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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18th January, 2022
Pronounced on: 28th January, 2022

+ W.P.(C) 13764/2009

SP SHARMA

..... Petitioner

Through: Ms. Sriparna Chatterjee, Adv.

versus

STATE BANK OF BIKANER AND JAIPUR

..... Respondent

Through: Ms. Kittu Bajaj, Adv.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****J U D G M E N T**

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28.01.2022

1. This is the third occasion when the petitioner is before this Court. It would be appropriate to trace the trajectory of the history of the petitioner's relationship with this Court, so as to identify the issues with which this Court is presently concerned.

2. On 31st January, 2007, when the petitioner was due to retire as Chief Manager of the Respondent-Bank ("the Bank", hereinafter), the petitioner was served with a charge-sheet, dated 29th January, 2007, proposing to initiate disciplinary proceedings against him under Regulation 19(2) of the State Bank of Bikaner and Jaipur (Officers) Service Regulations, 1979 ("the 1979 Regulations"). The Memorandum was accompanied by Articles of Charge and a Statement of Imputations of



Misconduct. Disciplinary inquiry was held, following which, on 12th October, 2007, the Inquiry Officer (“the IO”) submitted his Inquiry Report. The petitioner’s representation, against the Inquiry Report, was rejected by the Disciplinary Authority (“the DA”) who, *vide* order dated 6th August, 2008, dismissed the petitioner from service. A statutory appeal, preferred thereagainst, was dismissed by the Appellate Authority on 30th July, 2009.

3. The petitioner challenged the proceedings before this Court by way of WP (C) 13764/2009 which came to be allowed by a learned Single Judge of this Court *vide* judgment dated 14th May, 2012 on the sole ground that the annexures to the charge-sheet had been served on the petitioner after he had superannuated and that, therefore, there was no effective service of the charge-sheet on him prior to his retirement, as was required by law. The Bank carried the matter in appeal by way of LPA 736/2012. *Vide* order dated 1st February, 2013, the LPA was allowed by the Division Bench, rejecting the contention of the petitioner that he had not received the annexures to the charge-sheet prior to his superannuation. The petitioner, however, contended that he had additionally assailed the disciplinary action against him as being violative of Regulation 19(2) of the 1979 Regulations. As the learned Single Judge had, in his order dated 14th May, 2012, not dealt with this aspect, the case was remitted to the learned Single Judge for adjudicating on this plea of the petitioner.

4. The petitioner assailed the aforesaid order dated 1st February, 2013, passed in LPA 736/2012 before the Supreme Court by way of SLP (C) 14150/2014. *Vide* order dated 3rd July, 2013, the SLP was dismissed with



liberty to the petitioner to approach the Division Bench by way of Review Petition, seeking review of the order dated 1st February, 2013. The petitioner, accordingly, filed Review Petition 432/2013, before the Division Bench, which was dismissed by order dated 9th May, 2014.

5. The petition, thus, stood revived before the learned Single Judge. *Vide* judgment dated 26th November, 2015, the learned Single Judge dismissed the writ petition, rejecting the contention of the petitioner that Regulation 19(2) of the 1979 Regulations had been violated. The petitioner also sought to argue on the merits of the charges against him, but was not permitted to do so on the ground that the remand order dated 1st February, 2013 was limited in scope.

6. The judgment dated 26th November, 2015 was again carried by the petitioner in appeal, to the Division Bench *vide* LPA 51/2016. *Vide* judgment dated 25th January, 2016, the Division Bench, even while upholding the finding of the learned Single Judge on the issue of infraction of Regulation 19(2), nonetheless remanded the matter to the learned Single Judge to consider the petitioner's challenge to the merits of the findings against him in the inquiry proceedings.

7. It is, thus, that the matter had come back to the learned Single Judge and was argued before me.

8. Paras 10 to 12 of the judgment dated 25th January, 2016 of the Division Bench in LPA 51/2016 read thus:



“10. As far as the other ground that the merits of the enquiry proceedings and the charges were never gone into is concerned, the order of the learned Single Judge dated 14.05.2012 merely records the submission regarding the procedural lapse alleged against the bank. In para 6 the learned Single Judge recorded that he heard the counsels for the parties. After this length of time, it is not possible for the Court to go into as to what the learned Single Judge in fact did hear but what he applied his mind was only as to the question of procedural infirmity in not furnishing material documents. On that basis alone, the findings of the enquiry officer and the penalty imposed were set aside. Quite naturally, only the bank was aggrieved by this order - the appellant did not and could not have filed an appeal. The Division Bench remitted the matter. Although the bank would have us believe that the remand was limited to the question of Regulation 19 (2) nevertheless there is nothing in the order itself which precludes a consideration of the merits viz-a-viz the contention of the findings of the enquiry officer as accepted by the disciplinary authority. It goes without saying that the grounds urged before the Court of the first instance have to be gone into by it or the litigant who approaches the court would be prejudiced. In the present case, that seems to have happened, perhaps unwittingly.

