

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8618 of 2017**

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Santosh Kumar Paswan son of Jitendra Kumar Paswan resident of at  
Daulatpur South of Raja Bazar, District - Jehanabad, Bihar.

... .. Petitioner/s

Versus

1. State Bank of India, Regional Business Office, Region - IV, Madhubani, 1st Floor, ADB Madhubani Branch Building, Madhubani - 847211 through its Regional Manager.
2. Disciplinary Authority Cum Regional Manager (RBO) State Bank of India Regional Business Officer, Madhubani, 1st Floor of ADB Madhubani Branch, Madhubani - 847211.
3. State Bank of India, Secretariat of the Dy. General Manager (B & O), Zonal Office, Kale Bhawan Road, Purnea - 854301 through its Dy. General Manager (B & O).
4. Dy. General Manager (B & O) and Appellate Authority, State Bank of India, Administrative Office, Purnea.
5. Chief Manager (Enquiry), Enquiry Dept. State Bank of India, Region -IV, Regional Business Office, Madhubani, 1st Floor of ABD Madhubani Branch, Madhubani - 847211.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|--------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Dhaneshwar Prasad Gupta, Adv.<br>Mr. Subhro Sanyal, Adv. |
| For the Bank         | : | Mr. Sanjiv Kumar, Adv.                                       |

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**CAV JUDGMENT**  
**Date : 17-12-2018**

Heard learned counsel for the parties.

In this case, the petitioner is challenging the enquiry report dated 30.11.2016 issued by the Chief Manager (Enquiry), the order dated 31.1.2017 passed by the Regional Manager & Disciplinary Authority, RBO, Madhubani and the appellate order dated 6.5.2017 passed by the Deputy General Manager (B & O) and the Appellate Authority, whereby and whereunder, the petitioner has been dismissed from service.



The petitioner had joined the service in the year 2009, was posted as an Assistant at Dagmara Branch of the State Bank of India and, soon thereafter, he was transferred to Nirmali Branch but his I.D. was not activated to work on CBS Platform. Even after several requests, the I.D. of the petitioner was not activated but, later on, the petitioner was again transferred to the Dagmara Branch of the Bank where his I.D. was activated. The petitioner was assigned the job of cash in-charge, having claimed by the petitioner that he had no experience either of working on CBS platform or on the job of Cash In-charge. As has been claimed by the petitioner that the Branch was very active branch whereas the system was not functioning properly as the system was very slow and several function key such as F-7, F-10 which were meant for identification of the name of customer was not functioning properly but, even after his repeated requests, the fault was not corrected. On that account, he had to make payment/receipt only on the basis of old teller system or else face the wrath of the customers. While he was performing as a clerical job, the First Information Report was lodged against the petitioner being Kunaili P.S. Case No. 24 of 2016 for offence under Sections 406, 409, 420, 467, 468 and 471 I.P.C. which was lodged on a complainant made by the Branch Manager, SBI, Dagmara vide application dated



19.5.2016 wherein an allegation has been made that one Mukesh Singh and Beena Devi who were/are the account holders being A/c No. 3084294439 and A/c No. 11894461881 respectively that from their account, Rs. 26,000/- and 20,000/- respectively have been debited by Santosh Kumar Paswan, whereby, he had committed criminal act by withdrawing money from the account of two customers illegally. The petitioner was put behind the bar, ultimately he was released on the strength of the order passed in Cr. Misc. No. 29856 of 2016 and, after his release from the confinement, the petitioner was sought an explanation with respect to nine imputations basically withdrawal of money from the account of Mukesh Singh and Beena Devi as well as he had operated the bank account of Rajnish Kumar and Pawan Kumar with their fake signatures respectively as it does not tally with their recorded signature. The petitioner filed explanation dated 28.6.2016 where he has not denied the incident the manner the money was transferred from the account of Mukesh Singh and Veena Singh but, has given an explanation that by mistake he has pressed the F-12 button and the amount was debited from the account of Mukesh Singh. In a similar manner also, the money was debited from the account of Bina Devi by committing mistake of pressing the F-12 button and tendered his apology having



stated that he has not caused any loss to the Bank, whereafter, a formal charge-sheet was served upon the petitioner vide letter dated 18.8.2016 which reads as follows:-

“CHARGE SHEET

*It has been decided to initiate disciplinary action against you for under noted lapses observed on your part during your posting at our Dagmara Branch:*

*i. You have withdrawn cash unauthorisedly by doing under noted malafide transactions using you ID no. 5996651*

*a) Rs. 26000/- from the account of Shri Mukesh Singh, A/c no. 30982399478 on 22.01.2016 without cheque/withdrawal form.*

*b) Rs. 20000/- from the account of Smt Beena Devi, A/c no. 11894461881 on 12.02.2016 without cheque/withdrawal form.*

*ii. You have inserted fictitious withdrawal form for Rs. 26000/- dt. 22.01.2016 of A/c no. 30842944391 favouring Shri Rajneesh Kumar (with fake signature as it does not resemble with the recorded signature) without posting in CBS.*

*iii. On receipt of verbal complaint/enquiry made by Shri Mukesh Singh, you have deposited Rs. 26000/- in another account (A/c no. 30842944391) favouring Shri Rajneesh Kumar on 29.03.2016.*

*iv. You have unauthorisedly transferred Rs. 26000/- from S/B A/c no. 30842944391 of Shri Rajneesh Kumar to the A/c no. 30982399478 of Shri Mukesh Singh*



*without signature of Shri Kumar on the voucher dated 29.03.2016 to cover up the malafide transactions.*

