IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 27, 2018

\+ W.P.(C) 17579/2006, CM No. 14546/2006

BHUPINDER SINGH

..... Petitioner

Through: Mr. C. Mohan Rao, Adv. with Mr. Anuj Ranjan, Mr. Devender Kumar & Mr. Lokesh Kr. Sharma, Advs.

versus

BANK OF BARODA & ORS.

..... Respondents

Through: Mr. Pramod Gupta, Adv. with Ms. Kashvi Dutta, Adv.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner challenging the Inquiry Report and the orders dated August 2, 2004, January 31, 2005 and May 10, 2005 whereby the charges framed against the petitioner have been proved in the Inquiry Report and the petitioner was imposed the penalty of dismissal by the Disciplinary Authority (vide order dated January, 31 2005) and the appeal against the said order was dismissed by the Appellate Authority (May 10, 2005).

2. Some of the facts are, a charge-sheet was issued to the petitioner on September 12, 2003 which in substance included the following allegations:

"A "difference A/c" with a credit balance of ₹1,36,868.43 was opened in the FDR ledger No.4 on folio No.12 on 30.09.1992 in violation of the rules/guidelines of the Bank. The difference account was shown separately in the balance book of FDR ledger No.4 as on 30.09.1992. While opening the FDR difference A/c, prior written permission of the higher authorities was not sought/obtained.

The outstanding balance of ₹1,41,492.43 in the difference account was finally liquidated by debiting full amount in the account without date of the entry. It was observed that a sum of ₹1 Lac was fraudulently siphoned off from the FDR "Difference A/c" maintained at the Branch, through the SB A/c No.5116 in the name Shri Naveen Mehta, a dormant a/c till then, which was subsequently activated by Shri Bhupinder Singh. Shri Naveen Mehta denied having deposited any amount in his SB A/c 5116 at the Branch for reviving the a/c.

The balance updation programme was, used without any base, in the most unauthorized/unjustifed/unfair manner, abusing his positno as Senior Branch Manager.

The balance in the Current A/c No.1713 of M/s Grace Incorporated was increased/inflated by ₹1,00,000/- by using the 'Balance Updation Programee' on 21.06.1993 (after taking down of balances) or on 22.06.1993. Thereafter, on 02.07.1993, a sum of ₹1,00,000/- was transferred from the Current A/c No.1713 in the name of M/s Grace Incorporated to the Current A/c No.1751 of Jukie (India) Private Limited. On 12.08.1993 from the Current A/c No.1751 of Jukie (India) Private Limited, a sum of ₹50,000/- was transferred to Current A/c No.1775 of M/s S S Padam & Company, which was opened on that day. The cheque for ₹50,000/- in the Current A/c No. 1751 of Jukie (India) Private Limited as well as the paying-in-slip (credit voucher) for ₹50,000/- in the current a/c No.1775 of M/s S S Padam & Company were both *passed by Shri Bhupinder Singh, singly without the initials of any other officer.*

On 13.08.1993 (i.e. the next day), this amount of ₹50,000/- was withdrawn from this account (Current Account No. No.1775 of M/s S S Padam & Co) alongwith ₹1,50,040/- from their Demand Loan A/c (both cheques signed by M/s S S Padam & Co) for issuing one DD favouring Riat Sons, drawn on Ludhiana Branch. A loose cheque No.225046 in the Current A/c No. 1775 was issued by Shri Singh on 13.08.1993. The said loose cheque in the Current A/c No. No.1775 of M/s S S Padam & Co for ₹50,000/- and the Demand Loan Cheque for ₹1,50,040/- as also the Demand Draft voucher for ₹2,00,000/- were all passed/signed by Shri Singh singly, without the initials of any other officer of the Branch.

A Demand Loan for ₹2,00,000/- was sanctioned by Shri Bhupinder Singh to M/s S S Padam & Co. a newly opened account where a margin of 25% was stipulated. However, it is evident from the series of events/transactions as mentioned above that Shri Singh arranged this 25% margin (i.e ₹50,000/-) for M/s S S Padam & Co. by way of transfer of the said sum of ₹50,000/- from the account of Jukie (India Private Limited, which in turn had received credit of ₹1,00,000/- by way of a transfer of ₹1,00,000/- to their (Jukie (India) Pvt. Ltd.) A/c from M/s Grace Incorporated, where an unauthorized credit of ₹1,00,000/- was afforded using balance updation programme.

The statement showing Housekeeping/Balancing position in respect of Current A/c sent to the Regional Officer, DCR-II (now DMR-II) by Shri Singh did not tally with the actual status of balances."

3. The petitioner replied to the charge-sheet vide letter dated November 11, 2003. On January 19, 2004, an Inquiry Officer was appointed, who submitted his report dated August 2, 2004. On August 31, 2004, the petitioner submitted his comments on the

findings of the Inquiry Officer to the Disciplinary Authority. On February 7, 2005, the Disciplinary Authority imposed on the petitioner the penalty of dismissal from respondent's service which is ordinarily a disqualification for future employment. On March 17, 2005, the petitioner preferred an appeal against the order of the Disciplinary Authority dated February 07, 2005 before the Appellate Authority. On May 10, 2005 the Appellate Authority found no merit in the appeal and dismissed the same.

4. It is the submission of Mr. C. Mohan Rao, Ld. Counsel for the petitioner that the petitioner was at the relevant time in the year 1992 posted as Senior Manager in the East of Kailash branch of the Bank. By the time the petitioner took over as the Senior Manager of Branch, the Branch was 16 years old with the business of ₹ 14 Crores and a profit of ₹25,00,000/-. Within a short time of the petitioner taking over the Bank, the business of the bank doubled and the profit increased from ₹ 25,00,000/- to ₹1,08,00,000/-. It is his submission that when the petitioner took over the branch in 1992 the G/L Heads of the Branch were not balanced since 1985-86 and there were huge house-keeping arrears in the branch. The petitioner while increasing the business and profit of the bank undertook the job of completing the house keeping arrears and balancing the accounts. All this the petitioner achieved in a very short time with limited staff available at his disposal. The staff crunch was so severe that peons and the officers handled the clerical jobs. The petitioner addressed a letter to the Regional Office on January 22, 1993, pointing out that in the previous few months the branch has relieved four clerical staff and one officer and one officer posted in the Branch in July, 1993 has not reported for duty till the date of addressing the letter. The letter pointed out that the

business of the branch has doubled in one year and peons and officers are being forced to do the clerical jobs. According to him, a computer received for Savings Department could not be started due to non-availability of a clerk to run it. During his submissions, he has highlighted the number of commendation received by the petitioner for excellent results achieved by him as a Senior Manager despite severe and depleted staff conditions. According to Mr. Rao, the petitioner left the East of Kailash Branch in 1994 and worked in various positions including the most important and sensitive position in the Head Office of the respondent bank called as Chief Manager Sensitive accounts. He stated that after almost three years of the petitioner leaving the East of Kailash Branch in the year 1994, an explanation was sought from the petitioner in the year 1997 to which he submitted reply vide letter dated September 18, 1997. According to Mr. Rao, the petitioner stated, as the transactions being 5-6 years old he remember the transactions vaguely. According to him, the Bank had subsequently called upon Mr. Naveen Mehta to deposit the amount of ₹ 1,00,000/- on the ground that the amount was wrongly credited to his account and Mr. Naveen Mehta had withdrawn the said amount knowing that the amount does not belong to him. In other words, it was the endeavor of Mr. Rao to contend that the bonafide of the petitioner could not have been doubted as the amount of ₹ 1,00,000/- which was credited in the account of Mr. Naveen Mehta, was by mistake. According to Mr. Rao till 2003 nothing happened when all of a sudden the respondents initiated proceedings against the petitioner. He has highlighted the fact that the charge-sheet was issued almost 11 years after the transactions in question, which were the subject matter of the charge-sheet. He stated that it was the case of the petitioner before the Disciplinary Authority and now before this Court that though eight charges were leveled against him, they essentially pertain to alleged violation of Rules and guidelines, acting malafidely against the interest of the bank and abusing the position as a Manager of the Bank. He would highlight the fact though a charge of causing wrongful loss was also made against the petitioner, the same was held to be not proved by the Inquiry Officer. It is the submission of Mr. Rao, the Articles of allegation against the petitioner were divided into four cases, i.e., Case 1 to Case 4. Case 1 to Case 3 pertain to alleged siphoning of ₹1,00,000/- through the account of Mr. Naveen Mehta and Case 4 pertain to alleged siphoning of ₹1,00,000/- through the account of M/s Grace, in collusion with three account holders. Each case contains different allegations. In fact, some simple statements of facts were considered as allegation. The Articles of allegation did not follow any discernible pattern of chronology or narration creating confusion as to the actual allegations and number of allegations. He would state, sometimes same allegations were repeated with minor changes found to be proved by the Inquiry Officer. In order to substantiate the allegation of siphoning of money by the petitioner number of allegations of irregularities and violation of Rules and Guidelines, starting from the very inception of the petitioner's taking of the charge of the branch, were made against the petitioner. He would state, in the process, bonafide actions taken by the petitioner in the interest of the Bank and clerical mistakes committed under severe staff crunch were made subject matter of allegations and held to have been proved. According to him, the defence of the petitioner, that every action, omission / commission were within the knowledge of higher authorities at the relevant time and the same was accepted, or that there was express or implied consent were all rejected by the Inquiry Officer holding that the petitioner has not produced any documentary or other evidence. The Inquiry Officer had completely ignored the fact that the petitioner is not in possession of any document and after a lapse of more than a decade it is impossible for the petitioner to prove the consent. He stated that the Inquiry Officer has overlooked a basic principle of service jurisprudence that the burden to prove was on the management and not on the petitioner. He submitted that there is specific finding of the Inquiry Officer that *there would not have been any irregularity if it would have been done for the bank's interest with bonafide intention. But from series of events and by circumstantial evidence it led to suspicion that CSO did the same with fraudulent intent*. According to Mr. Rao, it is clear that the alleged irregularities were essentially in the nature of clerical mistakes of no consequence, which has taken place due to heavy work load under the conditions of severe staff crunch. It was his submission that the finding of the Inquiry Officer with regard to the siphoning of the money through the account of Mr. Naveen Mehta and the account of M/s. Grace are perverse inasmuch as it is an admitted position that the house keeping position of the branch was very bad at the time, the petitioner took over as the Senior Branch Manager of the Branch. The Inquiry Officer has taken note of the fact regarding the huge housekeeping arrears and the fact that G/L heads remained imbalanced since 1985-86. The petitioner apart from increasing the business and profits of the Bank, also undertook the job of completing the house keeping arrears and rectifying the balances. The natural consequence was that the discrepancies in the account that come to the notice had to be reflected in a statement. Otherwise, the entire exercise was meaningless. This statement of differences that came to notice pursuant to housekeeping and balancing exercise is called the *"difference account"*. He stated there are no Rules or Guidelines for opening the *"difference account"*. Once the *"difference account"* is opened, the same has to be brought to the notice of the higher authorities. According to Mr. Rao there is also no dispute that the petitioner had brought the *"difference account"* to the notice of the higher authorities. The allegation was that the petitioner had opened the difference account 'without prior permission of the higher authorities' / Regional Office. The respondent bank could not able to prove the existence of guidelines and the petitioner has violated the same. Hence, the finding of the Inquiry Officer that opening of *"difference account"* is in clear violation of Rules and Guidelines of the bank as branch / branch official has no power whatsoever to open such account, as difference account, by rejecting the submission of the petitioner as not acceptable, is arbitrary.

5. Mr. Rao had also stressed on the fact that the opening of the *"difference account"* had implied consent of the Regional Office. According to him, the Inquiry Officer rejected the contention on the ground that no evidence or document has been shown that the consent was obtained. The allegations were also made against the petitioner under Case 1 alleging that the petitioner had liquidated the difference account without date of entry, without initials of any other officer; and that there were over writing of the date mentioned; the petitioner had not ensured that the voucher contains the same date; passing of voucher singly by the petitioner etc. have not been proved as it was the case of the petitioner that the vouchers though passed by him were not prepared by him. The

overwriting was due to shortage of staff and excessive work pressure and it was a clerical mistake without any consequence etc. He would state, unfortunately, the Inquiry Officer rejected the plea that overwriting was due to shortage of staff and excessive work pressure by holding the same shows the negligent and callous approach of the petitioner and is not at all desirable. It was his submission that the Inquiry Officer also rejected the contention and held that a responsible bank officer passing a voucher has to keep an eye on the dates and held the allegations as proved. It is his submission that the Inquiry Officer had a biased approach.

6. In this regard, he has drawn the attention of the Court to page 252 of the paper book wherein it was observed that the *"Defence side has merely stated that the management at that time did not object to it, is not acceptable. The same is beyond comprehension and in clear violation of the bank norms. Why the MIP interest was debited to this account (G/L Difference account) instead of P/L interest paid on FD is again a matter of investigation / suspicion"*. He also referred to pages 254-255 in support of his contention. According to him, the aforesaid would show that the burden has wrongly been cast on the petitioner after a gap of 11 years. No norms were proved. Each and every action of the petitioner was within the knowledge of the Regional Office. No objections were raised at the relevant time, shows that the petitioner had not committed any illegality.