11. In view of the above findings, this court is of the opinion that the petition has to be considered afresh on the grounds urged before the learned Single Judge as to the findings recorded by the disciplinary authority based upon the conclusions of the enquiry officer's report. The appeal, therefore has to succeed. W.P.(C) 13764/2009 shall now be decided on the merits as to the findings recorded by the enquiry officer and accepted by the disciplinary and appellate authorities ultimately leading the penalty of dismissal.

12. The appeal is allowed in the above terms. The learned Single Judge shall consider expediting and deciding the matter at his convenience preferably within six months from today”

9. The concluding sentence in para 11 of the judgment of the Division Bench is clear and categorical. My jurisdiction, in these proceedings, is limited to assessing “*the merits as to the findings recorded by the Inquiry*”



Officer and accepted by the Disciplinary and Appellate Authorities ultimately leading the penalty of dismissal”.

10. It is in this backdrop, therefore, that the controversy has now to be decided.

Scope of jurisdiction of the Writ Court, while dealing with disciplinary proceedings and punishments imposed consequent thereto

11. One may take it as fossilized, in service jurisprudence, that the Court exercising jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the findings of the Disciplinary Authority and cannot re-examine the merits of the charges against the aggrieved Officer as if the inquiry was being examined afresh. The scope of jurisdiction of the Court is classically restricted to deciding whether the authorities below, chiefly the disciplinary and the appellate authorities, have exceeded their jurisdiction or acted with perversity. It is equally well-settled that the disciplinary and appellate authorities exercise quasi-judicial powers. The writ Court, therefore, effectively exercises certiorari jurisdiction, while sitting in judicial review over their decisions. The parameters of certiorari jurisdiction stand classically delineated in the following passage from *Syed Yakooob v. K.S. Radhakrishnan*¹:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior

¹AIR 1964 SC 477



courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque* (1995) 1 SCR 1104, *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* (1958) SCR 1240 and *Kaushalya Devi v. Bachittar Singh* AIR 1960 SC 1168).

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear



that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.”

12. The authorities on the scope of the writ Court when approached by an officer aggrieved by the conclusion of disciplinary proceedings against him, has been explained and re-explained, *ad nauseam* by a catena of judicial pronouncements². The principles that emerge therefrom may be set out thus:

²Bank of India v. Degala Suryanarayana (1999) 5 SCC 762; B.C. Chaturvedi v. Union of India (1995) 6 SCC 749; Union of India v. G. Ganayuthan (1997) 7 SCC 463; High Court of Judicature at Bombay v. Shashikant S. Patil (2000) 1 SCC 416; State of Karnataka & Anr. v. N. Gangaraj (2020) 3 SCC 423; Asst. General Manager SBI v. Ashok Kumar Bhatia 2021 SCC OnLine Del 5419.



(i) A writ court, exercising power of judicial review over the decision of the disciplinary or appellate authority, does not sit in appeal over the said decisions.

(ii) The power of judicial review, vested in the writ court, is confined to the decision making process. It is intended to ensure that the aggrieved individual has received fair treatment at the hands of the authorities below, and is not intended to ensure that the conclusion of the authorities below is necessarily correct in the eyes of the court.

(iii) The writ court is, therefore, required to determine, essentially, whether

- (a) the enquiry was held by a competent authority,
- (b) the enquiry was held according to the procedure prescribed in that regard and
- (c) principles of natural justice were, or were not, violated.

(iv) So long as some evidence exists, on the basis of which the disciplinary or appellate authorities have proceeded, and the said evidence reasonably supports the conclusion arrived at by the said authorities, the writ court would not review or reassess the evidence and arrive at its independent finding thereon. At the same time, the finding of the disciplinary/appellate authority must be based on some evidence. If so, the adequacy, sufficiency or even reliability of the evidence, is not open for examination by the writ court.



(v) Technical stipulations, contained in the Evidence Act, 1872, and the standards of proof contemplated therein, do not apply to disciplinary proceedings³.

(vi) The disciplinary authority is the sole judge of facts, though the appellate authority has co-extensive power to re-appreciate evidence, as well as interfere with the punishment awarded. The writ court will not correct an error of fact of the disciplinary authority, howsoever grave. The exercise of assessment of facts and re-appreciation of evidence, has, however, necessarily to stop at the stage of the appellate authority. The writ court is required to forbear from doing so.

(vii) The writ court can, however, interfere where

- (a) the Enquiry Officer is not competent to enquire into the charges,
- (b) the disciplinary authority is not competent to pass the order of punishment,
- (c) the disciplinary proceedings are not in accordance with the procedure prescribed in that regard,
- (d) the principles of natural justice have been violated,
- (e) the decision(s) of the authorities below is/are vitiated by extraneous considerations,
- (f) the decisions of the authorities are arbitrary or capricious, or

³ Deputy General Manager (Appellate Authority) v. Ajai Kumar Srivastava (2021) 2 SCC 612



(g) the conclusions of the authorities below are such as no reasonable person, conversant with the facts would arrive at and are, consequently, perverse.

(viii) The writ court can interfere with the quantum of punishment if it shocks the conscience of the court, applying the principles of Wednesbury unreasonableness.

