthorized transactions were carried out by the petitioners in the accounts of those customers, that would not condone or exonerate the petitioners from unauthorized acts committed by them. In our view, unauthorized acts committed by the petitioners would not become authorized in absence of any complaints or even if no pecuniary loss of any nature whatsoever was suffered by the bank or there was no gain to the petitioners.

129) Insofar as the judgment of the Supreme Court in case of *Om Prakash Bhatnagar v. Madhya Pradesh Electricity Board & others* (supra), relied upon by the learned counsel for the petitioners, is concerned, the Supreme Court had intervened with the order of the High Court in a situation where the appellant was acquitted of all the charges leveled against him in the criminal proceedings. The allegations against the appellant were made after two years of the alleged demand of bribe. There was a considerable delay in leveling charges against the appellant. The State Government had accepted the judgment of the Criminal Court acquitting the appellant of all the charges. The Supreme Court in the facts at hand in that matter held that the appellant would only be entitled to 50% back wages. The appellant was already superannuated. In our view, this judgment of the Supreme

Court would not advance the case of the petitioners.

130) The petitioners could not dispute before this Court that out of several charges leveled against them by the respondent no.1 – bank in the charge-sheets, the criminal proceedings were only in respect of one out of such charges in which the petitioners were acquitted. The petitioners also could not satisfy this Court as to whether even in respect of such charge, which was subject matter of the criminal proceedings, the petitioners were honourably acquitted on merits.

131) Insofar as the judgment of the Supreme Court in case of *S. Bhaskar Reddy & another v. Superintendent of Police & another* (supra), relied upon by the learned counsel for the petitioners is concerned, in our view, this judgment would not advance the case of the petitioners. There was an *ex-parte* enquiry conducted by the Enquiry Committee against the employees and the criminal case and the departmental proceedings were based on similar facts and evidence. The employees were acquitted honourably by the trial Court. In this case, the Inquiring Authority proceeded with the charges other than the charge, which was subject matter of the criminal proceedings and after considering the oral and documentary evidence had held both the petitioners guilty of all the charges which were allowed to be proceeded with by the Division Bench of this Court. The Supreme Court also considered that the findings recorded by the Enquiry Officer was an *ex-parte*

departmental proceedings. In our view, the facts before the Supreme Court in that matter were totally different and are clearly distinguishable in the facts of this case.

132) Insofar as the judgment of the Supreme Court in case of *Deputy Commissioner, KVS & others v. J. Hussain* (supra), relied upon by the learned counsel for the petitioners, is concerned, it is held that the discretion which can be exercised by the disciplinary authority has to be exercised by considering whether a particular penalty specified in the relevant rules would be proper considering the nature and gravity, past conduct, nature of duties assigned to the delinquent etc. The Court, while undertaking a judicial review of the matter is not supposed to substitute its opinion on reappraisal of facts. The Court can interfere with the punishment imposed only when it is found to be totally irrational or is outrageous in defiance of logic. The Court can interfere with the punishment only when the punishment is shockingly disproportionate, suggesting lack of good faith. Merely because in the opinion of the Court, lesser punishment would have been more appropriate, that cannot be a ground to interfere with the discretion of the departmental authorities.

133) In the said judgment, the Supreme Court has held that even if the punishment appears to be excessive either but even if it were to be so, merely because the Court feels that penalty should have been lighter than the one imposed, by itself is not a ground to

interfere with the discretion of the disciplinary authority. It is held that a person when dismissed from service is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Maintenance of discipline of an institution is equally important. In our view, the said judgment of the Supreme Court would not assist the case of the petitioners but would assist the case of the bank.

134) Insofar as judgment of the Supreme Court in case of *Allahabad Bank & others v. Krishna Narayan Tewari* (supra), relied upon by the learned counsel for the petitioners is concerned, the Supreme Court interfered with the order passed by the high Court holding that the case of the employee that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence had not been effectively rebutted by the employer. The disciplinary authority had not properly appreciated the evidence nor recorded reasons in support of his conclusion. The appellate authority had without recording its own reasons and independently appreciating the material on record simply reproduced the findings of the disciplinary authority. The Supreme Court had taken a view that the disciplinary authority and appellate authority had faltered in the discharge of their duties resulting in miscarriage of justice and thus the High Court was right in interfering with the orders passed by the disciplinary authority and the appellate authority.

135) The Supreme Court also made an observation that the High Court had found that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of alleged misconduct of the respondent. The Supreme Court did not interfere with the discretion exercised by the High Court in not remanding the matter back in that matter. The earlier view taken by the Supreme Court in number of matters that if serious misconduct on the part of the bank employee is proved beyond reasonable doubt, merely because no actual loss was suffered by the employer due to such serious misconduct, that could not have been a ground for exonerating the employee, were not brought to the notice of the Supreme Court in case of *Allahabad Bank & others* (supra). In our view, the facts at hand before the Supreme Court in the said judgment were totally different and are clearly distinguishable in the facts of this case.

136) Insofar as judgment of the Supreme Court in case of *Kazi Moinuddin Kazi Anwaruddin v. The State of Maharashtra & others* (supra), relied upon by the learned counsel for the petitioners, in support of the submission that since the respondent no.1 - bank did not file any affidavit in reply in these two petitions is concerned, and thus the averments made in the writ petitions are deemed to have been admitted, is concerned, it is not in dispute that the petitioners in both these cases had challenged the decision of the Inquiring Authority, the disciplinary authority, the appellate authority and the reviewing authority. All such orders

are impugned on the basis of the documentary and oral evidence already on record. While exercising powers by this Court under Article 226 read with Article 227 of the Constitution of India, the Court has to examine whether the orders passed by the disciplinary authority, the appellate authority and the reviewing authority were not perverse and were in accordance with law.