7. Even on the allegation that he siphoned off the money through the account of Mr. Naveen Mehta is concerned, it was the submission of Mr. Rao that it is admitted that the petitioner filled the pay in-slip of ₹200/-. According to him, the petitioner denied that

he was aware that the account was dormant. He denied the allegation that he filled in the pay in slip for ₹13,000/-. According to him, the finding of the Inquiry Officer that the petitioner had filled in the pay in slip of ₹13,000/- is without any basis. He stressed on the fact that the mere comparison of the two pay in slips show that the pay in slip of ₹13,000/- was not in the hand writing of the petitioner. According to Mr. Rao, the Inquiry Officer without any proof has also found that the petitioner had filled the application for bankers cheque and the deposit slip of the bankers cheque whereas the petitioner had admitted filling in the application form for bankers cheque and nothing more.

8. According to Mr. Rao, the important steps to substantiate the allegation of siphoning off was that in the account of Mr. Naveen Mehta rather than entering ₹24,175/- on the basis of bankers cheque an amount of ₹1,24,175/- was entered. The entry was not made by the petitioner. The entry was made by ALPM operator and authenticated by the Management. The operator who made the wrong entry was not even examined. The Manager who authenticated the entry was examined as MW-4. The evidence of MW-4 shows that he did not remember the seating arrangement of the bank. However, he can remember a single transaction with all the details. From his evidence it is obvious that he was making a false statement in order to save his own skin. His evidence was not taken seriously even by the Inquiry Officer. He would state, the petitioner cannot be held responsible for making the wrong entry in the account of Mr. Naveen Mehta. According to Mr. Rao, last link in order to prove the allegation of siphoning off is that the money was withdrawn by the petitioner. There is no allegation

that the money was withdrawn by the petitioner. The allegation was that the petitioner had singly cleared the bill without the initials of other officer as required. The defence of the petitioner is that he had cleared the cheque as the account was reflecting the sufficient balance and had cleared the same bonafidely and the initials of other officer was not taken due to staff crunch as usually happened during the time.

9. Mr. Rao, had also stated the filling up of the pay in slip of ₹200/- is not an exceptional case. In terms of the evidence of DW-1 the same was being done routinely and has not been done with any malafide intent. According to Mr. Rao, the important aspect is that the allegation of siphoning off cannot be held to be proved unless the wrong entry was made by the petitioner and the amount was withdrawn by him. There is no allegation and no effort has been made to show that the petitioner had made an entry or withdrawn the amount. In the absence of the allegation and proof that the wrong entry was made by the petitioner, it is not possible to hold that the allegation of siphoning of the money as proved. It was his submission, clearly there is no evidence in support of the allegation and the finding of the Inquiry Officer is based purely on suspicion and unwarranted surmises and conjectures.

10. On the aspect of the siphoning off the money from the account of M/s Grace, it was the submission of Mr. Rao that it was alleged that the petitioner has siphoned off another sum of ₹1,00,000/- in collusion with three account holder viz; M/s Grace, Zukie India Pvt. Ltd. and S.S. Padam and Co. The contention of the respondent was that the petitioner had created an elaborate web in collusion with the three account holders in order to siphon off ₹1,00,000/-. The elaborate modus operandi portrayed by the

respondent bank itself shows that no person in the position of the petitioner could ever conceive and execute the fraud of the nature and that too in collusion with three account holders for siphoning off ₹1,00,000/-. While making these allegations, the respondent bank has concealed the fact that the Current Account of the bank from which ₹1,00,000/- was purportedly siphoned off has in fact showed excess amount of ₹ 71,679.43/- (as evident from the note of the Board of the respondent dated February 28, 2000 (at page 83). This shows that bonafide mistakes have taken place not only decreasing the amount from the banks account but also increasing the amount. He stated that M/s Grace paid the amount under protest taking the specific plea that the entry was not a mistake but genuine transaction. The mistake has not merely reduced the amount but also increased the amount in the banks account. The allegation of siphoning off through the account of M/s. Grace is also without any proof and is based on suspicion, surmises and conjunctures on the basis of opening of the accounts by the petitioner, which is actually responsible for the increase in profit of the bank. The allegations of conspiracy between three account holders to siphon off ₹1,00,000/- however, is without any basis and merely shows bias against the petitioner strengthening the fact that proceedings were initiated against the petitioner for malafide reasons.

11. Mr. Rao has also made his submission on the aspect of delay and prejudice caused to him. According to him, it is palpably evident from the Inquiry Report that gross delay in initiating the proceedings against the petitioner has caused serious prejudice to the petitioner. In a case of the present nature, where the officers deal with thousands of transactions every day, it is impossible to recollect a particular transaction

or event that had taken place more than 11 years ago. This is also a case where all the documents are entirely and exclusively within the custody of the bank and the petitioner cannot produce any documentary or other evidence on his own, particularly after a long delay of more than a decade. In number of allegations made against the petitioner, the defence of the petitioner was that the higher authorities / RO were aware of the actions, omissions and commission on the part of the petitioner and there is implied consent. The Inquiry Officer however, rejected the stand of the petitioner holding that the petitioner has not proved the same either by documentary or other evidence though it is very clear that the petitioner was not in a position and cannot produce any evidence after a lapse of more than a decade. The findings in the Inquiry Report itself reveals that the great prejudice has been caused to the petitioner in view of the delay.

12. According to Mr. Rao, the respondent bank has contended mere delay is not sufficient and it is mandatory to plead and prove that the delay has caused prejudice. According to Mr. Rao it is the stand of the respondent bank that only a passing reference was made by the petitioner (at page 140) in the reply to the charge sheet about delay. He stated, this contention of the respondent is absolutely incorrect. For example, in response to the explanation sought by the bank in year 1997 the petitioner pointed out that, *"regarding house keeping a few things I vaguely remember"* (as the matter is 4-5 years old and I have been to three branches thereafter). "The petitioner stated that *"though I do not remember specifically."* "In reply to charge sheet the petitioner stated that *"this document is of the date February 16, 1994. More than 11 years have passed. Who knows when and by whom that remark was made*". Mr. Rao stated the petitioner

had raised the plea of delay at every stage including in the appeal and in the present writ petition.

13. According to him, it is thus absolutely incorrect that the petitioner has not pleaded that prejudice was caused to him on account of delay. The petitioner had pleaded delay and prejudice at every stage. Prejudice is also evident in every allegation made against the petitioner. The respondent made a specious effort to justify the delay stating that after the petitioner left the branch in 1994 internal Inquiry was conducted between 1995 to 1997; explanation was called from the petitioner in 1997; demand was made against Mr. Naveen Mehta on January 01, 1998 and referred to the audit committee note of the year 2000 and issuance to the charge sheet in 2003. The reference to these dates is sufficient to reject the plea that the delay is justified. First, there was no reason to wait till the petitioner left the branch. Nothing has been brought to show why action was taken after a long delay of more than a decade. A perusal of the Inquiry report shows almost all the actions of the petitioner, which were called in question and charges were framed were within the knowledge of the bank, almost contemporaneously. The MW-3 in his cross examination has stated that frauds were detected in the year 1992 (at page 161). It is clear that every bonafide action taken by the petitioner for which there was implied consent at the relevant time was framed as an irregularity and allegations were made against the petitioner for malafide reasons. Responding to victimization of the petitioner for malafide reasons Deputy General Manager (IBA) vide letter dated January 27, 2003 observed ‘I request you to believe your General Managers and not those elements, who want to harm this bank by

harassing and demotivating performing Manager' (page 139). The delay in initiating the proceedings is not genuine or bonafide but has been taken for malafide reason, knowing fully well that it would be impossible for the petitioner to defend himself after a long gap of more than a decade by placing the burden of proof on the petitioner rather than on the respondent management.

14. He stated, there is no controversy on the law relating to the delay in the initiation of the disciplinary proceedings and can be quashed for the same. According to Mr. Rao, from the following judgments it is clear that if there is delay in initiation of Departmental Proceedings resulting in prejudice the proceedings are liable to be quashed:

a. ***The State of Madhya Pradesh Vs. Bani Singh & Anr (AIR 1990 SC 1308);***
b. ***M.L. Tahiliani vs. D.D.A. (2002 VI AD (Delhi) 9);***
c. ***Anil Rajpal vs. Delhi Development Authority 124 (2005) Delhi Law Times 368;***
d. ***P.V. Mahadevan vs. Md. T.N. Housing Board (2005) 6 SCC 636;***
e. ***Management of Centaur Hotel vs. P.S. Mohan Nair & Anr. 2013 (1) LLN 135 (Del.)***

15. He also answers the judgments relied upon by Mr. Pramod Gupta by stating in ***R.S. Saini vs. State of Punjab and Ors. (1999) 8 SCC 90*** and ***Lalit Popli vs. Canara Bank (2003) 3 SCC 583*** it is held that the High Court in exercise of powers under Article 226 of the Constitution of India, does not act as Appellate Authority. According to Mr. Rao there cannot be any controversy regarding the extent of power this Court exercise in judicial review. In the two cases referred to by the respondent bank the issue

is that of sufficiency of evidence. He stated the present one is not a case of sufficiency of evidence but a case of rendering a perverse finding on the basis of suspicion.

16. On the ***Government of A.P. and Ors. vs. Appala Swamy (2007) 14 SCC 49*** he stated, the reliance on this judgment is absolutely misplaced. The case of ***Appala Swamay*** is a case of considering the issue of delay during the pendency of Departmental proceedings. There was no Inquiry report as in the present case which itself is disclosing prejudice. Considering the stage of disciplinary proceedings the Supreme Court while holding that no hard and fast rule can be laid down held that where the delay caused prejudiced to the employee such a case of the prejudice is to be made out by the employee before the Inquiry Officer which are still pending. Where challenge is made to Inquiry proceedings on the ground of delay even before the Inquiry report is submitted, it is necessary to make out not only case of delay but prejudice. However, where the Inquiry report itself reveals prejudice the courts of equity would not permit miscarriage of justice on the ground that prejudice was not specifically pleaded. According to Mr. Rao, in any case the present one is not a case of there being no pleadings or proof regarding prejudice. In the present case the prejudice is palpably evident in every finding of the Inquiry Officer.

17. He answers the judgments of ***Haryana Financial Corporation and Anr. vs. Kailash Chandra Ahuja 92008) 9 SCC 31, Union of India vs. Vishambhar Dass Dogra (2009) 13 SCC 102 and Union of India vs. Alok Kumar (2010) 5 SCC 349*** relied upon by the respondents to contend that prejudice has to be not only pleaded but also proved, and the petitioner further wrongly alleged that it is not the case of the

petitioner anywhere before the Inquiry Officer that his memory is impaired on account of delay, by stating this allegation is wrong the petitioner has specifically stated even in the explanation submitted to the respondent in the year 1997 that as the transactions are 5-6 years old *"he does not remember vaguely remember the details pertaining to the said transaction."* Further the judgments relied upon by the respondent bank are not applicable to the present case. The case of ***Haryana Financial Corporation*** as well as ***Bishambhar Das Dogra*** cases (supra) are the cases relating to non supply of the Inquiry report and in both the cases except for stating that non supply of Inquiry report has caused prejudice, no effort was made to show what prejudice was caused. Thus on the facts of those cases on a finding that the employees has failed to show even to the Supreme Court what prejudice was caused the Court has held that violation becomes fatal only if it has caused prejudice to the person concerned. The case of ***Alok Kumar*** (supra) was a case in which the Supreme Court has laid down that actual prejudice has to be shown and not mere violation. Thus, none of the judgments relied on by the respondent bank are applicable to the facts of the present case. According to Mr. Rao, the present case is the case of actual prejudice to the petitioner on account delay by placing the burden on the petitioner after lapse of more than 11 years that the petitioner had failed to produce any documentary or any other evidence. In support of his contention that various irregularities alleged against him were not irregularities and were in fact known to the higher authorities and consented.

18. He stated / reiterated, there is no reason and no justifiable explanation for the delay. The Inquiry proceedings are liable to be quashed on the ground of delay alone.

The Inquiry proceedings, the Inquiry report and the order of punishment suffer from blatant perversity, punishing an honest officer who had rendered selfless service promoting the interest of bank at every stage. This Court may therefore allow the petition and quash the impugned orders and Inquiry report.

19. On the other hand Mr. Pramod Gupta, learned counsel for the respondents would submit that the petitioner has based his challenge to the Inquiry Report dated August 02, 2004 on the following four grounds:-

a) The Inquiry findings are perverse and it is a case of No Evidence.

b) Inquiry Officer is biased.

c) The proceedings have been initiated with a malafide intention.

d) Inquiry Report has to be set aside on the ground of delay itself.

20. It is his submission that the petitioner has not addressed any arguments with respect to the order of the Disciplinary Authority dated January 31, 2005 and Appellate Authority Order dated May 10, 2005. In support of point (a) Mr. Gupta would submit the present case by no stretch of imagination can be called as that of 'no evidence'. The inquiry report is based on extensive documents produced by the Bank which are admitted by the petitioner and inspection certificate to this effect was given by the CO to PO which was taken on record, which collectively point towards the acts of omission and commission as alleged in the Chargesheet and the complicity of Petitioner in the matter. In this regards the findings of the Inquiry Officer are self-explanatory. The charges against the petitioner inter-alia are that of re-opening of dormant account

without the authority or intimation to the customer, inflating the said account by ₹1 Lac, withdrawal of ₹1,35,000/- from the said account. In this regard, the explanation from the petitioner dated September 18, 1997 and his admission therein, is a clinching piece of evidence showing the involvement of the petitioner. Further, the petitioner has admitted to filling of the deposit slip of ₹200/- for reviving the dormant account of Mr. Naveen Mehta. Further, there were deposits of ₹13,000/- cash on February 04, 1994 and ₹24,175/- by DD made against cash from the same branch and the amount of the DD, was inflated in the account of Mr. Naveen Mehta to ₹1,24,175/-.