13. In the context of disciplinary proceedings against bank employees, and the scope of interference, therewith, under Article 226 of the Constitution of India, a distinct jurisprudence has emerged over time. This is because banks constitute the financial backbone of the national economy, and officials discharging duties in banks and other such financial institutions are required to exercise a proportionately greater degree of care. Infractions, even if minor and procedural, often have cascading effects, as they act *in rem* rather than *in personam*. Such derelictions cannot, therefore, be tolerated, and bank officials who display a propensity to jettison official procedure may, even if they are acting *bona fide* albeit without the requisite degree of care and circumspection, have to suffer expulsion from the bank's employ.

14. A comparatively recent decision, which exposit authoritatively on the point, is ***Deputy General Manager***³. The respondent before the Supreme Court, in that case, too, was a bank employee, in respect of whom serious charges, albeit with allegations of *mala fides*, were levelled, in effecting bank transactions including, *inter alia*, advancing of loans, as in the case at hand. The IA found Article 1 of the Articles of Charge not to



be proved, and Articles 2 to 7 to be proved. The DA disagreed with the IA in respect of Article 1. A disagreement note was issued to the respondent, along with a copy of the Inquiry Report. The DA held all Articles of Charge to have been proved, and dismissed the respondent from service. On the appeal, therefrom, also failing, the respondent approached the High Court, which set aside the order of the DA and the appellate authority as being unreasoned. The Bank appealed to the Supreme Court. Holding, *inter alia*, that the decisions of the disciplinary and the appellate authority were detailed and reasoned, the Supreme Court allowed the appeal of the Bank. Paras 22 to 28 of the report from the judgment of the Supreme Court read thus:

“22. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in *State of T.N. v. T.V. Venugopalan*, (1994) 6 SCC 302 and later in *State of T.N. v. A. Rajapandian*, (1995) 1 SCC 216 and further examined by the three-Judge Bench of this Court in *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 wherein it has been held as under: (*B.C. Chaturvedi*⁴ case, SCC pp. 759-60, para 13)

“13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court/tribunal. In *Union of India v. H.C. Goel*,

⁴ B.C. Chaturvedi v. Union of India (1995) 6 SCC 749



AIR 1964 SC 364 this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

23. It has been consistently followed in the later decision of this Court in *H.P. SEB v. Mahesh Dahiya*, (2017) 1 SCC 768 and recently by the three-Judge Bench of this Court in *Pravin Kumar v. Union of India*, (2020) 9 SCC 471.

24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

- (i) whether the enquiry was held by the competent authority;
- (ii) whether rules of natural justice are complied with;
- (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings



recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

15. The High Court, in the said case, had held, while reversing the finding of the IA regarding Article 1, that the DA had not given any reasons. In this regard, the Supreme Court observed thus:

“33. The submission which was made in regard to the note of disagreement not being served upon the respondent delinquent as to Charge 1 is concerned, this Court does find substance to hold that the disciplinary authority on receiving the report of enquiry, if was not in agreement with the finding recorded by the enquiry officer, was under an obligation to record its reasons of disagreement and call upon the delinquent for his explanation in the first place before recording his finding of guilt and undisputedly the procedure as prescribed by law was not followed and that has caused prejudice to the respondent and indeed it was in violation of the principles of natural justice. We are of the



considered view that so far as the finding of guilt recorded by the disciplinary authority in reference to Charge 1 is concerned, that could not be held to be justified in holding him guilty.

34. But this may not detain us any further for the reason that Charge 1 in reference to which the finding recorded by the enquiry officer has been overturned by the disciplinary authority is severable from the other charges (Charges 2-7) levelled against the respondent which were found proved by the enquiry officer and the finding of fact was confirmed by the disciplinary/appellate authority after meeting out objections raised by the respondent delinquent in his written brief furnished at different stages.

35. If the order of dismissal was based on the findings of Charge 1 alone, it would have been possible for the court to declare the order of dismissal illegal but on the finding of guilt being recorded by the enquiry officer in his report in reference to Charges 2-7 and confirmed by the disciplinary/appellate authority was not liable to be interfered with and those findings established the guilt of grave delinquency which, in our view, was an apparent error being committed by the High Court while interfering with the order of penalty of dismissal inflicted upon the respondent employee.

36. It is supported by the judgment of the Constitution Bench of this Court in *State of Orissa v. Bidyabhushan Mohapatra*, AIR 1963 SC 779 wherein it has been observed as under: (AIR pp. 785-86, para 9)

“9. The High Court has held [*Bidya Bhushan Mohapatra v. State of Orissa*, 1959 SCC OnLine Ori 43] that there was evidence to support the findings on Heads (c) and (d) of Charge (1) and on Charge (2). In respect of Charge 1(b) the respondent was acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of Charges 1(a) and 1(e) in the view of the High Court ‘the rules of natural justice had not been observed’. The recommendation of the Tribunal was undoubtedly founded on its findings on Charges 1(a), 1(e), 1(c), 1(d) and Charge (2). The High Court was of the opinion that the findings on two of the heads under Charge (1) could not be sustained, because in arriving at the findings the Tribunal had violated the rules of natural justice. The High Court therefore directed that the Government of the State of Orissa should decide whether ‘on the basis of those



charges, the punishment of dismissal should be maintained or else whether a lesser punishment would suffice'. It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on Charges 1(a) and 1(e) were vitiated for reasons set out by it, because in our judgment the order [*Bidya Bhushan Mohapatra v. State of Orissa*, 1959 SCC OnLine Ori 43] of the High Court directing the Government to reconsider the question of punishment cannot, for reasons we will presently set out, be sustained. If the order of dismissal was based on the findings on Charges 1(a) and 1(e) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal.”