*v. You also have inserted fictitious withdrawal form for Rs. 20000/- dt. 12.02.2016 of A/c no. 11894475714 favouring Pawan Kumar without posting in CBS.*

*vi. On receipt of verbal complaint/enquiry made by Smt. Beena Devi, you have deposited Rs. 20000/- in another account (A/c no. 11894475714) favouring Shri Pawan Kumar dated 21.03.2016.*

*vii. You have unauthorisedly transferred Rs. 20000/- from the S/B A/c no. 11894475714 of Shri Pawan Kumar to the a/c no. 11894461881 of Smt. Beena Devi without signature of Shri Kumar to cover up the malafide transactions.*

*viii. All the vouchers were posted by PF ID 5996651 of Shri Santosh Kumar Paswan without any stamp of maker on the vouchers.*

*ix. Most of the vouchers have the same handwriting which resemble with the handwriting of Shri Santosh Kumar Paswan.*

*x. By your above acts, you have violated instructions of the bank and acted in a manner, which is highly prejudicial to the interest of the Bank and tantamount to "Gross Misconduct" in terms of clause 5(j) of Memorandum of Settlement dated 10.04.2002.*

*2. You, are therefore, instructed to submit statement of defence within 7 days from the receipt of the Memorandum, failing which it will be presumed that you have nothing to offer and Bank will proceed further against you as deemed fit.*



*3. Meanwhile, please acknowledge receipt of this Memorandum on duplicate hereof with your full signature and date.*

*Sd./-*

*Shaileendra Kumar Yadav*

*Disciplinary Authority*

*-cum- Regional Manager”*

Thereafter, he was also asked to file explanation which he filed reiterating the same stand what he had taken earlier in his reply dated 27.8.2016. The enquiry was conducted and concluded in which the petitioner participated along with his defence representative, also it appears, at the end of the enquiry, the petitioner was asked to file written defence which he could not do on account of the fact that the person who was representing the petitioner in the enquiry proceeding was busy on account of demonetization. From the enquiry report, it shows that altogether 23 documents of the bank has been marked as exhibits and three documents on behalf of the petitioner have also been marked. The enquiry officer considered the evidence on record and found all the charges proved which reads as follows:-

*“All of these facts have proved that CSE has withdrawn cash unauthorizedly by doing malafide transactions in SB account of Smt. Bina Devi A/C No. 11894461881 on 12.02.2016, without cheque/withdrawal form.”*



*“All of these facts prove CSE, who prepared and signed him self on behalf of the account holder and has inserted the fictitious withdrawal form for Rs. 26,000/- dt. 22.01.2016 of Shri Rajneesh Kumar A/c No. 30842944391 without posting in CBS in the day’s voucher.”*

*“Of course there is no evidence of verbal or written complaint from Shri Mukesh Kumar but on the principles of “PREPONDERANCE OF PROBABILITY” based on above facts it is prove that CSE has deposited Rs. 26,000/- in SB account of Shri Rajneesh Kumar (A/C No. 30842944391) on 29.03.2016 to enable him reverse the entry made in SB account of Shri Mukesh Kumar.”*

*“I have perused prosecution/Defence documents, their written briefs and proceeding recorded in EPR to find out the fact of the allegation. CSE has prepared, established and posted a profarma voucher of Rs. 26,000/- to reverse the debit (withdrawal) entry in SB account of Shri Mukesh Singh by debiting SB account no. 30842944391 of Shri Rajneesh Kumar (P.Ex.-8). The voucher, did not have debit confirmation from the account holder Shri Rajneesh Kumar to debit his account. Further, CSE himself prepared, posted and signed the credit voucher of cash deposit for Rs. 26,000/- to credit SB account of Shri Rajneesh Kumar (P.Ex.7). In both the vouchers, hand writing in tallies with other vouchers prepared by the CSE including his own withdrawal from his staff account (P.Ex.21, 22 and 23). Both the vouchers (P.Ex.7 and 8) proved that CSE has unauthorisedly*



*transferred Rs. 26,000/- to cover up the malafide transactions done by him.”*

*“All of these facts prove that CSE, who has prepared and signed, has inserted fictitious withdrawal form form Rs. 20,000/- dt. 12.02.2016 of Shri Pawan Kumar A/c No. 11894475714 without posting in CBS in the day's voucher to cover up his fraudulent acts.”*

*“Further, Smt Bina Devi withdrew her complaint in writing stating that withdrawal was made without her knowledge and after her complaint, amount was deposited in her account (D.Ex.1).”*

*“I have perused prosecution/Defence documents, their written briefs and proceeding recorded in EPR to find out the fact of the allegation. CSE has prepared, established and posted a proforma voucher of Rs. 20,000/- to reverse the debit (withdrawal) entry in SB account of Smt. Bina Devi by debiting SB account no. 11894475714 of Shri Pawan Kumar (P.Ex.-14). On this voucher, there is no debit confirmation taken from the account holder Shri Pawan Kumar authorized to debit his account. Further, CSE has himself prepared, posted and signed credit voucher of cash for Rs. 20,000/- to credit SB account of Shri Pawan Kumar (P.Ex.13). In both the vouchers, hand writing is tallied with other vouchers prepared by the CSE including his own withdrawal (P.Ex. 21,22 and 23). Both the vouchers (P.Ex.13 and 14) proved that CSE has unauthorisedly transferred Rs. 20,000/- to cover up the malafide transactions.”*