21. He would state, the petitioner in his reply to Chargesheet dated November 11, 2003, tried to pin it on Mr. Naveen Mehta that the amount was withdrawn and later deposited by him into the bank account. Whereas Mr. Mehta vide his legal notice dated January 05, 1998 in response to the letter of the Bank dated January 01, 1998 has specifically mentioned that he has not operated the said account since August 14, 1987 and he retains all the blank cheques in his cheque book. However, the fact remains that on a new requisition slip a fresh cheque book bearing cheque nos. 166591-166600 was issued by petitioner bears initials of the petitioner and from the said cheque book a cheque no. 166596 was issued for ₹1,35,000/- and the same was encashed and all these transactions were singly approved by the petitioner. Management Witness III in his evidence has explained the procedure for withdrawal of cheque Token process, whereas in the present case the cheques were singly passed by the petitioner. Further, on enquiries later on, in 1999, 3 drafts of ₹40,000/- + ₹40,000/- + ₹20,000/- totalling for ₹1 Lac were deposited in the said account of Mr. Naveen Mehta. Though name of Mr.

Naveen Mehta was mentioned on the envelope, on further investigation by respondent bank no such person was found to exist at the said address and the drafts were also made against cash by persons who were not customers of those two banks. It is his submission that the petitioner has never assailed the reply of Mr. Naveen Mehta dated January 05, 1998, nor while cross examining the two MW's who had visited Mr. Mehta, has challenged veracity of statements of these witnesses on the ground that they have not visited Mr. Mehta or they are deposing falsely. In fact, on the contrary, the entire cross-examination of these witnesses is on the premise and tacit admission of petitioner, that MW's have visited Mr. Mehta. Thus, there is cogent and credible evidence against the petitioner and the same has not been refuted by the petitioner in any manner. It is further his submission, Audit Committee Note dated February 28, 2000, clearly established that the Bank was doing all within its powers to unearth the fraud and the same was time consuming and even after deploying the IT professionals the complete extent of the fraud could not be detected. Thus, from the complete reading of the Inquiry Report, it cannot be said that the present case is that of 'no evidence'. He would state, there is sufficient evidence on record which indicates the involvement of the petitioner in the misdemeanors leading to his dismissal from service. According to him, the petitioner cannot question the sufficiency of evidence or ask this Court to substitute its own opinion in place of the Inquiry Officer. He would state that judicial review of Disciplinary Proceedings under Article 226 of the Constitution of India is very limited as the Court does not act as an Appellate Authority and re-appreciate the evidence. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

22. Insofar as the other contention of petitioner that Disciplinary Proceedings deserve to be quashed on the ground of delay is concerned, he would state that the delay in the present case can be sufficiently explained since these were multi-layered transactions and despite extensive inquiries, the Bank was able to unearth few of the transactions and it was time consuming process. Petitioner has not denied that all throughout the respondents were in the process of unearthing these transactions and investigation was taking time. It is not that during the entire period of nine years, there was complete silence on the part of the respondents. Delay by itself cannot be a ground for setting aside of the Inquiry Proceedings. He would state, the understanding of the petitioner of the concept of prejudice is completely skewed and is not in consonance with the recent trend. He would rely upon the judgment of the Supreme Court in the case of ***Government of A.P & Ors v. Appala Swammy, (2007) 14 SCC 49.*** According to Mr. Gupta, it is the admitted case of the petitioner that barring a passing reference in reply dated 11.11.2003 (pages 131-140) to the chargesheet dated 12.09.2003 in the following words *"Other charges levied in the articles of charges are hypothetical and can't be levied after nine years",* the petitioner has neither pleaded nor proved any prejudice on account of delay in initiation of the Disciplinary Proceedings. In fact, @ page 140, in the line before the one reproduced above, the petitioner in his submissions while referring to the charge about Grace Account, stated, *"Above is the only charge*

which can be materially proved and has been proved wrong". Thus, even the cursory objection w.r.t delay was also not pertaining to Grace Account, but *Other Charges*. This kind of vague and unsubstantiated objection w.r.t delay is not sufficient to plead and establish prejudice.

23. He stated, it is settled proposition of law that prejudice not only has to be pleaded but also to be proved. It is not the case of the petitioner anywhere before the Inquiry Officer that his memory is impaired on account of delay in the initiation of the disciplinary proceedings or he does not recollect the transactions which are the subject matter of the disciplinary proceedings or any prejudice has been caused to him on account of delay in initiation of the Disciplinary Proceedings. Mr. Gupta states, the judgments, Mr. Rao relied on the issue of prejudice have no applicability. He relied on the following judgments:-

a. ***Haryana Financial Corporation v. Kailash Chand Ahuja (2008) 9 SCC 31.***
b. ***Union of India v. Bishamber Das Dogra, (2009) 13 SCC 102***
c. ***Union of India v. Alok Kumar (2010) 5 SCC 349***

24. It is his submission the following facts with regard to case Case IV, i.e., Fraud of ₹ 1 lac in the Current A/c No. 1713 of M/s. Grace Incorporated at East of Kailash Branch, New Delhi, conclusively prove the charge.

i. A Difference A/c No. 1000 was opened on February 26, 1993 by transferring a Debit Balance of ₹1,74,005.93. The statement of Difference

A/c during June 21, 1993 to June 30, 1993 shows closing balance of ₹2,42,775.87 and Check Balance of ₹1,42,775.87, i.e., difference of ₹1 Lac.

ii. Daily Balance reports of Current Account dated June 22, 1993 showed a difference of ₹1 lac on June 22, 1993 in the current A/c No. 1713 (Grace Incorporated). In Current A/c No. 1713 of Grace incorporated there were no credit entries in the A/c from June 21, 1993 to June 22, 1993. However, balance in the said account was increased by Mr. Bhupinder Singh by ₹ 1 lac by using Balance Updating Programme on June 21, 1993 & June 22, 1993 without any permission or authority of higher officer.

iii. Account of Jukie (India) Pvt. Ltd. was opened on June 30, 1993 with Directors – Sh. Manohar Kumar Sood, Sh. S.S. Padam, Mrs. Kiran Padam and Mrs. Renu Padam. No introduction obtained and signature card not signed by any officers of the bank at the time of opening of the Account.

iv. On July 2, 1993, A sum of ₹ 1 lac transferred from Current Account no. 1713 – M/s. Grace incorporated to Acount No. 1751 of Jukie (India) Pvt. Ltd.

v. On July 20, 1993 – Difference Account No. 1000 – Showed Balance of ₹1,26, 943.32. Further on July 21, 1993 a new Current Account No. 102 titled as Dormant Account was opened and the amount of ₹1,26,943.32 was transferred in the account no. 102, i.e., Dormant A/c.

vi. Debit Credit Vouchers dated July 21, 1993 for ₹1,26,943.32 bears signatures of Bhupinder Singh. The Daily Balance Report dated July 21, 1993 shows balance of ₹1,26,943.32 in Dormant Account No. 102 and Nil Balance in Difference Account No. 1000. However, balance position Statement sent to regional office showed that balances were tallied hence, Mr. Bhupinder Singh furnished wrong / incorrect information to the higher authorities.

vii. On August 12, 1993, a Sum of ₹50,000/- transferred from Current Account No. 1751 of Jukie India Pvt. Ltd. in current Account No. 1775 of M/s. S.S. Padam & Co. The cheque and paying slip (credit vouchers) for ₹50,000/- was singly filled by Mr. Bhupinder Singh without any signatures / initials of other officers.

viii. Current Account No. 1775 – M/s. S.S. Padam & Co. was opened on August 12, 1993 with Sh. S.S. Padam as Sole Proprietor of the firm who was also one of the director in the Company – Jukie (India) Pvt. Ltd.

ix. Current Account No. 1775 of M/s. S.S. Padam & Co. was opened with the introduction of Newly opened account, i.e., Jukie (India) Pvt. Ltd. and account opening form and signature card had not been signed by any officer of the Branch.

x. Deemed loan of ₹ 2 lacs sanctioned by Mr. Bhupinder Singh to M/s. S.S. Padam & Co. with 25% Margin. The amount of ₹50,000/- transferred to

M/s. S.S. Padam & Co. account by Jukie India Pvt. Ltd. served as Margin of 25%. The said loan account after some time became NPA and a recovery suit has to be filed for recovery of amount.

xi. Loose Cheque No. 225046 in Account No. 1775 was issued by Mr. Bhupinder Singh on August 13, 1993. The said Loose Cheque was used by M/s. S. S. Padam for issuance of DD. The said Cheque of ₹50,000/- and Demand Loan Cheque for ₹1,50,040 and DD vouchers for ₹2,00,040/- were all passed by Mr. Bhupinder Singh singly without initials / signatures of other officers at Branch.

xii. On August 13, 1993 the amount of ₹50,000/- was withdrawn from M/s. S.S. Padam & Co. Account along with ₹1,50,040/- from demand loan account. Both cheques were signed by M/s. S.S. Padam & Co. for issuing DD favouring Rial Sons drawn on Ludhiana Branch.

He seeks the dismissal of the writ petition.

25. Having heard the ld. Counsel for the parties, the first and foremost issue which needs to be decided is whether the departmental proceedings commenced with the issuance of chargesheet after almost 11 years of the transactions need to be set aside on the ground of delay. Before I deal with the submissions made, I deem it appropriate to refer to the Judgments relied upon by Mr. Rao. Insofar as the judgments relied upon by Mr. Rao in ***State of Madhya Pradesh (supra)*** is concerned, the Supreme Court held in the absence of any satisfactory explanation for inordinate delay in issuing charge memo, disciplinary proceedings after more than 12 years liable to be quashed. Similarly, in

M.L. Tahiliani (supra) this court quashed the chargesheet as there was no satisfactory explanation for the delay of 10 years caused in issuing the chargesheet. In ***Anil Rajpal (supra),*** the Coordinate Bench of this Court has set aside the chargesheet on the ground of inordinate delay after a lapse of 13 years after the award of Arbitrator having not been satisfactorily explained. Similarly, in ***P.V. Mahadevan (supra)*** the Supreme Court on the ground, that the delay was not satisfactorily explained had set aside the chargesheet. Similar is the position in the case of ***Management of Centaur Hotel (supra)*** wherein the coordinate Bench of this Court has upheld the judgment passed by the Industrial Tribunal dismissing the application filed by the Hotel under Section 33 (2) (b) of the I.D. Act and thereby declining to give approval for dismissal of the respondent on the ground that the charge sheet has been issued after 8 to 9 years, when the material evidence was not available with the respondent no.1, grave prejudice would be caused to the employee. Having noted the Judgments, the issue of delay needs to be seen from the facts that the transactions relate to the year 1994. The first statement of the petitioner was on September 18, 1997 when the same was recorded. In the said statement, petitioner does not plead that he does not remember the transactions. In fact, the statement given by him narrates the sequence of events. No doubt, at one place petitioner does state, he does not remember the dates specifically. But at the same time, he does not insist upon to look into the documents by him to recollect the transactions. Be that as it may, the chargesheet was issued in the year 2003. In the reply to the chargesheet, the petitioner except stating other charges leveled in the Articles of charge are hypothetical and cannot be leveled after 9 years, does not specifically plead ignorance about the transactions or plead any prejudice having been caused to him because of the delay. Suffice to state, he answers the charges framed against him vide memorandum dated September 12, 2003 on merits. Similarly, in the written arguments submitted by the petitioner before the Inquiry Officer there is no such plea. Even in his submissions to the Inquiry Officer's report except stating that the chargesheet has been issued after inordinate delay of 10 years no plea of prejudice having been caused has been averred nor proved by the petitioner. Similarly, in the appeal submitted to the Appellate Authority, except stating that it is a 12 years old matter he does not plead how delay has caused prejudice to him. Further, each charge is a sum total of different acts / transactions, which need to be looked into / analyzed before prima facie holding / concluding, that a misconduct has been committed by the petitioner. In fact, the response of Mr. Naveen Mehta was received in the year 1998. Even the Audit Committee note was of February 28, 2000. So, it is not a case of no explanation for the delay. Further the delay is not abnormal. In fact the submission of Mr. Gupta, that the charges were multilayered transactions and despite extensive inquiries the Bank was able to unearth few of the transactions and it was time consuming process is justified / appealing. His submission that it is not the case of the petitioner that his memory has impaired because of delay is also appealing.

26. It is also not the case of the petitioner that the delay has resulted in the non-availability of the evidence including witnesses because of which he cannot defend himself effectively. The proceedings were held; the witnesses were produced from both the sides which resulted in the Inquiry Officer submitting his report. Insofar as the

Judgments relied upon by Mr. Gupta are concerned, in the cases of ***Haryana Financial Corporation and Anr. v. Bishambhar Das Dogra (supra)*** and ***Union of India v. Alok Kumar (supra)*** it was held that prejudice not only to be pleaded but also proved. No doubt, Mr. Rao was right in contending that the judgments relied upon by Mr. Gupta are with regard to effect of non-supply supply of Inquiry report and also actual prejudice has to be shown, but the position of law as has been held by the Supreme Court in its recent Judgment in the case of ***Anant R. Kulkarni v. Y.P. Education Society and Ors. 2013 6 SCC 515*** is required to be noted, wherein it is held as under:

> *"8. The court/tribunal should not generally set aside the departmental Inquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion. (emphasis supplied) (Vide: State of U.P. v. Brahm Datt Sharma & Anr., AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; Union of India & Anr. v.*

Kunisetty Satyanarayana, AIR 2007 SC 906; The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha, AIR 2012 SC 2250; and Chairman, LIC of India & Ors. v. A. Masilamani, JT (2012) 11 SC 533)."

As the following conclusion of mine would prove that the charges framed and proved against the petitioner are of very serious nature, amounting to loss of confidence, I reject this plea of Mr. Rao.