137) The petitioners are not allowed to bring any new facts on record in the writ petitions, which were not required to be dealt with factually by the respondent no.1. In our view, thus in the facts and circumstances of this case, even if an affidavit in reply is not filed by the respondent no.1, the respondent no.1 is entitled to place reliance upon the documentary and oral evidence, which were on record before the authorities below and also in the present proceedings. The judgment of this Court in case of *Kazi Moinuddin* (supra) thus would not assist the case of the petitioners.

138) Insofar as judgment of the Supreme Court in case of *State Bank of India & others v. D.C. Aggarwal & another* (supra), relied upon by the learned counsel for the petitioners is concerned, the Supreme Court had held that the respondent in that matter was a very senior officer of the bank and was promoted to the top executive grade. The Supreme Court was refrained from entering into merits and made an observation that once the disciplinary authority found that the action of the respondent did not cause any harm to the bank nor the respondent gained out of it, the High

Court cannot be said to have misdirected itself in quashing the order for procedural error. The Supreme Court held that the inquiry in that matter was vitiated on the ground that the proper procedure and the principles of natural justice was not followed by the Inquiry Officer while conducting inquiry. Be that as it may, in the later judgment of the Supreme Court, it has been clearly held that if serious misconduct is proved against an employee, merely because no loss is suffered by the employer would not be of any significance to exonerate the employee. The Supreme Court in case of *State Bank of India & others v. D.C. Aggarwal & another* (supra) thus would not assist the case of the petitioners.

139) Insofar as submission of the learned counsel for the petitioners that filling up of pay-in-slip for customers by the bank employees is a routine practice being followed all over India is concerned, it is not the case of the petitioners that the same was authorized to be filled in by the bank. In this case, more particularly when there are allegations that some of the accounts of the customers were debited and/or credited by the petitioners and various unauthorized transactions are carried out, it would be relevant to consider whether even pay-in-slip for such customers are filled in by the petitioners or not. In our view, the customers of the bank have to operate their own accounts and could not have been operated by the petitioners on their behalf including to fill up the pay-in-slip for the customers of the bank under the guise of routine practice being followed all over India.

140) Insofar as the allegations against the petitioner in Writ petition No.3410/2004 that he had used his relatives' account for Benami deposits for tapping unaccounted money of the bank against the rules and procedure of operating those accounts himself without authority's consent are concerned, we are not inclined to accept the submission of the learned counsel for the petitioners that the respondent ought to have examined any of its customers to substantiate those allegations leveled against the petitioners. The petitioners had not disputed the transactions carried out by the petitioner in WP 3410/2004 carried out in his relatives' accounts. Merely because the relatives of the petitioner in WP 3410/2004 had not made any complaint to the bank against him would not exonerate the said petitioner from his breaches committed by him without any authority, express or otherwise, from the bank.

141) Insofar as allegations of the bank against the petitioner in WP 3410/2004 that he had availed National Saving Certificates loan on three occasions without prior permission of the regional office and even without actually holding such certificates is concerned, merely because no objection was raised in the earlier audit reports about such illegality committed by the petitioner in WP 3410/2004, would be of no significance. A perusal of the record indicates that the said petitioner had first availed of the loan facility from the bank and thereafter purchased the National

Savings Certificates.

142) Insofar as the allegations made by the bank that the petitioner had availed vehicle loan and the lien of the bank was not registered with the Regional Transport Officer (RTO office) by the petitioner is concerned, it has been admitted by the petitioner that he had not registered the charge of the bank with the RTO. In our view, merely because in the insurance policy obtained by the petitioner in respect of the said vehicle, the policy was in the name of the petitioner and the bank or that no objection was raised in the earlier audit reports would not exonerate the petitioner from this serious misconduct.

143) A perusal of the record clearly indicates that both the petitioners had carried out number of unauthorized transactions without any authority and without taking prior permission of the bank thereby jeopardizing the interest of the bank and contrary to the banking norms fixed by the Reserve Bank of India. In these circumstances, in our view, the punishment of dismissal inflicted by the disciplinary authority and confirmed by the appellate authority and the reviewing authority, cannot be interfered with by this Court. In our view, the punishment of dismissal was the most appropriate punishment in such facts at hand. It is not the case of the petitioners that the proper opportunity was not granted by the Inquiring Authority while conducting inquiry or by the disciplinary authority post submission of the inquiry report by the Inquiring

Authority. A perusal of the record indicates that the full opportunity was rendered by the Inquiring Authority and also by the disciplinary authority to the petitioners.

144) In our view, the findings rendered by the enquiring authority, the disciplinary authority and the reviewing authority were rendered in compliance with the principles of natural justice and not being perverse, cannot be interfered with by this Court under Articles 226 and 227 of the Constitution of India. In our view, both the petitions are totally devoid of merit. We, therefore, pass the following order.

ORDER

Writ Petition Nos.3410/2004 and 3511/2004 are dismissed. Rule is discharged. There shall be no order as to costs.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)

spt/