*“Further, in account statement of Shri Mukesh Singh (P.Ex.2), Smt. Bina Devi (P.Ex.3), Shri Rajneesh Kumar (P.Ex.9 & 10) and Shri Pawan Kumar (P.Ex.15 & 16) it is observed that all the related entries were posted by the ID no. 5996651. This ID is of Shri Santosh Kumar (CSE) which is proved in report no. 009607 (P.Ex.17).”*

*“Hand writing in all of the above vouchers tally with other genuine vouchers, prepared by the CSE including his own Withdrawal form his SB (staff) account (P.Ex.21, 22 and 23).*

*Hence, all these vouchers were prepared by the CSE.”*

*“I have perused prosecution/Defence documents, their written briefs and proceeding recorded in EPR to find out the fact of the allegation and found that all the 10 allegations, are proved, thus the charges of “Gross Misconduct” against Shri Santosh Kumar Paswan (Assistant U/S) in terms of paragraph 5 (j) of the Memorandum of settlement dated 10<sup>th</sup> April 2002 (Bipartite) stands proved.”*

After the submission of the charge-sheet, the petitioner was given the copy of the enquiry report, ultimately the petitioner has been visited with the order of punishment by the Disciplinary authority which was challenged before the Appellate Authority who considered the appeal of the petitioner, rejected the same, which is under challenge.



The ground has been taken by the petitioner that the complainant who had made a complaint was not examined, there was no oral evidence to corroborate the fact with regard to charges leveled against the petitioner as well as Bina Devi who had made a complaint has already withdrawn the complaint on the ground that the money which was debited has already been credited to her account and the Branch Manager has ensured that no action would be taken against the petitioner on the plea that the same act will not be repeated in future and pleaded that it is the human error and having no complaint against any person.

Learned counsel for the petitioner in support of his submission has placed reliance on the judgment in the case of State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772, Roop Singh Negi Vs. Punjab National Bank & Ors. reported in (2009) 2 SCC 570 and Narain Pandey Vs. Pannalal Pandey reported in (2013) 11 SCC 435 and, on that strength, learned counsel for the petitioner has submitted that the procedure that has been adopted by the Bank in conducting the disciplinary enquiry is blatantly suffers from procedural illegality as well as punishment awarded to the petitioner is so excessive requires interference, whereas, the Bank has taken a plea that the charges are serious in nature against the petitioner as he had



withdrawn the money from the account of two customers without their permission and credited their withdrawn money to their respective account through the account of two customers without their consent which is completely illegal, there was no procedural irregularity in conducting the enquiry as the procedure which was followed by the Bank is based on the practice of holding of the enquiry. It has further been said that the documents have been marked as exhibit with the consent of both the sides. He has further submitted that the documents of the petitioner have also been exhibited, so, he cannot say that any prejudice has been caused to the petitioner in any manner during enquiry. On the theory of prejudice, learned counsel for the Bank has placed reliance on the judgment in the case of State Bank of Patiala & Ors. Vs. S.K. Sharma reported in (1996) 3 SCC 364 para 23 and 34. On the question of quantum of punishment, he has placed reliance on the judgment B.C. Chaturvedi Vs. Union of India & Ors. reported in AIR 1996 SC 484, State Bank of India & Ors. Vs. Narendra Kumar Pandey reported in (2013) 2 SCC 740.

In the present case, the petitioner has argued basically two points, firstly the fairness of holding the departmental proceeding as it has been said that the principle of natural justice, which is required to be followed, has not been followed and



second aspect of that matter is that there was no loss to the Bank, inasmuch as, the punishment, awarded to the petitioner, is shockingly disproportionate to the nature of charge, even if is found to be proved, requires interference of this Court.

In order to resolve the gamut of dispute, this Court would like to first place the reliance on the judgment passed in the case of B.C. Chaturvedi Vs. Union of India & Ors. reported in AIR 1996 SC 484 wherein the parameter of interference in the matter of procedural fairness in the departmental enquiry as well as on the quantum of punishment, inasmuch as, interference by a writ court while exercising the power of judicial review has been considered as that was the case with regard to the fact that the person was proceeded departmentally for acquisition of property beyond the known source of income. The power of judicial review is to ensure that the individual has received fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. If the enquiry has been conducted, the Court is to see whether the enquiry has been held by a competent officer or whether the rule of principle of natural justice has been complied with, whether the findings of the conclusion are based on some evidence, the authority entrusted with the power to hold the enquiry has jurisdiction and power in the authority to



arrive to a finding of fact or conclusion that the finding was based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. The enquiry proceeding is based on the principle of preponderance of probability. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court while exercises the power of judicial review, it does not act as the appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court may interfere when the enquiry officer has not conducted the enquiry following the principle of natural justice or violates the statutory provision and the findings arrived at is based on no evidence or the conclusion or findings recorded are such no reasonable person would have ever reached to such conclusion. The Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

In the question of interfering with the order of punishment, the Court has held that the penalty is not open to judicial review by the High Court under Article 226. If the High Court reached a finding that there was some evidence and would



conveniently reach to such conclusion, the Court would refuse to interfere. The order of the authority who has jurisdiction and unrestricted power to determine the appropriate punishment is final. If the order is supported on finding to substantiate the misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing an employee. The Court has no jurisdiction if the findings prima facie made out the case of misconduct, adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the High Court and if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari would lie. If the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court, it would mould the relief appropriately. It is relevant to quote paragraph nos. 12, 13 and 17 which reads as follows:-

*“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the*



*court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*

13. *The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of*



*punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*

17. ----- *The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty.----- "*

In the case of State Bank of India & Ors. Vrs. Narendra Kumar Pandey reported in (2013) 2 SCC 740, the scope of judicial review has been considered, it will be relevant to quote paragraph nos. 23 to 27 which reads as follows:-