27. Now coming on the findings of the Inquiry Officer on the charges framed against the petitioner; it was the submission of Mr. Rao that the findings are perverse. To answer the plea of Mr. Rao that the findings of the Inquiry Officer are perverse, it is necessary to state in brief the charges which have been framed against the petitioner. The charges have been divided into four sub-heads being Case No.1 to Case No.4. The allegations in Case No.1 are: (i) a difference account with a credit balance of ₹1,36,868.43/- was opened in violation of Rules and Guidelines of the Bank and prior written permission of the higher authorities was not sought / obtained; (ii) the outstanding balance of ₹1,41,492.43/- in the difference account was finally liquidated by debiting full amount in the account without date of the entry; (iii)(a) the amount debited to G/L FDR as per the supplementary account, taken in the cash book and G/L under FDR head was ₹1,41,492.43/- and after passing the credit entries, corresponding credit was short by ₹1,00,000/-; (iii)(b) On March 2, 1994, a cheque drawn payable to self for ₹1,35,000/- was paid in cash to the holder of the account Mr. Naveen Mehta leaving a balance of ₹2,375/-; (iv) that a sum of ₹1,00,000/- has been fraudulently siphoned off from the FDR difference account.

28. The allegations in Case No.2 are: (i) Dormant SB Account NO. 5116 of Sh. Naveen Mehta was revived on February 1, 1994 on the basis of pay-in slip for ₹200/- filled by petitioner Bhupinder Singh himself whereas Mr. Naveen Mehta has denied having deposited the said amount; (ii) The receipt voucher of ₹200/- does not bear the signatures of the receiving cashier. (iii) The pay-in slip dated February 4, 1994 of ₹13,000/- depositing the cash in SB Account 5116 was prepared by Mr. Bhupinder Singh, the petitioner. Mr. Naveen Mehta denied having deposited ₹13,000/- in cash. (iv) A bankers cheque No. 00290 dated January 11, 1994 of ₹24,175/- favouring Naveen Mehta was purchased from the same branch by depositing cash where the name of the applicant was written as self. It was later deposited in the same branch in Naveen Mehta's account instead of depositing cash into the account on January 11, 1994 itself. The bankers cheque and the credit pay-in slip were passed by Mr. Bhupinder Singh singly. Mr. Naveen Mehta, the purported purchaser of the bankers cheque denied having purchased the said bankers cheque or tendered it for payment on February 16, 1994. It is apparent that the bankers cheque was purchased and kept ready to be used as and when the transfer entry from the difference account is passed so as to facilitate the misappropriation of the amount of ₹1,00,000/-. (v) A cheque book no. 166591 – 166600 was issued on a requisition slip in the SB account no. 5116 in the name of Mr. Naveen Mehta. The related cheque book and the requisition slip were partially filled / prepared by Mr. Bhupinder Singh. The above cheque requisition slip was signed / passed by Mr. Bhupinder Singh singly without initials of any other officer. Mr. Naveen Mehta denied having requested issuance of new cheque book.

29. The allegations in Case No.3 are: (i) Mr. Bhupinder Singh admitted vide his statement dated September 18, 1997 given at East of Kailash Branch, New Delhi of opening difference account at the Branch and also liquidation of the said difference account by transfer of ₹1,00,000/- to the dormant account in SB and balance as expenditure of MIP Interest. The statement of Mr. Bhupinder Singh showing house-keeping / balance position as on July 30, 1993 in branch records show the SDR and FDR balances taken down on July 30, 1993 as tallied with G/L heads which amounts to deliberate concealment of true facts from the higher authorities, Regional Office and not a mere wrong reporting / confirmation to them. It is also evident that while the balances of FDR / SDR segments as on July 31, 1993 were wrongly reported as tallied by Mr. Bhupinder Singh, the balances could not be treated even later, as having been tallied in view of the manner in which the amount was appropriated wrongly from the said difference FDR account.

30. The allegations in Case No.4 are: (i) the difference account No. 1000 which was opened on February 16, 1993 by transferring debit balance of ₹1,74,005.93 for the sake of tallying ALPM balances with G/L balances without actually tallying the balances. The credit as well as the debit current account supplementaries for the date February 26, 1993 do not show any transaction entry in the difference account, i.e., CA No. 1000. Thus, the amount of ₹1,74,005.93 was transferred / credited to the difference account No. 1000 on February 26, 1993 by using one time activity / balance updating programme in flagrant violation of the laid down norms / procedures of the Bank. (ii) it is observed closing balance do not tally. While closing balance for the month of June,

1993 is shown as ₹2,42,775.87/-, the check balance is shown as ₹ 1,42,775.87/-. This shows a difference of ₹1,00,000/- in the balance of difference account no. 1000. As such the balance updation programme was used without any base, in the most unauthorized / unjustified / unfair manner abusing his position as a Sr. Branch Manager. (iii) the balances in the current account No. 1713 was increased / inflated by ₹1,00,000/- by using balance updation programme on June 21, 1993. On July 2, 1993, a sum of ₹1,00,000/- was transferred from Current Account no. 1713 in the name of M/s. Grace Incorporated to Current Account 1751 of Junkie (India) Pvt. Ltd. in the following manner:

> *(4) On 02.07.1993, a sum of ₹ 1,00,000/- was transferred from the C/A No 1713 in the name of M/s Grace Incorporated to the C/A No.1751 of Jukie (India) Private Limited. The Current A/c of Jukie (India) Private Limited was opened on 30.06.1993 with the Directors, Shri Manohar Kumar Sood, Shri S S Padam, Mrs. Kiran Padam and Mrs. Renu Padam. No introduction was obtained / given at the time of opening of the A/c. Account opening form / signature card is not signed by any officer. On 12.08.1993 from the C/A No 1751 of Jukie (India) Private Limited, a sum of ₹ 50,000/- was transferred to C/A No 1775 of M/s S S Padam & Company. The cheque for ₹50,000/- in the Current A/c 1751 of Jukie (India) Private Limited as well as the paying-in-slip (credit voucher) for ₹ 50,000/- in the current A/c No 1775 of M/s S S Padam & Company were both passed by Shri Bhupinder Singh, singly without the initials of any other officer.*
>
> *The current A/c No.1775 of M/s S S Padam & Company was opened on 12.08.1993 with Shri S S Padam as the Sole Proprietor of the firm. Shri S S Padam was also one of the Directorates in the company, Jukie (India) India Private Limited (Current A/c No1751). The account opening form of the current account No 1775 of M/s S S Padam & Company was initiated by Shri Bhupinder Singh. While doing so, Shri Singh failed to notice / did not consider that the Current A/c 1775 of M/s S S Padam & Company was being opened with the introduction of the Current Account No 1751 of*

Jukie (India) Private Limited, a newly opened account, which itself (the current a/c No 1751) had not been introduced, as per the laid norms / guidelines and the account opening form/specimen signature card had not been signed by any officer at the branch, signifying authentication of the signatures appearing therein.

On 13.08.1993 (i.e. the next day), this amount of ₹ 50,000/- was withdrawn from this account (Current A/c No 1775 of M/s S S Padam & Company) alongwith ₹ 1,50,040/- from their Demand Loan A/c (both cheques signed by M/s S S Padam & Company) for issuing one DD favouring Riat Sons, drawn on Ludhiana Branch. A loose cheque No.225046 in the Current A/c No 1775 was issued by Shri Singh on 13.08.1993. The said loose cheque in the Current A/c No 1775 of M/s S S Padam & Company for ₹ 50,000/- and the Demand Loan Cheque for ₹ 1,50,040/-, as also the Demand Draft voucher for ₹ 2,00,040/- were all passed / signed by Shri Singh, singly, without the initials of any other officer at the Branch.

A Demand Loan for ₹ 2,00,000/- was sanctioned by Shri Bhupinder Singh to M/s S S Padam & Company, a newly opened account, where a margin of 25% was stipulated. The loan granted to M/s S S Padam & Company had become difficult of recovery. A suit had to be filed against M/s S S Padam & Company and others for recovery of Bank's dues. The bank's dues were repaid by the guarantor.

(5) It is evidence from the series of events/transactions as mentioned Shri Singh arranged this 25% margin (i.e. ₹50,000/-) for M/s S S Padam & Company by way of transfer of the said sum of ₹ 50,000/- from the account of Jukie (India) Private Limited, which in turn had received credit of ₹ 1,00,000/- by way of a transfer of ₹ 1,00,000/- to their (Jukie (India) Pvt. Ltd. A/c from M/s Grace Incorporated) the A/c opened by his introduction, where an unauthorised credit of ₹ 1,00,000/- was afforded using balance updation programme.

(6) On 20.07.1993, the Difference A/c (Current A/c) No 1000 showed a balance of ₹ 1,26,943.32. On 21.07.1993, a new Current A/c No 102 with title Dormant A/c was opened and the above amount of ₹ 1,26,943.32 was transferred from the Difference A/c (C/A) No.1000 to the said Dormant A/c No 102. The debt-credit vouchers dated 21.07.1993 for ₹ 1,26,943.32 bear the signature of Shri Bhupinder Singh. The daily balance report

dated 21.07.1993 shows a balance of ₹ 1,26,943.32 in Dormant A/c No 102 and a NIL balance in Difference A/c (Current A/c) No 1000.

31. The findings of the Inquiry Officer on Case Nos. 1 to 4 are as under:

Case No.1 – All proved.

Case No.2 – All proved except the allegation that requisition slip for issuance of cheque book no. 166591 – 166600 has been filled by Sh. Bhupinder Singh, the petitioner.

Case No.3 – All the allegations stood proved.

Case No. 4 – All the allegations stood proved.

32. In so far as the findings of the Inquiry Officer with regard to Case Nos.1 to 3 as noted above are concerned, the submissions of Mr. Rao in this regard can be summed up as under:

The house-keeping position of the Branch was very bad at the time the petitioner took over as Sr. Manager of the Branch. The IO has taken note of the fact of some house-keeping arrears and the fact G/L Heads of the Branch were unbalanced since 1985-86. The natural consequence of balancing is that the discrepancies in the account that come to the notice have to reflected in a statement, otherwise, the entire exercise is meaningless. There are no rules / guidelines for opening difference account. Once a difference account is opened, the same has to be brought to the notice of the higher authorities. Respondent Bank made no effort to prove the existence of guidelines and the petitioner had acted in violation of the same. The IO without making any effort gave a finding that the opening of difference account is in violation of rules and guidelines of the Bank. Subsequently, IO considered the contention of the petitioner that there are no guidelines, simply rejected it by stating not acceptable. The case of the petitioner was that the higher authorities / RO was informed about the opening of the difference account, to which there was no objection shown. It was the case of the petitioner that there was an implied consent. It was also the case of the petitioner that the matter was "*discussed amongst ourselves*" and the account was opened with the consent of the RO. The rejection of such stand taken by the IO that the petitioner has not produced any evidence shows non-application of mind. It was the case of the petitioner that the vouchers which have been passed by the petitioner were not prepared by him. The overwriting was due to shortage of staff and excessive work pressure and that it was a clerical mistake without any consequence. That IO has also accepted that the allegations were mere mistake which makes a sad reflection on the sincerity and alertness of CSO and nothing more. The petitioner has denied that he was aware of the account of Mr. Naveen Mehta was dormant. The finding of the IO that the petitioner had filled in pay-in slip of ₹13,000/- is incorrect and the same can be seen on a comparison of two pay-in slips which would reveal that the pay-in slip for ₹13,000/- was not filled by the petitioner. The allegation of siphoning off was that in the account of Mr. Naveen Mehta rather than entering ₹24,175 on the basis of bankers cheque, an amount of ₹1,24,175 was entered is because of an entry made by ALPM operator and authenticated by the Manager. The said operator was not even examined. The statement of MW4, (the Manager) that he authenticated the entry on the statement of the petitioner is a false statement in order to save his own skin. The last link in order to prove the allegation of siphoning off is that the money was withdrawn by the petitioner. Based on a finding that the petitioner had single handedly cleared the Bill without initial of other officers as the account reflected sufficient balance and has cleared the same bonafidely and the initial of other officers was not taken due to staff crunch as usually happened during that time.

33. Having noted the gist of the submissions of Mr. Rao on Case No.1 to Case No.3, suffice to state in substance the charge is of fraud of ₹1,00,000/- committed through Saving Bank Account no. 5116 of Mr. Naveen Mehta, East of Kailash Branch, New Delhi. Whatever may be the individual charges / transactions under Case Nos. 1 to 3, in so far as the issue of fraud of ₹1,00,000/- in the SB A/c. No. 5116 of Mr. Naveen Mehta is concerned, the findings of the Inquiry Officer to prove the allegation of fraud is in terms of the following findings (on case Nos. 1 to 3):

1. A "difference A/c" with a credit balance of ₹1,36,868.43 was opened in the FDR ledger NO.4 on folio No.12, on 30.09.1992 in violation of the rules / guidelines of the Bank. The difference account was shown separately in the balance book of FDR ledger No.4 as on 30.09.1992. While opening the FDR difference A/c, prior permission of the higher (Regional) Authorities was not sought / obtained.

FINDINGS:

By his own admission of the CSO, as also documented in his statement dated 18.09.1997 (ME-32), it has been proved beyond doubt that difference account with a credit balance of ₹1,36,868.43 was opened in FDR Ledger No. 4 on Folio No.12 on 30.09.2002. It is in clear violation of rules / guidelines of the Bank as any Branch / Branch Officials has no power what so ever to open such account as Difference A/c.