37. This was further considered by this Court in *Binny Ltd. v. Workmen*, (1972) 3 SCC 806 as under: (SCC p. 813, para 9)

“9. ... It was urged that the Court should not have assumed that the General Manager would have inflicted the punishment of dismissal solely on the basis of the second charge and consequently the punishment should not be sustained if it was held that one of the two charges on the basis of which it was imposed was unsustainable. This was rejected following the decision in *State of Orissa v. Bidyabhushan Mohapatra*, AIR 1963 SC 779, wherein it was said that if an order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which punishment imposed can lawfully be given, it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question. In our view that principle can have no application to the facts of this case. Although the enquiry officer found in fact that the respondent had behaved insolently towards the Warehouse Master, he did not come to the conclusion that this act of indiscipline on a solitary occasion was sufficient to warrant an order of dismissal.”



38. Yet again, in *Sawarn Singh v. State of Punjab*, (1976) 2 SCC 868, this Court held: (SCC p. 873, para 19)

“19. In view of this, the deficiency or reference to some irrelevant matters in the order of the Commissioner, had not prejudiced the decision of the case on merits either at the appellate or revisional stage. There is authority for the proposition that where the order of a domestic tribunal makes reference to several grounds, some relevant and existent, and others irrelevant and non-existent, the order will be sustained if the Court is satisfied that the authority would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant or non-existing grounds could not have affected the ultimate decision (see *State of Orissa v. Bidyabhushan Mohapatra*, AIR 1963 SC 779).”

39. The Constitution Bench has clearly laid down that even after the charges which have been proved, justify imposition of penalty, the court may not exercise its power of judicial review.”

16. The judgment of the Supreme Court concludes with the following instructive words, regarding the conduct of bank employees

“42. Before we conclude, we need to emphasise that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24-7-1999 confirmed in departmental appeal by order dated 15-11-1999.”



17. Apropos the need for a greater degree of circumspection, in conducting of affairs by bank employees, I have had occasion to observe, in *Ishwar Pal Singh v. Punjab National Bank*⁵, thus:

“33. In respect of delinquent bank employees, a distinct jurisprudence has developed, which may be reflected in the following passages, from *Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar* (2003) 4 SCC 364, *Lalit Popli v. Canara Bank* (2003) 3 SCC 583 and *State Bank of India v. Ramesh Dinkar Punde* (2006) 7 SCC 212:

“A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik* [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious.”

(*P.C. Kakkar*⁶, para 14)

“As noted above, the employee accepted that there was some lapse on his part but he pleaded lack of criminal intent. A bank employee deals with public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. Any carelessness invites action.”

⁵ MANU/DE/0575/2020

⁶ *United Commercial Bank v. P.C. Kakkar* (2003) 4 SCC 364



(*Lalit Popli*⁷, para 20)

“Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance such submission. As already said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.”

(*Ramesh Dinkar Punde*⁸, para 21)

34. On the aspect of susceptibility, to disciplinary proceedings, to attack in judicial review, on the ground of violation of the principles of natural justice, whether contained in the applicable statutory provisions, or at common law, a caveat has been entered, by a line of authorities of the Supreme Court, the most well-known of which is, probably, *State Bank of Patiala v. S.K. Sharma* [(1996) 3 SCC 364], which held that perceived infraction of the principles of natural justice could vitiate disciplinary proceedings only if, as a consequence of such infraction, prejudice was shown to have resulted to the delinquent officer. Helpfully, for all of whom Article 141 of the Constitution of India enjoins the duty to faithfully follow the law laid down by the Supreme Court, *State Bank of Patiala*⁹ neatly sets out, in para 33 (of the report), the principles enunciated therein, thus (even while clarifying that the said principles were not meant to be exhaustive):

⁷ *Lalit Popli v. Canara Bank* (2003) 3 SCC 583

⁸ *State Bank of India v. Ramesh Dinkar Punde* (2006) 7 SCC 212

⁹ *State Bank of Patiala v. S.K. Sharma* (1996) 3 SCC 364



“(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To



repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

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

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in **B. Karunakar, (1993) 4 SCC 72**. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

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



adequate opportunity, i.e., between "no notice 'V' no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

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

35. *State Bank of Patiala*¹¹ continues to be followed, till as late as *Manisha Jaiprakash v. U.O.I. (2019) 10 SCC 115*"

In the same decision, following various decisions of the Supreme Court, it was held, in paras 29 to 32, thus:

"29. It would be appropriate, at the outset, to analyse the scope of interference, by a writ Court exercising powers under Article 226 of the Constitution of India, with disciplinary proceedings,



and the findings returned therein, or punishment imposed as a consequence thereof.