*“23. The Inquiring Authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion that most of the charges were proved. In a departmental inquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this Court reported in Union of India v. Sardar Bahadur; (1972) 4 SCC 618 and R.S. Saini v. State of Punjab and Others; (1999) 8 SCC 90. The documents produced by the bank, which were not controverted by the charged officer, supports all the allegations and charges levelled against the charged officer. In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the bank and not controverted it is always open to the Inquiring Authority to accept the same.*

*24. In Bank of India v. Apurba Kumar Saha ; (1994) 2 SCC 615, this court held:*

*“4. ... A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and honesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the bank employer had resulted in violation of principles of natural justice of fair hearing”.*

*25. The High Court, in our view, under Article 226 of the Constitution of India was not justified in interfering with the*



*order of dismissal passed by the appointing authority after a full-fledged inquiry, especially when the Service Rules provide for an alternative remedy of appeal. It is a well acceptable principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. In State Bank of India and Others v. Ramesh Dinkar Punde (2006) 7 SCC 212, this Court held that the High Court cannot re-appreciate the evidence acting as a court of Appeal. We have, on facts, found that no procedural irregularity has been committed either by the Bank, presenting officer or the Inquiring Authority. Disciplinary proceedings were conducted strictly in accordance with the Service Rules.*

26. *This court in State of Andhra Pradesh v. Sree Rama Rao; AIR 1963 SC 1723 held:*

*“7. ... Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence especially when the charged officer had not participated in the inquiry and had not raised the grounds urged by him before the High Court by the Inquiring Authority.”*

27. *This Court in Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup; AIR 1957 SC 82 held where a workman intentionally*



*refuses to participate in the inquiry, cannot complain that the dismissal is against the principles of natural justice. Once the inquiry proceed ex parte, it is not necessary for the Inquiring Authority to again ask the charged officer to state his defence orally or in writing. We cannot appreciate the conduct of the charged officer in this case, who did not appear before the Inquiring Authority and offered any explanation to the charges levelled against him but approached the High Court stating that the principles of natural justice had been violated.”*

In the case of State Bank of Patiala & Ors. Vs. S.K. Sharma reported in (1996) 3 SCC 364, in this case, different facets of the departmental proceeding have been considered by the Hon'ble Apex Court and the parameter for interference by the Apex Court has been delineated. In this case, the Hon'ble Apex Court has divided the natural justice into two facets, firstly, the delinquent employee was not given any opportunity to defend himself in the departmental proceeding and, secondly, the delinquent has not been given sufficient opportunity in the departmental proceeding to defend his case. The first front denotes failure to comply the principle of natural justice i.e. no notice, no opportunity and “no hearing” categories, the departmental enquiry would vitiate but, in the matter of irregularity i.e. deviation and infraction of certain provision in conducting the enquiry proceeding, in this facet, it has to be examined on the angle of



prejudice has been caused to the delinquent employee. That has been divided, firstly mandatory and secondly directory and it has been held that the Court will interfere against the order passed against the delinquent employee but, in the second matter of natural deviation, the Court will examine the issue from the angle of quantum of prejudice, whether deviation or non-observation of certain procedure formality has caused prejudice to the delinquent during enquiry. In the aforesaid case, there was also deviation and non-observance of certain regulation, plea was taken that the order passed by the authority is vitiated. The Court has examined taking example of the civil proceeding under the Civil Procedure Code as well as the proceeding under the Criminal Procedure Code. If the rules and regulations are substantial in nature had to be complied with. In case of substantive provision, theory of substantial compliance would not be available. But, in a case of following certain procedures in the enquiry proceeding other than that of the fundamental in nature, theory of substantial compliance will be available. In such cases, complain or objection on this score has to be judged on the touch stone of prejudice that the delinquent officer was not given a fair deal. On factual consideration, on consideration of entire facts and circumstances, it is found that no real prejudice has been caused to a party aggrieved in absence of



any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement. If the delinquent does not controvert the authority of the officer or record of testimony, gathered behind his back, cannot expect to succeed in any subsequent demand that there was no opportunity for cross-examination specially when it was not asked for and there was no dispute of the veracity of the statement. Proceeding would vitiate when it would be shown, the prejudice has been caused to the delinquent. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but, only an explanation to the acts, absence of opportunity to cross-examination does not create any prejudice in such cases. The principle of natural justice cannot be put in a straight-jacket, its applicability depends upon the context of fact and circumstances of the case. The objective is to ensure the fair hearing, a fair deal, to the person whose rights are going to be effected. A distinction ought to be made between between violation of principle natural justice, audi alteram partem, as such and violation of facete of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no



adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". The person is dismissed from service without hearing, it would fall under the first category and the order of dismissal would be invalid or void without applying the test of prejudice but, when a person is dismissed from service without supplying him enquiry officer's report or without due opportunity of cross-examination to the witness, it would be a case falling in the latter category, violation of second facet of natural justice. In this case, the validity and order has to be decided on the touch stone of prejudice. The crux of the matter has been narrated in paragraph no.28 and the Court has culled out the principle of natural justice and its effect or deviation in violation of procedure of the departmental enquiry in paragraph no.33, which reads as follows:-

*"28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell c. Duke of Norfolk [1949 (1) All.E.R.109] way back in 1949, these principle cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances of each case. [See Mahender Singh Gill v. Chief Election commissioner (1978 (2) S.C.R.272)]. The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. [See A.K.Roy v. Union of India 1982 (1) S.C.C.271) and Swadeshi Cotton Mills v. Union (1981 (1) S.C.C.664)]. As pointed out by*