The Defence has taken the plea that there was implied consent of the Regional office in the sense that the same was "discussed amongst ourselves"and with the consent of R/O. However the defence side has not produced any evidence or document to show that the so called "consent" was obtained. Similarly, the statement of Defence Representative that in his statement dated 18.09.1997 the CSO had admitted opening of the Difference A/c and as per version of the DR "The Management of that time accepted the statement and did not objected to. It means that above action had approval" also does not hold good.

In departmental proceedings no law of limitation applies, if CSO has opened difference A/c in 1992 and has admitted the same in 1997 – the management has right to take cognizance of any misconduct even after lapse of many years.

The opening of the difference A/c on 30.09.1992 and closing of the same on 16.02.1994 has also proved by copy of ledger vide ME-1 and also by deposition of MW-1. The defence has also argued that there were "NO GUIDELINES NOT TO OPEN SUCH Difference A/c and as such "such A/c could be opened"- also is not acceptable.

(The allegation stands proved).

2. The outstanding balance of ₹1,41,492.43 in the difference account was finally liquidated by debiting full amount in the account without date of the entry. However, the aforesaid amount appears on the debit side of the FDR supplementary dated 16.02.1994.

<u>Findings:</u>

This is a matter of record and stands proved with the help of ME-1 which a statement of difference A/c.

Against the above said debit of ₹1,41,492.43 of FDR difference account, the following corresponding credit vouchers are on record of the Branch.

Sl. No.	*Date appearing voucher*	*Credit in favour of*	*Amount (Rs.)*	*Nature of Credit.*
1.	*16.02.1994 (bears overwriting)*	*Shyam Khemchandani SB A/c 10777*	*1237.00*	*Intt. On FDR*
2.	*16.02.1994 (bears overwriting)*	*Shyam Khemchandani SB A/c 10777*	*379.00*	*Intt. On FDR*
3.	*29.02.1994*	*Shyam Khemchandani SB A/c 10777*	*16,357.00*	*Intt. On FDR*
4.	*16.02.1994 (bears overwriting also date 27.01.1994 struck)*	*Shyam Khemchandani SB A/c 10777*	*8,879.00*	*Intt. On FDR*
5.	*14.02.1994*	*Bharti Khemchandani SB A/c 10777*	*7,396.00*	*Intt. On FDR*
6.	*16.02.1994*	*P/L intt. Paid A/c On FDR*	*7,244.43*	*Excess provided on FDR.*

		TOTAL	*41,492.43*	

All the above said credit vouchers, aggregating ₹41,492.43 were passed by Sh. Bhupinder Singh singly on 16.02.1994 without initials of any other officer at the said branch against the debit of ₹1,41,492.43 in the FDR difference A/c.

Findings:

The above fact is proved by the relevant voucher as per ME No.3a, 3a, 3c, 3d, 3e, 3f, Mr. Bhupinder Singh the CSO has passed the same is also evident from the said exhibits. Even the defence side has not challenged it. Instead the defence side has merely contended that these vouchers though passed by the CSO but were not "prepared" by him and these were prepared in the department only. In this regard, allegation stands proved as it states only abut who passed the voucher singly (N.B. – who prepared the same is immaterial so far as the allegation is concerned.) (proved).

i. Sh. Bhupinder Singh passed the vouchers mentioned at Sl. No. 1, 2 and 4 herein above though there was overwriting on the dates mentioned. Also the voucher dated 16.02.1994 for ₹8,879/- besides bearing overwriting on date, shows the dated 27.01.1994 as having been struck.

Findings:

These are the matters of record as per ME 3a, 3b, 3c and are proved beyond doubt that there was over-writing on the dates mentioned on the vouchers on Sl. No.1, 2 and 4 and also on the voucher dated 16.02.1994 for ₹8,879/-. Moreover, the defence has not even challenged the same. Defence has merely taken the stand that there was shortage of staff and excess work pressure and as it was clerical mistake and was overlooked by CSO. But this negligent and callous approach of CSO is not at all desirable.

(Hence allegation stands proved).

ii. From the credit vouchers mentioned under Sl. Nos. 1 to 5 it is revealed

that the outstanding balance in the G/L FDR difference A/c has been transferred for meeting the monthly expenditure of MIP interest, which is invariably paid to the debit of P/L interest paid on FDR A/c.

<u>Findings:</u>

It is again a matter of fact which has been proved by the concerned voucher bearing Sl. No.ME-3a, 3b, 3c, 3d, 3e Defence side has merely stated that the management at the time did not object to it, is not acceptable. The same is beyond comprehension and in clear violation of Bank's norms. Whey the MIP interest was debited to this account (GL Difference A/c) instead of P/L interest paid on FD is again a matter of investigation / suspicion. (Allegation proved).

iii. Shri Bhupender Singh passed the vouchers mentioned under Sl. No. 5 and 3 herein above, on 16.02.1994 while the voucher at Sl. No. 5 for ₹ 7,396/- was dated 14.02.1994 and the voucher at Sl. No. 3 for ₹16,357/- was post dated, bearing the date as 29.02.1994.

As such, Sh. Bhupinder Singh passed these vouchers without ensuring that the vouchers were of the same date, i.e., 16.02.1994.

<u>Findings:</u>

The above allegation is also proved by the concerned copy of the vouchers marked as ME No.3a, 3b, 3c and 3d. The defence has made plea that this was a "clerical mistake and of little consequence" again is not valid. A responsible Bank official passing a voucher has to keep an eye on the dates. The CSO passed the voucher on 16.02.1994. However the voucher for ₹7,396/- was dated 14.02.1994 and the voucher for ₹16,357/- was post dated (bearing the date as 29.02.1994). This establishes that CSO passed the voucher without taking into account the dates mentioned thereon. Here again the argument of the defence that the CSO overlooked the overwriting or the dates because of heavy work load at the branch does not justify the mistake. The defence argument that "these mistakes did not make any difference in the transaction for affected the situation in any way "also *makes a sad reflection on the sincerity and alertness of the CSO. (Allegation stands proved).*

(iv) Out of the above said debit of ₹14,1492.43 from the G/L FDR difference a/c, a sum of ₹ 72,44.43 has been credited to P/L interest paid a/c FDR on 16.02.1994. The voucher bears the narration "being amount excess provided on FDR". No specific details of the said "excess" (transaction) have been mentioned in the voucher. The voucher has been passed singly by Sh. Bhupinder Singh without justification.

Findings:

It is again a matter of record and the same is proved as per the concerned ME bearing Sl. No. 3a, 3b, 3c, 3d, 3e and 3f. The defence's plea that this was done with the consent of R/O has not been substantiated. The plea of the defence side that since the management at that time did not objected to this implies that it has the consent of the R/O also does not hold good.

Again the above transaction is a subject matter of statement of factual position as per ME No.3f. There is not any specific details given in the narration is also evident from the concerned voucher (ME No.3f). It is also proved that the voucher has been passed singly by Mr. Bhupinder Singh without justification. It may further be noted here that any balancing difference to be credited / debited to P/L A/c by itself is a risky proposition and exposes the bank to various risks. The plea of defence that was no other alternative but to credit the left over balance to P/L also exhibits lack of sincerity and lack of probity on the part of CSO. (Allegations stands proved).

3. (i) The amount debited to G/L FDR as per the supplementary and the amount taken in the cash book and G/L under FDR head on 16.02.1994 was ₹1,41,492.43 and after passing the credit entries as above, the corresponding credit was short by ₹1,00,000/-

Findings:

There was a difference of ₹1,00,000/- on credit side as is evident from the

Vouchers as per ME 3a, 3b, 3c, 3d, 3e, 3f. Here the defence has made a plea that ₹1,00,000/- was transferred to a Dormant SB A/c (as per the paragraph in allegation NO.2 itself) and as such there was a voucher of ₹1,00,000/- for the Dormant SB A/c also does not hold good. The defence has not shown any proof of existence of voucher of ₹1,00,000/-. In departmental Inquiry the maxim is one who alleges had to prove it (the other side does not have to disprove that). In instance case, if defence side claims that there was voucher of ₹1,00,000/-, the onus lies on himself to prove it. But as they have not proved, their claim of existence of any voucher for ₹1,00,000/- is not acceptable. Instead as it will be discussed later on that to give semblance of compensatory mistake, the credit voucher for a Banker's Cheque of ₹24,175/- was inflated by ₹1,00,000/-.

(Stands proved).

Subsequently on 16.02.1994 itself, a Banker's Cheque No. 00290 dated 11.01.1994 drawn in favour of "Naveen Mehta" for ₹24, 175/- was paid by crediting the proceeds to SB A/c 5116 of Sh. Naveen Mehta. The amount of the credit voucher was, however, posted as ₹1,24,175/- instead of ₹24,175/- thus causing a credit balance of ₹1,37,375/- in SB A/c No. 5116 as against the bonafide balance of ₹37,375/-.

Findings:

There was a Banker's Cheque No. 00290 dated 11.01.1994 drawn in favour of Mr. Naveen Mehta for ₹24,175/-. This is proved by the copy of the same vide ME-8. The same was paid is also evident from the cancellation of the same. However, the credit voucher was posted as ₹1,24,175/- is also evident from the statement of account of SB A/c No. 5116 of Mr. Naveen Mehta for the month of Feb., vide ME No. 11 and vide ME-10 (Savings supplementary credit side dt. 16.02.1994) and consequent upon this credit of ₹1,24,175/- the balance of the SB A/c No. 5116 was inflated to ₹1,37,375/- instead of bonafide balance of

₹37,375/-. This is also proved by ME-11 (The statement of SB A/c 5116).

It is interesting that defence side has not challenged this fraudulent act of inflating of balance of SB A/c 5116 of Mr. Naveen Mehta. Instead first in one statement the DR has written the bold and dark letters that "there was a voucher of ₹1,00,000/- for the Dormant SB A/c"and in the same breath the DR has later on contended that if a clerk posts a voucher wrongly, what can a Branch Manager do. This contradiction in the statement of the defence (at one place the defence has taken a stand that there might have been a voucher of ₹1,00,000/- for credit to the Dormant SB A/c and at other place they are putting blame on the clerk for making a credit of ₹1,24,175/- for Banker's Cheque of ₹24,175/- (voucher vide ME-9) also is not convincing and as such not acceptable. Thus, allegation stands proved.

The Banker's cheque dated 11.01.1994 for ₹24,175/- (debit) paid on 16.02.1994 and the corresponding credit voucher favouring SB A/c 5116 of Sh. Naveen Mehta have both been passed by Sh. Bhupinder Singh singly without the initials of any other officer.

<u>Findings:</u>

It is also clear from the documents as per Banker's Cheque dated 11.01.1994 for ₹24,175/- (debit voucher paid on 16.02.1994 and corresponding credit voucher favouring SB A/c 5116 of Sh. Naveen Mehta was passed by Sh. Bhupinder Singh singly. Here again the defence side's argument that due to office exigencies Mr. Singh passed the voucher singly without initial of any officer, does not hold good. Generally a Br. Manager in ordinary course of business will not sign vouchers meant for Banker's Cheque deptt. and for Saving Bank A/c. It is only in case of big amount vouchers that the Branch Manager signs or cancels such vouchers but that too only on the strength of initials of the concerned department officer. As per circumstantial evidence, all these *vouchers were passed singly by the CSO had an element of malafide.*

The plea of defence that "there is no rule that forbids a Br. Manager to pass a cheque without initials of a junior officer "is also not acceptable because of the malafides proved in the case. Nevertheless the allegation states merely about passing of vouchers singly by the CSO and that is proved by the vouchers itself.

(stands proved).

(ii) On 02.03.1994, a cheque no. 166596 date 02.03.1994 drawn payable to 'Self' for ₹1,35,000/- on SB A/c 5116 was paid in cash purportedly to the holder of the A/c, Sh. Naveen Mehta, leaving a balance of ₹2,375/- in the A/c. The said cheque for ₹1,35,000/- purported to be drawn on SB A/c 5116 paid on 02.03.1994 has been passed singly by Sh. Singh without the initials of any other officer. As such, Sh. Singh did not route the above payment through the concerned SB department in violation of the said procedures of the Bank.

<u>Findings:</u>

This fact has also been established by concerned copy of the statement of SB A/c as per ME No. 12 and also by the copy of cheque (E-13). The defence side has taken the pleas only that there was a sufficient balance in the account (which was manipulated by excess credit through the payment of the Banker's Cheque). The vital issue is not the sufficiency of the Balance but the passing of the Cheque without routing through the concerned SB department. The defence has also taken the pleas that there is no rule that forbids a Branch Manger to pass a cheque without initials of a junior officer. But the defence side has not proved under what situation / circumstances the CSO did not proved under what situation / circumstances the CSO did not route the cheques through SB Deptt. The cancellation of the cheque (for ₹1,35,00/-) bears the signatures of the CSO. Hence the allegation stands proved.

There would have been no irregularity in it if would have been done for

Banks interest with bonafide intention. But from series of events and by circumstantial evidences it leads to suspicion that the CSO did the same with fraudulent intent.

(Stands proved).

4. It is thus observed that a sum of ₹1 Lakh has been fraudulently siphoned off from the FDR Difference A/c maintained at the Branch, through the SB A/c No. 5116 in the name of Sh. Naveen Mehta.