30. There are authorities galore, which expound on the scope of interference, by writ courts, with disciplinary proceedings, and orders of punishment, passed by disciplinary authorities/appellate authorities. We need search no further than the recent decision, of the Supreme Court in *State of Karnataka v. N. Gangaraj* (2020) 3 SCC 423, which encapsulates, by reference to its earlier decisions in *State of Andhra Pradesh v. S. Sree Rama Rao* AIR 1963 SC 1723, *B.C. Chaturvedi v. U.O.I.* (1995) 6 SCC 749, *U.O.I. v. H.C. Goel* (1964) 4 SCR 781, *High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil* (2000) 1 SCC 416, *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya* (2011) 4 SCC 584, *U.O.I. v. G. Gunayuthan* (1997) 7 SCC 463, *Bank of India v. Degala Suryanarayana* (1999) 5 SCC 762 and *U.O.I. v. P. Gunasekaran* (2015) 2 SCC 610, practically all the relevant indicia, which govern the exercise of the power of judicial review, by writ courts, in such cases. Paras 7 to 11, 13 and 14 of the report in *N. Gangaraj*¹⁰ deserve to be reproduced, in extenso, thus:

“7. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

8. In *State of Andhra Pradesh v. S. Sree Rama Rao*¹¹, a three Judge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under:

“7. The High Court is not constituted in a proceeding under Article 226 of the Constitution is not a court of appeal over the decision of the

¹⁰ *State of Karnataka v. N. Gangaraj* (2020) 3 SCC 423

¹¹ AIR 1963 SC 1723



authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence....”

9. In *B.C. Chaturvedi v. Union of India*⁸, again, a three Judge Bench of this Court has held that power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The Court/Tribunal in its power of judicial review does not act as an appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. It was held as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to



disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel*, this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

10. In *High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil*¹², this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such

¹² (2000) 1 SCC 416



enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under:

“16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

11. In *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*¹³, this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in

¹³ (2011) 4 SCC 584



the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B.C. Chaturvedi v. Union of India-, Union of India v. G Gunayuthan-, and Bank of India v. Degala Suryanarayana-, High Court of Judicature at Bombay v. Shashi Kant S. Patil,.)”

13. In another judgment reported as *Union of India v. P. Gunasekaran*¹⁴, this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings:

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

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

¹⁴ (2015) 2 SCC 610



- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.”

14. On the other hand learned counsel for the respondent relies upon the judgment reported as **Allahabad Bank v. Krishna Narayan Tewari, (2017) 2 SCC 208**, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the Writ Court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct.”

32. In **Allahabad Bank v. Krishna Narayan Tiwari (2017) 2 SCC 308**, the Supreme Court held, additionally, that a writ court could interfere with the decision of the disciplinary/appellate authority, where the decision(s) were vitiated by non-application of mind, or were unreasoned. In the said case, the Supreme Court held that the appellate authority had "added insult to injury", by mechanically reproducing the findings of the disciplinary authority, thereby evidencing non-application of mind on its part.”



18. Where, on the basis of the allegations contained in the charge-sheet, the misconduct alleged against the charged employee or officer is not made out, the Court can interfere. That, however, is restricted to examining the nature of the misconduct alleged *vis-à-vis* the facts on basis of which the charge sheet has been issued. There is a lineup of authorities, of which, perhaps, the most often cited is *U.O.I. v. J. Ahmed*¹⁵, which holds that mere negligence in discharge of duties is not sufficient to justify proceeding departmentally against the officer concerned. The general principle that emerges from this line of decisions is that, where the allegation against the officer is founded on his negligence in performing his functions, it is only where there is, additionally, an allegation of the officer having been actuated by corrupt motives or ulterior considerations, that disciplinary proceedings could be justified.

19. To this general principle, however, the Courts have, from time to time, carved out exceptions. One such exception is where the act of the officer results in serious economic or financial loss or damage which is irreparable in nature. In such cases, even if corrupt or ulterior motives cannot be fastened on the officer, the consequences of the negligent act performed by him have been regarded as sufficient not only to warrant disciplinary proceedings, but to visit the officer with major punishment.

20. There can, however, in the very nature of things, be no absolute proposition in this branch of the law, as disciplinary proceedings are fundamentally proceedings *in personam*.

¹⁵ (1979) 2 SCC 286



21. The culpability of the charged officer has, therefore, to be assessed on a case to case basis. Following from this principle, the law has further excepted the general rule that mere negligence, *sans* any ulterior motive or corrupt consideration would not justify mulcting the officer with disciplinary proceedings or visiting him with major punishments, in cases of certain classes of officers. These exceptions are essentially predicated on the nature of duties discharged by the officer, vis-à-vis public interest. Thus, officers who are in the Armed Forces, the Police, the Health sector, and other such vocations, become liable to disciplinary action and, based on facts, even to major punishment, even if corrupt motives cannot, on facts be imputed to them. This is essentially owing to the public nature of the duties discharged by such officers, as their acts impact not merely individuals, but the public in general.