*this Court in A.K.Kraipak L Ors. v. Union d India & Ors. (1969 (2) S.C.C.262), the dividing line between quasi-judicial function and administrative function [affecting the rights of a party] has become quite thin and almost indistinguishable a fact also emphasized by House of Lords in C.C.C.U. v. Civil Service Union [supra] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the Cases it is from the standpoint of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/no hearing may defeat the very proceeding - which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India (1984 (3) S.C.C.465). There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different*



words, "no opportunity" and "no adequate opportunity". To illustrate - take a case where the person is dismissed from service without hearing him altogether [as in *Ridge v. Baldwin*]. It would be a case falling under the first category and the order of dismissal would be invalid or void, if one chooses to use that expression [*Calvin v. Carr*]. But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report [ *Managing Director, E.C.I.L. v. B. Karunkar*] or without affording him a due opportunity of cross-examining a witness [*K.L. Tripathi*] it would be a case falling in the latter category - violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touch-stone of prejudice, i.e., whether, all in all, the person concerned did nor did not have a fair hearing. It would not be correct - in the light of The above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in *B. Karunkar* should govern all cases where the complaint is not that there was no hearing [no notice, no opportunity and no hearing] but one of not affording a proper hearing [i.e., adequate or a full hearing] or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touch-stone of prejudice as aforesaid.

33. We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:



*(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character. (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.*

*(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudicate, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental*



*character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.*

*(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.*

*(b) In the case of violation of a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be*



*seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.*

*(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and "adequate opportunity", i.e., between "no notice"/"no hearing" "no fair hearing".*

*(a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem ]. (b) But in the latter case, the*



*effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.*

*(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. . In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”*

The case of Narain Pandey Vs. Pannalal Pandey reported in (2013) 11 SCC 435 relates to proceeding against the advocate who had committed misconduct of highest degree by filing a fraudulent testimony and fraudulent compromise petition, there being no signature of the person concerned as the person to whom he was claiming to be representing in the case.



In this case, the Disciplinary Committee of the Bar Council of India has recorded a finding against the advocate concerned, Bar Council of India, appellate authority, interfered in the matter, but Hon'ble Supreme Court restored the order of Disciplinary Authority. Paragraph nos. 9 to 11 being relevant are quoted herein below:-

*“9. The consideration of the matter by the Disciplinary Committee, BCI is clearly flawed. It overlooked the most vital aspect that seven witnesses tendered in evidence by the complainant had stated clearly and unequivocally that the respondent-advocate had filed forged and fabricated vakalatnamas on their behalf and they had not filed any compromise in Consolidation Court. The respondent-advocate had not at all cross-examined these witnesses on the above aspect although they were cross-examined on other aspects. There was ample documentary evidence as well which proved the allegations made in the complaint that the respondent-advocate had filed forged and fabricated vakalatnamas as well as compromises in diverse proceedings before the Consolidation Court. The Disciplinary Committee, BCI accepted the oral submission of the respondent-advocate (appellant therein) without realizing that the respondent even did not offer himself for cross-examination in respect of the affidavit that he filed in support of his reply. As a matter of fact, the respondent-advocate did not tender any evidence whatsoever in rebuttal. Mere oral submission unsupported by oral or documentary evidence on behalf of the respondent-advocate did not justify reversal of thorough and well-considered finding by the Disciplinary Committee, BCUP on analysis of the oral and documentary evidence let in by the complainant in support of the complaint. It is true that the complainant and the respondent-advocate are uncle and nephew and some dispute regarding the property amongst*



*the family members of the appellant and the respondent was going on but on that basis the well- reasoned and carefully written finding recorded by the Disciplinary Committee, BCUP was not liable to be reversed by the Disciplinary Committee, BCI.*

*10. The finding recorded by the Disciplinary Committee, BCI, “this Committee on perusal of the allegations made in the complaint does not agree with the findings of appearing on behalf of both the sides and forging the signatures arrived at by the Disciplinary Committee of the State Bar Council of Uttar Pradesh and the order wherein the appellant is debarred from practice for seven years” cannot be sustained.*

*11. On careful consideration of the entire material placed on record, we are of the considered view that the findings recorded by the Disciplinary Committee, BCUP that the respondent-advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises which adversely affected the interest of the parties concerned deserve to be restored and we order accordingly.”*

In the case of Roop Singh Negi Vs. Punjab National Bank & Ors. reported in (2009) 2 SCC 570, in this case the disciplinary proceeding was initiated on the point of failure to observe the principle of natural justice was consideration in the aforesaid case, some documents of the Bank were missing, the documents were collected by the police which was simply produced, not proved and purported confession of the appellant was also not good. The enquiry officer has drawn an inference that the delinquent had connection with those persons who had used



those bank accounts. The Court has said that the departmental proceeding is a quasi judicial proceeding, the Enquiry Officer performs a quasi judicial function, the charge leveled against the delinquent officer must be found to have been proved, the Enquiry Officer has a duty to arrive to a finding of fault taking into consideration the material produced on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Only evidence whereupon reliance was placed by the Enquiry Officer was purported confession made by the appellant before the police. The delinquent had taken a plea that the police has got his signature under coercion and force. He was tortured in the police station. The said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the



offence was committed in such a manner that no evidence was left. The Court in the said judgment has quoted paragraphs of Union of India Vs. H.C. Goel reported in AIR 1964 SC 364 and the quotation in the following terms; “In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent ?”.