<u>Findings:</u>

From the above paragraphs it is established that a sum of ₹1 Lakh was fraudulently transferred from Difference A/c to a Dormant SB A/ No. 5116 of Sh. Naveen Mehta and subsequently the same amount was withdrawn. Here defence plea that how somebody could stake his ₹37,375/- (₹200/- for reviving the Dormant A/c., ₹13,000/- to maintain sufficient balance and ₹24,175/- as Banker's Cheque money) for two months to do a fraud is again not valid. From circumstantial evidence and series of events, it is proved that the said modus operandi was used to siphon away ₹1 Lakh. The defence has also taken a plea that it may be mistake by computer operator, but this has not been substantiated by way document or exhibit or witness. Also the premise that the party (Mr. Naveen Mehta) sensing the wrong credit of ₹ 1 lakh might have withdrawn the money and on challenging the same by the Bank has refunded the money also has found to be baseless and as such not valid. Mr. Mehta has totally denied through his Advocate (By ME-20) having ever deposited ₹200/- + ₹13,000/- + a Banker's Cheque and accordingly he never withdrew the money ₹1,35,000/- cash. The cheque serial from which the money was withdrawn bears the initials of the CSO. The said ₹1 Lakh by means of 3 Bankers' cheques received in mysterious way only adds to the suspicion and the fraud.

The defence has also pleaded that it was unknown compensatory mistake *without malafide – But the malafide has been proved by the series of events as substantiated by documents. The defence has also tried to argue that if there were malafide then the CSO might have removed the documents. But the facts remain that quite a few documents are missing and as such needle of suspension again goes to the CSO.*

In departmental Inquiry an allegation need not be proved beyond doubt. (100%). The underlying principle in Departmental Inquiry is preponderance of Probability. In the present case the CSO revived the Dormant A/c of Mr. Naveen Mehta and deposited ₹200/- + ₹13,000/- + ₹24,175/- and then inflated the balance by ₹1,00,000/- to finally withdraw ₹1,35,000/- on 02.03.1994 (ME-12) by fraudulently issued cheque book leaving a meager balance of ₹2,373/-. Hence is PREPONDERENCE OF PROBABILITY based on documents, series of events and circumstantial evidences that ₹ 1 Lakh was fraudulently siphoned off.

(Proved).

34. In so far as Case No.2 is concerned, the finding of the Inquiry Officer is as under:

(i) The A/c No. 5116 was held in one of the Dormant A/c registers of Savings bank with a balance of ₹62.05. On 01.02.1994, Sh. Singh filled up / prepared a paying-in-slip for ₹200/- for cash deposit for credit of SB A/c 5116 in the name of Shri Naveen Mehta.

<u>Findings:</u>

From ME-21, it is proved that SB A/c No. 5116 of Mr. Naveen Mehta was a dormant A/c with balance of ₹62.05 since 14.03.1990 the same was listed in Dormant A/c Register (ME-2). The rounding off in ME-22 of A/c No. 5116 on 13.11.1998 proves that the A/c was revived from Dormant A/c on 13.11.1998. The handwriting on the Pay-in-slip (ME-25) for ₹200/- (To revive the A/c) was that of CSO. The defence has not challenged the same. Hence the allegation is proved.

Sh. Singh, as such, did not inquire / verify about the status of the said a/c No. 5116 on the day, from the account holder / bank Records.

Findings:

Normally an application from A/c holder is required to revive an Dormant AC. As no such evidence was shown in proceedings and the handwriting on the paying-in-slip is that of CSO, it is proved that the CSO did not enquire about the status of the A/c. (Proved).

The Dormant SB A/c No. 5116 of Sh. Naveen Mehta was revived on 01.02.1994 by the concerned department apparently on the basis of the paying-in-slip for ₹200/- (depositing cash), filled up by Sh. Bhupinder Singh himself, where the account holder, Sh. Naveen Mehta denied having deposited the said amount of ₹200/- in his SB A/c 5116 at the branch.

Findings:

The handwriting of the CSO on paying-in-slip (ME-25) and also on Dormant Register (ME-22) establishes the allegation that CSO revived the A/c without consent of the A/c holder (Mr. Mehta). Mr. Mehta the real A/c holder has denied having done so vide his letter / Legal Notice through his Advocate (ME-20). The defence side has tried to confuse the matter by taking help of deposition of MW-1 in which he has said that a new A/c was opened and the defence has parried whether it was same Mr. Naveen Mehta as the original one. But the fact remains that after computerization the A/c numbers are changed, so it was the same A/c with changed SB A/c number from 5611 to 05611 in computer system. Moreover the real clinching evidence is that Mr. Mehta has totally denied having every revived the A/c. hence the allegation stands proved.

ii. **The receipt voucher of ₹200/- does not bear the signatures of the receiving cashier.**

Findings:

This is also proved by the concerned voucher ME-25.

iii. **A paying-in-slip dated 04.02.94, for ₹13,000/- deposition cash in the SB A/c 5116 (in the name of Sh. Naveen Mehta was filled up / prepared by Sh. Singh. Shri Naveen Mehta, the A/c holder has denied having deposited ₹13,000/- in cash for credit of his SB A/c 5116 at the said branch.**

Findings:

The copy of the paying-in-slip dated 04.02.1994 for ₹13,000/- (ME-26) proves that a sum of ₹13,000/- was deposited on 04.02.1994 in SB A/c 5116 of Mr. Naveen Mehta. The handwriting on the paying-in-slip is that on the CSO, which can be ascertained by comparing his hand-writing. The DR has challenged the same without any proof. Instead he has tried to that whether Mr. Naveen Mehta A/c holder of SB A/c 5116 was the same A/c holder having account with our bank since 1986 or a different A/c was opened on 01.02.1994 when the Dormant A/c was revived. But defence has not proved anything to substantiate his point. Mr. Mehta has denied through the Legal Notice / Advocate's letter (ME-20) having done any transaction with bank. So this allegation is also found to have been proved.

(iv) **A Banker's cheque No. 00290 dated 11.01.1994 for ₹24,175/- favouring Naveen Mehta was purchased from the same branch (i.e. Bank of Baroda, East of Kailash Branch) by depositing cash where name of the applicant was written as "Self".**

Findings:

This is proved by Banker's Cheque application Form-Cum-Credit Voucher (ME-27). The handwriting of the applicant is that of CSO. The DR has not challenged it. Instead he has told that "the customer chooses to take a Banker's cheque and deposits in his A/c instead of depositing cash in the

A/cs what Branch manager can do about it." Again the modus operandi indicate a PREPONDERNCE OF PROBABILITY of a fraudulent intention on the part of CSO.

It was later deposited in the name branch for credit of Sh. Naveen Mehta's account, on 16.02.1994, instead of depositing cash into the account of 11.01.94 itself. The Banker's cheque (debit) and the credit paying-in-lip for ₹24,175/- each have been passed by Shri Bhupinder Singh singly.

Findings:

This is also proved by ME-27 (the paying-in-slip for purchase of Banker's Cheque), Copy of Banker's Cheque (ME-8 and credit voucher ME-9) and statement of A/c (ME-11). Although the PO could not establish that the Banker's Cheque was purchased by CSO, but his handwriting on B/cheque application from (ME-27) credit voucher (ME-9) and passing of the same by CSO-all leads to the conclusion that CSO has done this.

(V) **Sh. Naveen Mehta, the purported purchaser of the captioned Banker's Cheque has denied having either purchased the said Banker's Cheque or tendered it for payment on 16.02.1994. It is therefore apparent that B/C was purchased and kept ready to be used, as and when the transfer entry from the difference A/c is passed, so as to facilitate misappropriation of the amount of ₹ 1 Lakh through the said modus operandi.**

Findings:

Although the PO could not establish that the B/Cheque was purchased by CSO, but his handwriting on B/Chq. Application form (ME-27), credit voucher (ME-9), Banker's Cheque Register (ME-29) and passing of the same by CSO-all leads to the conclusion that CSO has done this.

From the various Management Exhibits and evidences of witnesses a series of events, there is PREPONDERENCE OF PROBABILITY that the CSO managed to purchase the Banker's Cheques and kept it ready to be used.

And he used it to siphon-off ₹1 lakh as proved in foregoing pages of Case-II

(Stands proved)

(VI) **A cheque Book No. 166591-166600 was issued on a requisition slip (used for issue of first cheque book in an account and not the one taken out of the earlier cheque book issued to the party) in the SB A/c No. 5116 in the name of Shri Naveen Mehta. The relative cheque book requisition slip has been partly filled / prepared by Sh. Singh.**

Findings:

From extract of cheque book issue report (ME-31) it is proved that cheque book bearing Serial No. 166591-600 was issued in SB A/c 005116 of Mr. Naveen Mehta on 01.03.1994. From Cheque Book issue Register (ME-30) the initials of CSO confirms that the cheque book issued was authorized by the CSO.

From, the Ledgers folio of SB A/c 5116 of Mr. Mehta (ME-21), it is noted that cheque book bearing SL. No. 092376-092400 (25 leaflets) was originally issued on 01.08.1986. Mr. Mehta has issued 3 cheques bearing SL. No. 2376, 2378 & 2380. The Management side has not produced the cheque book requisition slip as the same reportedly missing. So, it could not be proved that the Requisition Slip (to get new set of cheque Book) was filled up or prepared by CSO.

(Not proved)

(vii) **The above said cheque requisition slip was signed / passed by Sh. Singh singly, without the initials of any other officer. The cheque book register, against the issuance of above cheque book, has been initialed by Sh. Bhupinder Singh. The A/c holder, Sh. Naveen Mehta denied having**

requested for issuance of a new cheque book in his account stating that he still had unused cheque leaves in the previous cheque book issued to him.

Findings:

The said cheque book requisition has not been produced by the PO as such it could be proved that the slip was signed / prepared by Sh. Singh. However, in the Cheque Book issue Register (ME-30) the initials of the CSO proves that the cheque book was authorized to be issued by the CSO. The true A/holder Mr. Mehta has denied having issued a new Cheque Book. He is reportedly holding the old unused cheque book as confirmed through letter of his Advocate (ME-20) that he has not operated the A/c since 1987.

Hence, though filling up & signing of requisition slip is NOT PROVED (as voucher is reportedly missing), the initial of CSO leads to the suspicion that in Cheque Book Register the cheque book was issued by the CSO himself. It may be noted that the CSO in his statement dated 18.09.1997 (ME-32) has admitted "THOUGH I DO NOT REMEMBER SPECIFICALLY, IT IS POSSIBLE I MIGHT HAVE FILLED UP PAYING IN SLIP, ISSUED CHEQUE BOOK AND PASSED THE CHEQUE OF SH. MEHTA under manipulated circumstances."

So this is again PREPONDERENCE OF PROBABILITY that the CSO did the irregular act.

35. In so far as Case No.3 is concerned, the finding of the Inquiry Officer is as under:

6.(i) Shri Singh admitted vide his statement dated 18.09.1997, given at East of Kailash Branch, New Delhi as under: -

"G/L was excess by about ₹ 2 lakhs, a difference account was opened in FDR ledger and credited with difference amount for paying the unaccounted FDRs, if ever, present for payment – Differences if any (in SB A/c and CA balances) were adjusted in Dormant A/cs and differences detected thereafter were then adjusted through Dormant A/c in the hope that when all mistakes

are rectified, Dormant A/c will automatically be balanced. Till such time Dormant A/c was treated as "Difference A/c".

Findings:

This stands proved by the statement of CSO dated 18.09.1997 (ME-32) page 2 last para.

"After about one year, no accounted FDR was presented for payment, it was presumed that no accounted FDR was left outstanding it was found that ₹1.41 lakhs (approx) was still surplus in G/L FDR lying in Difference A/c and at the time Dormant A/c in SB was short by about ₹1,00,000/-

Findings:

This is also proved by the statement of CSO (ME-32) vide page 3 para 3.

The defence side has only repeated the plea that "Management side did not object to it" – is against NOT TENABLE.

(Allegation proved)

Therefore, presuming that at some earlier time ₹1 lakh in SB A/c could have gone to FDR A/c in General Ledger, we decided to transfer ₹1 lakh from difference A/c in FDR to dormant A/c in SB and the balance was used for meeting the monthly expenditure of MIP interest.

Findings:

This is also proved by the statement of CSO (ME-32) vide page – 3, penultimate para.

The defence side has argued that the difference in FDR A/c was allowed to be written off vide DE-1 is again FALSE AND MISLEADING as DE-1 is not a proposal for write-off of FDR difference. It is a note for transfer of difference from SHHMO A/c to HO A/c etc. etc.

As such, Shri Bhupinder Singh has admitted opening of the "Difference A/c" at the Branch and also, liquidation of the said Difference A/c by transfer of ₹1 lakh to Dormant A/c in SB and balance as expenditure on MIP interest.

Findings:

This is proved by statement of CSO (ME-32) dated 18.09.1997.

(ii) The statement showing housekeeping / balance position as on 30.07.1993 in Branch records shows the SDR and FDR balances taken down on 30.07.1993 as tallied with G/L. the said statement is signed by Shri Singh singly. This is tantamount to deliberate concealment of true facts from the higher authorities, the regional office, and not a mere wrong reporting / confirmation to them. It is also evident that while the balances of FDR / SDR segments as on 31.07.1993 were wrongly reported as tallied by Shri Singh, there balances could also not be treated even later, as having been tallied, in view of the manner in which the amount was appropriated wrongly from the said difference in FDR A/c.

Findings:

This is proved as per Housekeeping / Balancing position as of 30.07.1993 of East of Kailash branch (ME-33), the CSO had reported to the higher authorities that G/L FDR and G/L SDR tallied with G/L whereas it was a fact that as on 30.07.1993 there was difference in G/L FDR & SDR as admitted by CSO in his statement dated 18.09.1997 (ME-32) that there was huge difference in G/L FDR / SDR. So, it is proved that CSO deliberately concealed the facts higher management.