22. One such sector which does not enjoy the latitude provided by *J Ahmed*³⁴, and decisions which follow it, is the banking sector. It has been held in several judicial authorities that officers in banks and other institutions dealing with public monies and public finances, are required to exercise a much higher degree of responsibility, care and caution while discharging their duties, as negligence or want of care results in a cascading and deleterious effect to the economy and public interest in general. Thus, officers in banks who are found remiss or negligent in discharging their duties are classically vulnerable to a much higher degree of punishment than officers in less sensitive organizations. This is because the officer is remiss not only in discharging his duties with due care and caution, but in failing to appreciate the additional care and



caution which he is excepted to exercise, given the nature of the functions discharged by him.

23. It is in the backdrop of these principles that the allegations against the petitioner, and the findings returned by the authorities below on the said allegations have to be assessed.

24. Thus assessed, I am unable to agree with Ms Sriparana Chatterjee, learned Counsel for the petitioner, that a case for interference with the findings of the authorities below, exists.

25. Keeping in mind the parameters of the jurisdiction of this Court, when dealing with disciplinary proceedings, I may briefly allude to the charges against the petitioner, and the findings and decision of the authorities below.

Article 1

26. Article 1, was divided into three sub-Articles in the Statement of Imputations of Misconduct.

Article 1(i)

27. Article 1 alleged violation, by the petitioner, of Circulars dated 2nd June, 1983 and 21st June, 2002 issued by the Bank, dealing with grant of housing loans. These circulars, according to the Charge, required purposeful pre-sanction inspection, by the officer sanctioning the loan, of the immovable properties which were provided as mortgage by way of



security against the loans. Article 1(i) alleged that the petitioner had not conducted such purposeful pre-sanction inspection of the immovable properties enlisted in Annexure A to the charge-sheet which were, later, found to be situated in unauthorised colonies.

28. Regarding Article 1(i), before the IO, the petitioner pointed out that, of the accounts enlisted in Annexure A to the charge-sheet, Inspection Reports were available only in respect of six accounts. He relied on the statement of Defense Witnesses led by him, to the effect that pre-sanction inspection of the properties had been conducted by him before sanctioning the loans, and that the borrowers had been interviewed by the petitioner. The veracity of the preliminary investigation report, on which the Bank was placing reliance, was also questioned.

29. The IO noted that the instructions issued by the Bank required that, before accepting mortgage of any immovable property against the grant of housing loan, the Branch Manager/Chief Manager/Assistant General Manager was required to satisfy himself, by examining the title deeds, that the title of the property was *prima facie* in order. The Inspection Register revealed that, in respect of the housing loans sanctioned by the petitioner to the borrowers enlisted at Serial Numbers 1, 2, 3, 4, 5 and 9 of Annexure A to the charge-sheet, there was no reference to any verification of the title of the properties. This, finds the IO, indicated that the petitioner had not conducted purposeful pre-sanction inspection of the borrowers to whom the said housing loans had been granted. For want of the records relating to the other borrowers enlisted in Annexure A, the IO held Article 1(i) to be partly proved.



30. As the petitioner was unable to dispute the contents of the Inspection Register, on which the IO had placed reliance, the DA and the Appellate Authority concurred with the IO that Article 1(i) stood partly proved against the petitioner.

Article 1(ii)

31. Article 1(ii) alleged that a housing loan of ₹ 8 lakhs was sanctioned, by the petitioner to Rakesh Kumar Sharma on 11th March, 2003, without verifying the antecedents of the borrower of the loan and that, in fact, one Satyendra Kumar Agarwal had availed the loan impersonating himself as Rakesh Kumar Sharma.

32. Regarding Article 1(ii), the petitioner pointed out that the Inspection Report relevant to the charge was not available. The Bank had sought to prove the charges on the basis of the statement of the Branch Manager who, not being the author of the document, could not confirm its contents. He alleged the communication of Rakesh Kumar Sharma, on which the Bank was relying, to be forged, and that the signature of Rakesh Kumar Sharma on the said communication was different from that on the loan documents.

33. The IO rejected the defence of the petitioner. He relied on the statement, dated 8th September, 2006, of Rakesh Kumar Sharma, to the Investigating Officer who had investigated at the pre-charge-sheet stage, to the effect that he had not availed any loan from the Bank and had come to learn that, in his name, loan had been availed by another person. He



also confirmed having been informed, by Satyendra Kumar Agarwal, that he had availed the loan in place of Rakesh Kumar Sharma. This was corroborated by the statement, dated 8th September, 2006, of Satyendra Kumar Agarwal, who confirmed having availed the housing loan of ₹ 8 lakhs in the name of Rakesh Kumar Sharma, who, at the time, was working with him. The statement of Satyendra Kumar Agarwal was witnessed by a Bank official who was, at the time of the enquiry, posted as Deputy Manager. These facts were also corroborated by the spot verification report, signed by 4 members/officers of the bank. The valuation report of the property, dated 28th February, 2003, also revealed that inspection of the property had been done at the request of Satyendra Kumar Agarwal. Though the address of Rakesh Kumar Sharma, in his statement to the Investigating Officer at the stage of investigation was C-328, Trans Yamuna Colony, Agra, and that in the loan documents was C-238, Trans Yamuna Colony, Agra, the IO treated this as a mere typographical error. The name of the father of Rakesh Kumar Sharma, as noted in his statement was, it was observed, correct. For these reasons, the IO held Article 1(ii) to be proved.