The departmental proceeding is a quasi judicial proceeding, although the provision of the evidence Act is not applicable, only the principle of natural justice is required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether finding recorded with respect to commission of misconduct by the delinquent officer is based on relevant piece of evidence and irrelevant facts have been excluded therefrom. Inference on fact must be based on evidence which meet the requirements of legal principles though the strict



principle of Evidence Act does not apply in the departmental proceeding. Suspicion whatsoever strong cannot be basis for arriving to the finding of misconduct and would be basis for inflicting punishment to a delinquent employee. It is relevant to quote paragraph no.23 of the aforesaid judgment which reads as follows:-

*“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.*

In the case of State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772, the Court has



considered the facets of natural justice in the matter of departmental proceeding and the Court has held that in the departmental proceeding, a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges. The enquiry officer discharging the quasi judicial function is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official, he has to see as to whether the un rebutted evidence is sufficient to hold that the charges have been proved against the delinquent employee. In that case, the Court has held that no oral evidence was recorded, the documents were not supplied, in such situation, it could not have been concluded that the charges were proved against the delinquent. It is relevant to quote paragraph nos. 28 and 39 which reads as follows:-

*“28. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent*



*official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*

*29. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.”*

The aforesaid view has recently been reiterated in the case of Union of India & Ors. Vs. P. Gunasekaran reported in (2015) 2 SCC 610 where the Court has held to what extent the high court, while exercising the power of judicial review should examine the facts and law, noted down what to be done and what not to be done. It is appropriate to quote paragraph nos. 12, 13, 14, 15, 16 & 20 which reads as follows:-

*“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the*



*evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:*

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

*13. Under Article 226/227 of the Constitution of India, the High Court shall not:*



- (i). re-appreciate the evidence;*
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii). go into the adequacy of the evidence;*
- (iv). go into the reliability of the evidence;*
- (v). interfere, if there be some legal evidence on which findings can be based.*
- (vi). correct the error of fact however grave it may appear to be;*
- (vii). go into the proportionality of punishment unless it shocks its conscience.*

14. *In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree Rama Rao[AIR 1963 SC 1723], many of the above principles have been discussed and it has been concluded thus:*

*"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under*



*Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."*

15. *In State of Andhra Pradesh and others v. Chitra Venkata Rao[(1975) 2 SCC 557], the principles have been further discussed at paragraph-21 to 24, which read as follows:*

*"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule*



*followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever*



*have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.*

22. *Again, this Court in Railway Board, representing the Union of India, New Delhi v. Niranjana Singh said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjana Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.[pic]*



23. *The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan.*

24. *The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to*



*justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."*

16. *These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another v. Rattan Singh[(1977) 2 SCC 491]. To quote the unparalleled and inimitable expressions:*

*"4. .... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or*



*arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."*

20. *Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."*

Thus, in nutshell, the conclusion is that the fair procedure is to be adopted, the delinquent employee should be given a chance to defend his case and the charge to be proved on the basis of some supporting evidence but, area and scope of interference on the finding recorded by Enquiry Officer will be in



consideration to the fact that as to whether fair and reasonable opportunity was given during enquiry, findings are based on some evidence, irrelevant consideration has not been taken by Enquiry Officer and relevant facts have not been left out and the findings are not perverse. In the event that fair standard of natural justice has been followed, the next step would be to examine procedural fairness in conducting the enquiry proceeding, in event it is found deviation, is to be examined on the test in any manner caused prejudice to the delinquent employee, in the event the court arrives to a finding that infraction of certain procedure caused prejudice, in such an event, the Court would interfere and would give direction to proceed further from that stage as per procedure prescribed. The next question is to examine the quantum of punishment imposed against the delinquent employee as to whether requires interference.

In the case of Ganesh Santa Ram Sirur vs State Bank of India & Anr reported in 2005 (1) SCC 13, there the Bank Manager had granted loan, was proceeded departmentally, one of the ground was taken that the Bank has not received any financial loss. In this case, the Court has said that the objective is to ensure a fair hearing, a fair deal to a person whose rights are going to be affected. The test of prejudice is on litmus test to record the



finding in the matter of preservation of natural justice. It is not a case of no notice, no opportunity and no hearing but, the best challenge is on failure to provide fair and proper hearing i.e. adequate or a full hearing or violation of procedural rule, in that event to examine in the light of requirement governing the test of prejudice and the Court has held that the test of integrity is to be applied in the matter of bank service. The Court has held acting beyond one's authority is by itself a breach of discipline and trust is a serious misconduct. If the person is holding the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. It is relevant to quote paragraph no. 34 which reads as follows:-

*“34. The Bank Manager/Officer and employees and any Bank nationalised/or non-nationalised are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge No. 5 framed against*



*the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant do not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule 34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC. Etawah & Ors. vs. Hoti Lal & Anr. reported in 2003(3) SCC 605. Wherein this Court has held as under:-*

*"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."*



In that case of State Bank of India & Anr Vrs. Bela Bagchi & Ors. reported in 2005 (7) SCC 435, the Court has held that the Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. The relevant portion of the aforesaid judgment reads as follows:-

*“A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, [1996] 9 SCC 68, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a*



*misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.”*

In view of the above, this Court has to decide the decision making process and not the decision and can interfere with the punishment on the test, the quantum of punishment is outrageous defiance of logic as no reasonable person can inflict such a punishment. It is also very much clear that the actual loss cannot be the criteria in the bank services to substitute the punishment by another punishment.