The statement of the difference A/c FDR (as irregularly opened by the Branch) vide ME-1 shows Credit Balance of ₹1,41,492.43 was debited (date missing) to reduce the balance in Difference A/c to Nil. As per supplementary dated 16.02.1994 (vide ME-4), it is mentioned that a sum of ₹1,41,492.43 is lying in FDR Ledger No. 4 (within remarks voucher missing). This proves that there was difference of ₹1,41 lakh at least on 16.02.1994. Then how could the CSO reported to higher authorities that the same is tallied as of 31.07.1993. This is clear cut MIS-REPORTING & CONCEALMENT of facts. The defence side plea that it was mere signed by the CSO and not prepared by CSO is not valid. The Sr. Branch Manager signing the statement is liable for the accuracy of the report.

36. Having noted, the findings of the IO on Case Nos. 1 to 3, I must state the submissions made by Mr. Rao as noted above, would only answer some of the findings of the IO, but no attempt has been made by Mr. Rao to answer that on a cumulative reading of the evidence / findings the charge of fraud with regard to ₹1 lac in the A/c of Naveen Menta is not proved. That apart, the findings of the Inquiry Officer and the limited scope of judicial review, the Inquiry Officer is justified on a principle of preponderance of probability by considering the cumulative effect of the evidence which has come on record to conclude that ₹1,00,000/- was fraudulently siphoned off. Some of the findings which weighed with the IO against the petitioner are (i) the petitioner had filled the pay-in slip of ₹200/-; issuance of cheque book and passed the cheque of Mr. Naveen Mehta; (ii) the petitioner in his reply to chargesheet had stated that Mr. Naveen Mehta had withdrawn money and later deposited the same into the bank account whereas Mr. Mehta vide his legal notice dated January 5, 1998 in response to the letter of the Bank has specifically mentioned that he has not operated the said account since August 14, 1997. This reply of Mr. Naveen Mehta has not been assailed by the petitioner nor the statements given by two MWs having visited Mr. Mehta been contested by the petitioner; (iii) That six vouchers being 3a to 3f were passed by Bhupender Singh. There was overwriting on the dates mentioned on the vouchers 1, 2 and 4; (iv) The MIP interest was debited to G/L difference account instead of P/L interest paid on FDR account; (v) The plea of Bhupender Singh is that ₹1 Lac was transferred to a dormant account, but such voucher for ₹1 Lac for the dormant account could not be produced. This stand is contrary to the stand taken by Bhupender Singh

that the amount was inflated by the ALPM operator; (vi) The bankers Cheque no. 00290 dated January 11, 1994 was drawn in favour of Naveen Mehta for ₹24,175/- and the same was paid after it was passed by Bhupender Singh singly; (vii) The credit voucher was posted as posted as ₹1,24,175/- and further the SB account was inflated to ₹1,37,375/- instead of ₹37,375/-; (viii) On 02.03.1994, a cheque no. 166596 dated 02.03.1994 payable for self for ₹1,35,000/- was paid in cash and the same was singly passed by Bhupender Singh without routing through SB Department; (ix) No application was submitted by Mr. Naveen Mehta for reviving the dormant account. The pay-in-slip for ₹200/- had the signature of Bhupender Singh; (x) The bankers cheque no. 00290 dated January 11, 1994 for ₹24,175/- favouring Naveen Mehta was purchased from the same branch by depositing cash which was passed by Bhupender Singh; (xi) The cheque book with slip no. 166591-166600 was issued by Bhupender Singh; (xii) The cheque book requisition slip was signed by Bhupender Singh; (xiii) It is also proved that as per housekeeping / balancing position as of July 30, 1993 of East of Kailash Branch, Mr. Bhupender Singh had reported to the higher authorities that G/L FDR and G/L SDR tallied with G/L, whereas in his statement dated July 18, 1997 he admitted that there was huge difference in G/L FDR/SDR. So on a complete reading of the findings of the Inquiry Officer it cannot be said that it is a case of no evidence. That apart it is not for the court to consider the sufficiency of evidence. In fact it is beyond judicial review. If some evidence is there, the court shall not interfere with the conclusion. Even if two views are possible, the court shall not substitute the view of the authorities with its view.

37. Similarly, on Case No. 4, the finding of the Inquiry Officer is as under:

(1) A Difference a/c (Current A/c No. 1000) was opened on 26.02.1993 by transferring a Debit balance of ₹1,74,005.93 for the sake of tallying of ALPM balances with G/L balances without actually tallying the balances.

Findings:-

An A/c styled as "Difference A/c" bearing A/c No. 1000 was opened in Current A/c is proved by Statement of A/c of A/c No 1000 (ME-36)

The A/c was opened on 26.02.1993 with Debit balance of ₹174,005.93 is proved by ME-35 as the same was not in existence on 25.02.1993 as established by ME-34 (Daily balance Report).

CSO in statement of dt. 18.09.1997 (ME-32) has confirmed that difference A/c was opened for the sake of tallying of ALPM balances with G/L balances.

The credit as well as the Debit Current A/c supplementaries for the date 26.02.1993 do not show any transaction entry in the difference A/c i.e., C/A no. 1000. Thus the amount of ₹1,74,005.93 was transferred / credit to Difference A/c No. 1000 on 26.02.1993 by using one time activity / balance updation programme in flagrant violation of the laid down norms / procedures of the bank.

Findings:

The copy of supplementary report of 26.02.1993 (ME-37) proves that there was no transaction in C/A No 1000 (the Difference A/c) on 26.02.1993. But Daily Balance Report (ME-35) proved that C/A No. 1000 was opened on 26.02.1993 with debit balance of ₹1,74,005.93. This proves that it was done by the CSO invoking onetime activity: Balance Updation Programme. It may be noted that as per administrative guidelines the Balance Updation Programme should be deleted by the Branch Head on the date of launch of computerization itself. In East of Kailash computerization started w.e.f 25.02.1993 whereas balance Updation

Programme was involved as balances were changed with fraudulent intent on 21.06.1993 / 22.06.1993. This proves that the balance updation programme was not deleted in Feb. 1993 and was being used or kept ready of misuse even at least till June, 1993. This irregular misuse of Balance Updation Programme, establishes fragrant violation of laid down norms / procedures of Bank. And since, it is only the Branch Head (i.e. CSO) who has access to this file / programme, it proved that this was done by the CSO. The CSO only could do so and as such he must have does it. (Allegation stands proved).

2. The statement of difference a/c (Current A/c) No. 1000 shows entries during 21.06.1993 to 30.06.1993 alongwith the totals (credit / debit summations – for the entire month), the closing balance and the check balance, as mentioned here under:

Date	Particulars	Withdrawals	Deposits	Net Amount
	Pre. Balance			2,27,706.58
21.06.1993	TR 1349.2106		9820.00	2,37,526.27
21.06.1993	By Transfer		7609.69	2,45,136.27
22.06.1993	EN dt. 21.06.1993		2.60	2,42,138.87
25.06.1993	Intt. On TOD	3003.00		2,42,135.87
30.06.1993	EN dt. 21.05.1993		640.00	2,42,775.87
	Total	4794.39	18072.29	

Closing Balance : 2,42,775.87

Check Balance : 1,42,775.87

It is observed that closing balance does not tally. While closing balance for the month of June 1993 is shown as ₹2,42,775.87, the Check Balance is shown as ₹1,42,775.87. This shows a difference of ₹1,00,000/- in the balance of Difference A/c (CA) No. 1000.

Findings:

This is a factual position and stands proved by the Statement of A/c of Difference A/c – A/c No 1000 (E-38). Moreover the Defence side has neither challenged it nor have proved anything to the contrary.

As such, the balance updation programme was, used without any base, in the most unauthorized / justified / unfair manner, abusing his position as Senior Branch Manager.

Findings:

As per laid down norms and as also adduced by MW-2, the Sr. Branch Manager (CSO) only had the power to invoke / use / delete the Balance Updation Programme. The balances in CD A/c of M/s Grace Inc inflated / changed by ₹1 lakh (as proved earlier) either on 21.06.1993 after taking down or on 22.06.1993 which could have been done only by invoking ONE TIME BALANCE UPDATION PROGRAME and for which only CSO had access, the CSO did it. Here at EOK Br. as the Balance Updation Programme was not deleted and the same was misused to generate difference A/c (CA N. 1000), it is proved that the CSO did not. His act is unauthorized unjustified also unfair.

Since balances in CD A/c of M/s Grace Inc. were inflated / changed by ₹ 1 Lakh (as proved earlier), later on on 21.06.1993 (after taking down) or on 22.06.1993 which could have been done only by invoking ONE TIME BALANCE UPDATION programme and only CSO had access, the CSO did it.

(3) Daily balance report of C/A dated 22.06.1993 showed a difference of ₹1 lakh as on 22.06.1993 in the Current A/c No. 1713 in the name of M/s Grace Incorporated. The statement of C/A No. 1713 of M/s. Grace Incorporated for the month of June 1993 showed a difference of ₹1,00,000/-. The supplementaries bearing the credit transactions relating to Current Accounts for the dates 21.06.1993 and 22.06.1993 do not show any credit transaction in the Current A/c No. 1713 of M/s. Grace Incorporated. It is

thus evident that the balance in the Current A/c No. 1713 was increased / inflated by ₹1,00,000/- by using the Balance updating programme on 21.06.1993 (after taking of balances) or on 22.06.1993.

<u>Findings:</u>

The difference of ₹1 Lakh in Difference A/c (CA-1000) already produced in above paragraphs by ME-38. The statement of A/c of A/c No. 1713 of M/s Grace Incorporated for the month of June 1993 states difference of ₹ 1 lakh. As this is possible only by invoking balance updation programme, which can only be done by Sr. Br. Manager. As the balances were inflated it is logical that the CSO inflated the balance in A/c No. 1713 by using Balance updation programme on 21.06.1993 after taking down balances (closing balance) or on 22.06.1993 opening balance).

The DR in his written brief has taken the fallacious plea that the statement of A/c (ME-39) was not attested by the Sr. Branch Manager and as such UN-ACCEPTABLE. It is to be made very clear that at the first meeting itself (Preliminary Hearing) the CSO was asked whether he challenges any management document. He has not challenged genuinity of Management Documents and also issued the certificate of examination as well. So later on DR can not challenge it. Therefore his plea has been rejected.

(4) On 02.07.93 a sum of ₹1,00,000/- was transferred from C/A No. 1713 in the name of M/s. Grace Incorporated to the Current A/c No. 1751 of Jukie (India) Pvt. Ltd. The Current Account of Jukie (India) Pvt. Ltd. was opened on 30.06.1993 with the Directors, Shri Manohar Kumar Sood, Sh. SS Padam Mrs. Kiran Padam and Mrs. Renu Padam. No introduction was obtained / given at the time of opening of the A/c. A/c Opening form / signature card is not signed by any officer. On 12.08.1993 from the current A/c No. 1751 of Jukie (India) Private Ltd., a sum of ₹50,000/- was transferred to C/A no. 1775 of M/s SS Kadam and Company. The cheque for ₹ 50,000/- in the Current A/c No. 1751 of Jukie (India) Pvt. Ltd. as well as the paying in slip (Credit Voucher) for ₹50,000/- in the C/A No. 177 of M/s. S.S. Padam &

Company were both passed by Sh. Bhupinder Singh, singly without the initial of any other officer.

<u>Findings:</u>

By ME-46 (A/c opening for of C/A 1713 of M/s. Grace Incorporated) it is proved that CSO has approved the opening of the A/c (by his initial on top) and there was no introduction of this A/c.

By M-48 (A/c opening form of CA No. 1775 of S.S. Padam & Co.) it is proved that the CSO has approved opening of the A/c (by his initial on top) and was introduced by M/s Julie Traders Pvt. Ltd. which was un-introduced. The plea of DR that for a limited company No introduction is required, is also not valid.

Thus a difference of ₹1,00,000/- was located in Difference A/c No C/A 1000 during June, 1993 (which is proved by ME-38). And compensating difference of ₹1,00,000/- was inflated / increased in the C/A of M/s. Grace Incorporated either on 21.06.1993 (after taking closing bal.) or on 22.06.1993. This has been proved by ME-39, which is statement of A/c of M/s Grace Inc. for the month of June, 1993 (taken on 30.07.1994).

On 02.07.1994 the said amount of ₹1,00,000/- was transferred from C/A 1713 of M/s. Grace Incorporated to C/A 1751 of M/s Jukie (India) Pvt. Ltd. This is proved by ME-52 (Cr. Voucher) and ME-51 (Dr., Voucher) and also by statement of A/c of C/a No. 1751 of M/s Jukie (India) Pvt. Ltd. was opened on 30.06.1993 with Director Sh. M.K. Sood, Sh. S.s. Padam, Ms. Kiran Padam and Mrs. Renu Padam. No introduction was obtained - all this stands proved with ME-47 (CD A/c opening form). There is no signature of authorization of any officer is also clear from the A/c opening form (ME-47).

On 12.08.1993 the transfer of ₹50,000/- from CD A/c 1751 of Jukie (India) Pvt. Ltd. to CD A/c 1775 of M/s S.S. Kadam & Co. is proved by relevant vouchers i.e. ME 53 & 54. Both the vouchers i.e. for ₹50,000/- in C/A 1751 and paying in slip (credit voucher) for C/A 1775 were passed by the CSO is also confirmed by his signature / initials on the ME 53 & ME 54. So this is proved.

The defence side has interestingly not challenged any of above transaction. The DR has written that "All other lapses, which are common in nature could have taken place due to heavy load of work and acute staff shortage in the Branch" is also a sad reflection, the sincerely, alertness of the CSO which resulted in violation and flouting of Bank's set norms / rules / procedures and let to fraud.