34. The DA upheld the finding of the IO, also noting that two of the witnesses cited by the Bank had corroborated the facts in the preliminary Investigation Report, to the effect that the housing loan was not availed by Rakesh Kumar Sharma. The Appellate Authority further noted that one of the Defence Witnesses, whose evidence had been led by the petitioner, had also admitted that the signature of Rakesh Kumar Sharma on the statement recorded during investigation, and on the loan documents, was almost similar. It was further observed that Satyendra Kumar Agarwal



had, in writing, agreed that he had availed the housing loan in the name of Rakesh Kumar Sharma, who, at the time, was his employee. He also undertook the responsibility to repay the loan. The finding that the Article of Charge had been proved against the petitioner was, therefore, affirmed in appeal.

Article 1(iii)

35. Article 1(iii) alleged that the petitioner had, without conducting pre-sanction inspection of the properties of Radhey Shyam and Gajendra Pal Sharma, sanctioned Mortgage Loans, to them, of ₹ 4.9 lakhs and ₹ 10 lakhs, respectively, by making false entries regarding the outcome of pre-sanction inspections in the Inspection Register. In reality, it was alleged, the plots were found to be open and unconstructed.

36. Regarding Article 1(iii), the petitioner initially faulted the charge-sheet on the ground that the properties, cited in the Article of charge, were against a loan sanctioned in the joint name of Radhey Shyam and Dhan Devi. Apropos the valuation, the petitioner relied on a fresh valuation report, as well as purported photographs of the plots in which houses were visible. As such, it was asserted that the petitioner had not made any wrong entry in the Inspection Register.

37. The IO observed that the spot verification report in respect of the property of Radhey Shyam Sharma, which was one of the properties mortgaged against the loan, given by three officers of the Bank, apart from the Investigating Officer who conducted the preliminary investigation, showed that the said property was an open plot. Dealing with the



Valuation Report provided by the petitioner and being relied upon by him, the IO noted that it contained several discrepancies. The year of construction of the house, stated to be present on the plot, was shown, at one point, as 2004 and another is 2005. The age of the floor was also shown as two years, which indicated that construction was started in 2005, whereas the loan was sanctioned on 1st March, 2004, which supported the inference that the plot was not constructed when the loan was sanctioned. Of the two properties mortgaged against the loan advanced to Radhey Shyam Sharma and Dhan Devi, therefore, the IO found Article 1(iii) to be proved in respect of the property belonging to Radhey Shyam Sharma.

38. The second property forming subject matter of Article 1(iii) was mortgaged against a loan of ₹ 10 lakhs extended to Gajendra Pal Sharma. Two properties had been mortgaged as security against grant of the said loan. The spot verification report in respect of one of the properties, located at 44, PawanVihar, indicated that it was an open plot. The photograph attached to the valuation report produced by the petitioner, too, indicated that it was an open plot with a boundary wall. In respect of the property located at 44, PawanVihar, mortgaged against the loan extended to Gajendra Pal Sharma, therefore, the IO held Article 1(iii) to be proved.

39. As a sequitur, the IO held that, in respect of one of the properties mortgaged against the loans extended to Radhey Shyam Sharma and Dhan Devi, and one of the properties against the loans extended to Gajendra Pal Sharma, the allegation of making false entries in the Inspection Register stood proved against the petitioner.



40. The DA and, subsequently, the Appellate Authority, upheld the findings of the IO. Reference has again been made, in their conclusions, to the evidence on which the IO relied. Additionally, the Appellate Authority rejected the contention, of the petitioner, that the irregularities, if any, had not been pointed out by the officers who had put up the file to him, and observed that the petitioner could not seek absolution from the lapses committed by him on that ground.

Article 2

41. Article 2, too, was divided into four sub-Articles in the Statement of Imputations of Misconduct.

Article 2(i)

42. Article 2(i) was, technically, held to be partly proved, but was, to all intents and purposes, dropped. The charge against the petitioner, in the said Article, was that Search-cum-Non-Encumbrance Certificates, which were required to be obtained from an advocate on the approved panel of the Bank had, in respect of certain accounts, be obtained from an Advocate who was later empanelled. Though, technically, this allegation was found to be established, the IO opined, and the DA and Appellate Authority agreed, that the default did not amount to much, from a practical point of view, as the concerned Advocate was later empanelled by the Bank, and his candidature for entitlement was under consideration at the time of providing the Certificates.

Article 2(ii)

43. Article 2(ii) alleged that, in violation of the Circulars issued by the Bank, the petitioner did not verify the value of the immovable properties mortgaged against the loans mentioned in Annexure B to the charge-sheet by conducting personal inspections and confirming the value from market sources before sanctioning and disbursing the loans. The value of the properties was, it was alleged, inflated by the valuers in their Valuation Reports, so as to facilitate borrowers in obtaining loans of higher amount.