In the present case, before initiation of proceeding, the petitioner was served with the show-cause and asked explanation with regard to withdrawal of the money from two customers, namely, from the account of Mukesh Singh having A/c No. 30922399478 and from the account of Beena Devi having A/c No. 11894461881 without their authority and without permission. The petitioner was served Memo No. 199 dated 15.6.2016 (Annexure-6) which was replied by the petitioner vide his explanation dated 28.6.2016 wherein he has specifically taken a plea that he had not withdrawn the cash amount of Rs. 26,000/- from the account of Mukesh Singh rather has taken a plea that on 22.1.2016, one Rajneesh Kumar having A/c No. 30842944391 submitted the withdrawal form for payment of Rs. 26,000/- and by mistake F12



button was pressed and, on that account, the said amount was debited from the account of Mukesh Singh vide A/c No. 30982399478 and, in the case of Bina Devi, A/c No. 11894461881 similar mistake was committed, on that account, the amount of Rs. 20,000/- was debited from the account of Bina Devi and credited to the account of Pawan Kumar having A/c No. 11894475714 and stated when it transpired, proper adjustment was made by crediting the amount in their respective accounts by the voucher prepared by him and that it was a bonafide mistake but, the Bank was not satisfied with the said explanation, issued charge-sheet dated 18.8.2016, again the explanation was asked and the similar defence was taken in the second explanation (Annexure-9) whereafter the Bank appointed Enquiry Officer, namely, Ali Mohammed Khan, the Chief Manager (Enquiry) and Sri Ajay Kumar Verma, Manager was appointed as Presenting Officer, the enquiry was conducted on 19.9.2016, 23.9.2016, 1.10.2016, 6.10.2016 and 18.10.2016. The petitioner was represented by his defence representative. The enquiry was concluded on 18.10.2016. The documents of the Bank, as prosecution exhibits 1 to 23 without objection of the petitioner and the (petitioner) Defence has also placed reliance on three documents which were marked as DExt No.01 to Dext No.3 as well as the petitioner also examined



Sri Arun Kumar Maurya, Branch Manager as DW-1 and the Presenting Officer submitted prosecution brief vide letter dated 25.10.2016 and the petitioner was also asked to submit his defence brief vide Enquiry Officer letter no. 666 dated 18.10.2016, letter no. 689 dated 25.10.2016, letter no. 708 dated 8.11.2016, letter no. 722 dated 16.11.2016 and letter no. 744 dated 24.11.2016, reminded the petitioner and his representative on several occasions but, he failed to file written defence brief, took the plea that defence representative was too much busy on account of imposition of demonetization. Ultimately, the Enquiry Officer submitted the enquiry report dated 30.11.2016. The plea has been taken that he could not submit the brief as the representative was very busy on account of increase of work due to demonetization. The enquiry was concluded on 18.10.2016 whereas demonetization was enforced on 8.11.2016 and, as such, the defence taken has no legs to stand. So, the plea that has been taken by the petitioner is liable to be rejected, whereafter, the management gave the enquiry report for making his submission on findings of the enquiry report and whereafter the petitioner filed his written submission vide letter dated 22.12.2016 (Annexure-12). In his explanation, he has not taken substantial plea of defence but only denied the allegation in vague manner. The Disciplinary



Authority not being satisfied with the plea taken, vide letter no. 1045 dated 20.1.2017, further issued the show-cause on question of quantum of sentence and gave opportunity of personal hearing, in pursuant thereof, the petitioner appeared and made oral submission before the Disciplinary Authority but, ultimately, the Disciplinary Authority vide memo No. RM/RBO/BO dated 31.01.2017, removed the petitioner from service with superannuation benefit and without disqualification from future employment, further the period of suspension will not be treated as on duty. Against the order of removal, the petitioner filed appeal before the appellate authority. In appeal, he has taken a different stand altogether in the matter of withdrawal of the money from the account of Mukesh Singh, similarly in the matter of withdrawal of money from the account of Bina Devi, he has taken a different plea as that of the plea taken earlier. Here, he has taken a plea that on 12.2.2016 on account of Saraswati Puja, there was great rush, Sri Pawan Kumar, a canteen boy and casual worker of the Branch came to him and inquired about the balance in the account of Smt. Bina Devi and also tendered withdrawal slip of Rs. 20,000/- from his account for payment. As the function of F7 or F10 key were not properly working and due to inadvertence, he pressed the F12 key and, on that account, the amount of Rs. 20,000/- from the



account of Bina Devi was debited. He has given a twist to the story that Pawan Kumar had asked information with respect to balance amount in the account of Bina Devi and further he has taken a plea that on complaint of Bina Devi, he could know his mistake that through his account ID, the amount was withdrawn and after taking voucher, on enquiry, it was transpired that withdrawal slip of Rs. 20,000/- pertains to the account of Pawan Kumar, a Canteen Boy, was laying with the bunch of vouchers without affording any debit. So, he could understand the seriousness of the matter. Branch Manager had asked Pawan Kumar to deposit the money and he had handed over Rs. 20,000/- saying that Pawan Kumar had given it for defrayal and, accordingly, he had deposited the said amount. So, in this case, he has developed a new story which he has not taken at any stage of the enquiry. Further in the case of Mukesh Singh, he has stated that Mukesh Singh himself had come with the withdrawal slip of Rs. 26,000/- and the same was withdrawn from his account and the money was handed over to him, at that time, Mukesh Singh was along with Rajneesh Kumar and Madan Jha and said Mukesh Singh and Rajneesh Kumar are members of the SSB Force posted in the same camp i.e. Kunauli Camp which is completely a somersault to the earlier plea that by mistake instead of debiting money from the account of Rajneesh