The Current A/c No. 1775 of M/s. S.S. Padam & Company was opened on 12.08.1993 with Shri S.S. Padam as the sole proprietor of the firm. Shri S.S. Padam as also one of the Directors in the company, Jukie (India) Pvt. Ltd. (C/A no. 1751).

The account opening form of the current A/c No. 1775 of M/s. S.S. Padam & Co. was initialed by Sh. Bhupinder Singh. While doing so, Shri. Singh failed to notice / did not consider that the current A/c No. 1775 of M/s. S.S. Padam & Co. was being opened with the introduction of the current A/c. No. 1751 of Jukie (India) Ltd. a newly opened account which itself (the current A/c No. 1751) had not been introduced, as per the laid norms / guidelines and the account opening Form / Specimen Signature Card had not been signed by any officer at the Branch, signifying authentication of the signatures appearing therein.

Findings:

The CD A/c of M/s. S.S. Padam & Co. was opened with introduction of C/A 1751 of M/s Jukie (India) Pvt. Ltd. is proved the A/c opening form ME48 current a/c of M/s Jukie (India) Pvt. Ltd. is not property introduced is also proved in relative A/c opening Form (ME-47). The CSO initialed on Top

Right side of the A/c Opening Form (ME-48) of S S Padam & Co. proved that he authorized the opening of the A/c. It also proves that he ignored / neglected the fact at the time of opening of A/c that A/c holder who is introducing itself is un-introduced.

(Allegation stands proved)

On 13.08.1993 (i.e., the next day) this amount of ₹50,000/- was withdrawn from this account (current a/c No. 1775 of M/s S S Padam & Co.) along with ₹1,50,040/- from their Demand Loan A/c (both cheques signed by M/s S.S. Padam & Co.) for issuing one DDA favouring Riat sons, drawn on Ludhiana Branch. A loose Cheque No. 225046 in the current A/c No. 1775 was issued by Shri Singh on 13.08.1993. The said loose cheque in the current A/c No. 1775 of M/s. S S Padam 7 Co. for ₹50,000/- and the demand loan cheque for ₹1,50,04/- as also the Demand Draft Vocher for ₹2,00,040/- were all passed / signed by Sh. Singh singly without the initials of any other offer at the branch.

Findings:

This is proved by the relevant voucher ME 53 (Dr. Vouhcer) and Credit Voucher ME-54, i.e., the margin money of CA 1775 of M/s SS Kadam & Co. was obtained out of ₹1 lakh wrong credit given to M/s Jukie (India) P. Ltd.

A demand loan for ₹2,00,000/- was sanctioned by Shri Bhupinder Singh to M/s S S Padam & Co. a newly opened A/c where a margin of 25% was stipulated. The loan granted to M/s S S Padam & Co. had become difficult for recovery. A suit had to be filed against M/s S S Padam & Co. and others for recovery of Bank's dues. The Bank's dues were repaid by the guarantor.

Findings:

Loan sanction letter (ME-58) proves that Demand loan of ₹2,00,000/- was sanctioned by Shri Bhupiner Sing with 25% margin. Subsequently the loan became difficult of recovery was recalled and suit filed is proved by document (ME-59) (ME-60). The loan was subsequently paid by the

Guarantor Mr. Sood as proved by ME-61.

(5) It is evident from the series of events / transactions as mentioned Shri Singh arranged this 25% margin (i.e., ₹50,000/-) for M/s SS Padam & Co. by way of transfer of the said sum of ₹50,000/- from the account of Jukie (India) Private Limited, which in turn had received credit of ₹1,00,000/- by way of a transfer of ₹1,00,000/- to their (Jukie (India) Pvt. Ltd.) A/c from M/s Grace Incorporated (the A/c opened by his introduction, where an unauthorized credit of ₹1,00,000/- was afforded using balance updation programme.

<u>Findings:</u>

All facts have been proved from the documents and series of events / transactions.

The defence side has parried the question "WHAT WAS THE PROBLEM IN WITHDRAWING CASH in the A/c of M/s Grace Inc." Here it may be noted that withdrawing of cash is not the issue. The crux of matter is fraudulent credit of ₹1 lakh given to M/s. Grace Inc. was transferred to M/s. Jukie (India) Pvt. Ltd. out of which ₹50,000/- was transferred to CD A/c of M/s S S Padam & Co. So one A/c was used as conduit for the other.

As Mr. SS Padam was director in Jukie (India) and also sole proprietor in M/s. S S Padam & Co. So their involvement / complicity is quite acceptable. How M/s. Grace Inc. transferred the excess credit of ₹1,00,000/- to M/s Jukie (India) Pvt. Ltd. is revealed by A/c. opening from (ME-46) where it is written by CSO "Known to us". This proves the connivance between CSO and the 3 CD A/cs.

(Hence allegation stands proved)

(6) On 20.07.1993, the difference A/c (Current A/c) No. 1000 showed a balance of ₹1,26,943.32. On 21.07.1993, a new current A/c No. 102 with little Dormat a/c was opened and the above amount of ₹1,26,943.32 was transferred from the Difference A/c (C/A) No. 1000 to the said Dormant A/c No. 102, the Debit Credit vouchers dated 21.07.1993 for ₹1,26,943.32 bear

the signature of Shri Bhupinder Singh. The daily balance report dt. 21.07.1993 shows a balance of ₹1,26,943.32 I Dormant A/c no. 102 and a NIL Balance in difference A/c (Current A/c) No. 1000.

<u>Findings:</u>

From ME-62, ME-63 and ME-65 it is proved that on 21.07.1993 a new C/A No. 102 with the little Dormat A/c was opened and the entire balance of ₹1,26,943.32 was transferred from the Difference A/c to the Dormant A/c. both the vouchers (ME-64 and ME-64) bears the signatures of CSO is also confirmed by the Management witness.

(Hence the allegation stands proved)

The statement showing Housekeeping / Balancing position in respect of Current A/c sent to the Regional Office, DCR-II now DMR-II) by Shri Singh alongwith the actual status of balances is shown hereunder: -

Date as on	**C/A whether tallied with progressive G/L Yes/No**	**As per list attached to statement (C/A Ledger No.10**	**Actual status of balance**
31.03.1993	**-**	**Tallied up to date with the progressive**	**The difference A/c (C/A No. 1000 showed a bal. of Debit ₹1,64,253.93**
15.07.1993	**Yes with G/L**	**-do-**	**Statement of difference A/c no. 1000 for July 19993 showed a balance of ₹ 1,26,943.32**
30.07.1993	**Yes with**		**Statement of difference A/c No. 1000 for July 1993 showed a NIL Bal.**

			However, the statement of Dormant A/c No. 102 for July 1993 showed a balance of ₹1,26,943.32 (the amount was transferred from Diff A/c No. 1000 on 21.07.1993.

Findings:

This is proved by the copy of statement of Housekeeping (ME-67) as sent by the Branch under the signature of Sh. Bhupinder Singh (CSO) as under:

a) On 31.03.93 the CSO reported that the CA was tallied whereas in actual, the difference A/c (C/A No. 1000) have deficit of ₹1,64,253.93.

b) Similarly in Housekeeping Report as of 15.07.1993, the CSO reported that A/cs tallied with G/L – whereas in actual there was Balance of ₹1,26,943.32 in the irregularly opened difference A/c (C/A- 1000).

c) Similarly on 30.07.93 also CSO made false reporting that the A/cs tallied with G/L. Though in the Difference A/c Balance was NIL (ME-62) but the difference was shifted to Dormant A/c with balance of ₹1,26,943.93 (ME-63).

It is evident from the above that Shri Bhupinder Singh furnished wrong / incorrect information (concealed the true state) relating to the Housekeeping position of the current A/c head to the higher (Regional) authorities.

Findings:

In view of the facts stated above, it is proved that CSO furnished wrong / incorrect information to the Higher Office. He concealed the fact the books were not balanced. He also concealed that there were balances in

Difference A/c and / or Dormat A/c (Hence proved).
(Allegation stands proved).

38. Having noted the findings of the Inquiry Officer on case No.4 the submission of Mr. Rao on the said findings was that the elaborate modus operandi portrayed by the respondents itself shows that no person in the position of the petitioner could ever conceive and execute the fraud of the nature and that to in collusion with the three account holders for siphoning off ₹1,00,000/-. According to him, while making the allegation(s) the respondents have concealed the fact that the current account from which ₹1,00,000/- was purportedly siphoned off has in fact showed excess amount of ₹71,679.43/-. In this regard, he relied upon the note of the Board of the respondent dated February 28, 2000. According to him, this shows bonafide mistakes have taken place not only decreasing the amount from the bank's account but also increasing the amount. He stated that the M/s Grace paid the amount under protest taking the plea that entry was not a mistake but genuine transaction. The mistake has not only reduced the amount but also increased the amount in bank's account. He stated the allegation of siphoning off is based on surmises and conjecture.

39. Suffice to state the limited submission made by Mr. Rao does not appeal to the Court for more than one reason. Mr. Rao does not answer the specific findings of the Inquiry Officer which were highlighted by Mr. Gupta and which have been noted above in Para 24. With regard to this allegation also on preponderance of probability the charge stood proved. Given the nature of findings it is not a case of no evidence. I may, at this stage reproduce the conclusion of the Disciplinary Authority in the impugned

order as under:

"Most of his submissions are repetitions of his submissions during the Inquiry, which were considered and answered by the IA.
The reported irregularities against Shri Bhupinder Singh are very serious in nature involving an element of disception and fraud. Some of his acts were camouflaged that it required a detailed probe before disciplinary proceedings could be initiated. Therefore the time taken to frame the allegations and charges was reasonable in the circumstances.
It is not denied by Shri Bhupinder Singh that he opened "difference a/cs" to transfer un-reconciled entries in various G/L heads, on a particular cut-off date. But he contends that he had the implied consent of the Regional Office. ***But I find from Inquiry report that during the Inquiry, he could not produce any evidence to substantiate his claim that*** *he had the implied consent. From time to time he reported to higher authorities that G/L heads are tallied. The a/cs involved were mostly allowed / introduced by him and the relative vouches were passed by him, which reflects his complicity and involvement in the series of transactions. Even the pay-in-slip / borrower's cheque requisition forms etc. were filled up by him. One of the beneficiaries of the fraudulent transactions viz M/s. SS Padam & Co. also became a borrower of the Bank, with the margin being arranged out of a set of dubious transactions. All these series of activities reflect malafide intention. The Inquiry reveals that Shrit Singh had not challenged any of the above transactions but tried to refer to the lapses of common nature which could have occurred due to heavy work load and staff shortage to while doing this, Shri Singh took advantage of the fact that, being the initial stage of computerization in the Bank, there were teething problems and that many people were not aware of the proper functioning of the system. He also took advantage of the fact that being the branch head, he was privy to many confidential information like passwords and diverted funds through a series of complicated transactions which remained undetected for a long time.*
Shri Bhupinder Singh has contended that in a very high value document i.e. the note put up to ACB by East of Kailash Branch, which was also approved by them, there is no mention of these 2 cases as a fraud, which clearly proves that there was no such fraud in the Branch. Shri Bhupinder Singh contends that netted credit balance was ultimately transferred to HO presuming there was no fraud. He further contends that if it is treated as a fraud, then even HO would be liable for fraudulently transferring the funds to HO a/c.

In this connection, I observed that the ACB note makes a disturbing, observation at Page No.3 under. Details regarding Frauds / Pending Customer complaints: that is, ... during the month of January 1999 & July 1999 credits were received in the said a/cs in a mysterious way and at present there is no debit balance outstanding in these accounts. An officer from IT department was deputed to the branch for investigation, but despite his best efforts, the irregular transactions could not be detected in full." When there was no outstanding balance in this account, the consequential inference could be that the netted credit balance did not involve the amounts from these accounts.

Further, the note in question reported frauds that were detected upto a particular time. It does not mean that all frauds were detected and reported. It is possible that a fraud can be unearthed subsequently and investigated.

I am satisfied that the Inquiring Authority had considered all the aspects and arrived at logical conclusions. The fact that the IA concluded that there was no loss to the Bank as concluded by Inquiry Authority can't come to his rescue in the light of the various irregularities that have been established in the inquiry and which were all fraudulent in nature. Banks being financial institutions can't continue in service people with doubtful integrity. His contentions that balance updation programme was not in the hands of the Branch Manager and that in the case of Private Ltd. Companies no introduction other that the certificate issued by ROC is required, had been logically dealt with by the IA and were rejected. I am convinced of the reasoning of the IA in this regard and accept the findings in toto.

Taking an overall view, I am of the opinion that ends of justice would be met if the penalty of "Dismissal from Bank's service which shall ordinarily be a disqualification for future employment" is imposed on Shri Bhupinder Singh."

40. The Supreme Court in Para 16 in the case of ***R.S. Saini vs. State of Punjab and Ors. (Supra)*** held as under*:*

"16. Before adverting to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the

function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

41. Further in the case of ***Lalit Popli vs. Canara Bank and Ors.*** the Supreme Court in Paras 18 and 19 held as under***:***

*"**18.** In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding.*

***19.** As observed in R.S. Saini v. State of Punjab [(1999) 8 SCC 90 : 1999 SCC (L&S) 1424] in paras 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows: (SCC p. 96)*

"16. Before adverting to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-

application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the Inquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard."

42. In view of my above discussion and keeping in view the position of law and the limited scope of jurisdiction of the court in interfering with the findings in the departmental Inquiry, I do not see any reason to interfere with the Inquiry Report and the impugned orders passed by the Disciplinary Authority and the Appellate Authority. The petition is dismissed.

No costs.

<u>CM No. 14546/2006</u>

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 27, 2018
aky/jg