Kumar, the money was debited from the account of Mukesh Singh. So, the plea that he has taken after receipt of the removal letter is completely de hors to the earlier plea, both cannot be reconciled with each other. Shifting change of his defence is at large itself indicates the culpability of mind of the petitioner. It is submitted that the Disciplinary Authority considered the enquiry report in which the enquiry officer has found all the charges proved and recorded a finding that the account of Pawan Kumar and account of Rajneesh Kumar were treated to be a parking account as he withdrew the amount of from Mukesh Singh and Bina Devi, later, using the account of Pawan Kumar and Kumar Rajneesh through withdrawal slip, the money was accordingly deposited and credited to the account of Mukesh Singh from the account of Rajneesh Kumar and from the account of Pawan Kumar to the account of Bina Devi.

The enquiry officer has correctly exhibited the documents filed by the Bank vis-à-vis the documents of the petitioner corresponding to the respective documents maintained by the Bank in course of business as were marked exhibits for prosecution as well as defence without any demur of the petitioner's side. It is also apparent that the disciplinary authority has agreed with the findings recorded by the enquiry officer and



incompatible plea, at two stages by the petitioner itself reflecting that when he was caught, he started to change his version of defence. The appellate authority has also affirmed the order.

The plea has been taken that by the petitioner that no witness was examined to prove the document, first thing is that the document of the Bank as well as of the petitioner were exhibited without any objection and all the documents have been certified by the competent authority of the Bank to be true. Whether the documents marked as exhibits can be used as valid piece of documentary evidence, in the light of Bankers' Books Evidence Act, 1891. Section 2A of the Bankers' Book Evidence Act reads as follows:-

*“[2A. Conditions in the printout.-A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:-*

*(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and*

*(b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of-*

*(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;*



*(B) the safeguards adopted to prevent and detect unauthorised change of data;*

*(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;*

*(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;*

*(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;*

*(F) the mode of identification of such data storage devices;*

*(G) the arrangements for the storage and custody of such storage devices;*

*(H) the safeguards to prevent and detect any tampering with the system; and*

*(I) any other factor which will vouch for the integrity and accuracy of the system.*

*(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.]”*

And the mode of proof of entries in bankers’ book has been postulated in Section-4 of the Bankers' Books Evidence Act and is quoted herein below:-



*“4. Mode of proof of entries in bankers’ books.- Subject to the provisions of this Act, a certified copy of any entry in a bankers’ book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.”*

For proving the document, certificate by a person in-charge of computer system containing a brief description of computer system has to be given and all the certified copy of any entry in the bankers’ book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be submitted as an evidence of matter, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible as a piece of evidence.

So if the Bank produces a document with the certification from a competent authority, it will be treated to be an piece of evidence and rightly the documents were marked as exhibit. It is not necessary that in every situation, the oral evidence is necessary for proving the same. The presumption of entries made in the record will be treated to be proper piece of evidence



and will have evidentiary value attached with presumption of correctness of entries. In the same manner, the documents produced by the defence were also marked as exhibit, inasmuch as, he had never challenged or raised an objection even in any of the explanation the mode, manner and method adopted for holding the departmental enquiry in making documents as exhibits. The allegation against the petitioner is very much serious, in different judgments of the Hon'ble Apex Court, namely, Suresh Pathrella Vs. Oriental Bank of Commerce reported in AIR 2007 SC 119 followed the judgment in the case of Chairman and Managing Director, United Commercial Bank Vs. P.C. Kakkar reported in (2003) 4 SCC 364 wherein the Court has said that the Bank employees are required to maintain highest standards of honesty and integrity as they deal with the money of customer. Every officer/employee of the Bank is required to take all possible steps to protect the interest of the Bank and to discharge his duty with utmost integrity, honesty, devotion and diligence and to do nothing unbecoming of bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank and in the case of Disciplinary Authority cum Regional Manager Vs. Nikunja Bihari reported in (1996) 9 SCC 69 where the Court has held that no loss or profit resulted in case, has any



bearing when the officer/employee acted beyond their authority. The very discipline of an organization more particularly a Bank is dependent on action of each officer and employee acting and operating within their allotted sphere. The same principle has been reiterated in the case of State Bank of India Vs. Ramesh Dinkar Pandey reported in (2006) 7 SCC 212.

This Court is not to act as an appellate authority but, has to examine the decision making process. This Court is to examine the case on its merit on the guideline as to whether the evidences are material, are available on record showing sufficient materials for proving the charges are in the shape of illegal withdrawal of money, later on, credited the money to their respective accounts, tampered pay-in-slip of different accounts with respect to two customers, namely, Mukesh Singh and Bina Devi including Rajneesh Kumar and Pawan Kumar to justify his action showing the bonafide mistake he has used the account of Rajneesh Kumar and Pawan Kumar as a parking account to justify the debit and credit from respective accounts. The reliance placed by the petitioner in the case of Roop Singh Negi and Saroj Kumar Sinha have no application in the present case as the natural justice cannot be put to the straight-jacket formula and caste iron, it is dependent on situation of each case, merely some procedural violation ipso



facto will not vitiate the enquiry proceeding unless the prejudice is shown to have caused, in absence, it will not be safe for the Court to interfere with the enquiry proceeding, finding and the order of punishment.

In the result, this Court does not find any merit in the present writ application and the same is dismissed.

**(Shivaji Pandey, J)**

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