44. In his defence, the petitioner questioned the veracity of the Valuation Reports cited by the Investigating Officer who conducted the preliminary investigation. The petitioner alleged that the Valuation Reports on the basis of which loan was sanctioned were correct but that the Valuation Reports cited by the Investigating Officer showed deflated imaginary prices which were unreal and unbelievable. Moreover, these reports, he alleged, did not take into account the fact that the borrowers were having properties of two storey's. The petitioner, therefore, denied the allegation of overvaluation of the mortgaged properties. It was further alleged that, had the Investigating Officer verified the Title Deeds Register, this confusion would not have arisen.

45. The IO considered the defence put forward by the petitioner, property by property. On the basis of the Verification Reports which had been presence of various officials of the Bank, it was seen that the properties were overvalued and, in many cases, plots of land, with no construction, were shown as constructed, with values apportioned to the constructed area. The Valuation Reports, on the basis of which the loans



sanctioned were, therefore, found to be fraudulent. The imputations against the petitioner, in respect of the properties for which data details were available were, therefore, held to be proved.

46. The DA upheld the findings of the IO. It was observed, by the DA, that, in at least four cases, open plots were valued by treating them as constructed houses and, thus, overvaluing the properties. This finding was maintained in appeal by the Appellate Authority.

Article 2(iii)

47. Article 2(iii) alleged that, in violation of the instructions issued by the Bank, the petitioner had sanctioned and disbursed loans, the particulars of which were contained in Annexure A to the charge-sheet without obtaining the complete chain of Title Deeds from the owners of the immovable properties at the time of creating equitable mortgage. Additionally, in respect of the loan accounts at Serial Nos 1 to 3, 5 to 7 and 9 of Annexure A, it was alleged that the petitioner had failed to obtain affidavits from the owners of the immovable properties, regarding their ownership rights over the properties.

48. Responding to the allegation, the petitioner sought to point out that, in the case of colonies converted from agricultural land, it was neither possible, nor required, to obtain the complete chain of title deeds. He submitted that the documents issued by the Agra Development Authority and other municipal authorities provided full rights and legitimate titles to the owners of the land for all legal purposes. He further pointed out that



the advocate of the Bank had, in all cases, given the Search Report and Non-Encumbrance Certificate, which was valid and sufficient document. The second allegation, regarding failure to obtain affidavits in respect of seven accounts, submitted the petitioner, was not substantiated with any material whatsoever.

49. The IO held the first part of the Article of Charge, regarding failure, on the part of the petitioner, to obtain the complete chain of title deeds in respect of the mortgaged or immovable properties, to be proved, but the second part of the Article of Charge, pertaining to failure to obtain affidavits in respect of seven accounts, not to be proved.

50. Apropos the first part of the Article of charge, the IO noted that the applicable instructions required the Branch Manager/Chief Manager/Assistant General Manager to satisfy himself, by examining the title deeds, that the title deeds were *prima facie* in order and to ascertain that the property was unencumbered. In the case of incomplete chain of title deeds, the instructions required the intending mortgagor to supply a copy of the missing documents, as certified by the Registrar, as well as the reasons for his failure to provide the original. As such, obtaining the complete chain of title deeds, in respect of immovable property to be mortgaged against grant of housing loans was, it was found, mandatory. As against this, in respect of eight of the borrowers in the said Annexure A to the charge-sheet, the petitioner had obtained only sale deeds. In respect of the ninth borrower, the petitioner had obtained the sale deed and a copy of the Revenue Record. In the case of the remaining two borrowers, the petitioner had obtained the registered sale deed, and



copies of the revenue record, agreement to sell and revenue receipt. No other document, relating to title to the properties, had been obtained.

51. The contention of the petitioner that, in respect of converted agricultural lands, complete chain of title deeds was not required, was rejected by the IO in view of the specific instructions issued by the Bank. Moreover, he observed that the petitioner had not led any material to indicate that the colonies had been converted from agricultural land.

52. The IO, further, even while acknowledging that the documents issued by the Agra Development Authority or the U.P. Avas Vikas Praishad provided full and legitimate title to the owners, observed that no such document, issued by these authorities, had been produced by the petitioner in the enquiry proceedings. In all the cases, it was found that the plots of land were purchased from private parties/Housing Cooperative Societies, and not from government authorities.

53. In view thereof, the IO held the allegation of failure, on the part of the petitioner, to obtain complete chain of title deeds from the owners of the properties being provided as mortgage to be proved against the petitioner.

54. The DA concurred with the IO. The Appellate Authority further observed that Search Reports were no substitute for the complete chain of title. It was again noted that no statutory document, evidencing that the properties were converted from agricultural land, was placed on record.

Article 2(iv)

55. This sub-Article of charge alleged that the petitioner had, in violation of the extant instructions, sanctioned and disbursed housing loans, to the borrowers identified in Annexure A to the charge-sheet without obtaining completion letters/certificates from the concerned borrowers/engineers regarding completion of the Housing Projects, in respect of the borrowers at Serial Nos 7 to 11 of Annexure A. Subsequently, it was observed, these projects were found to be incomplete.

56. The petitioner denied the allegation. He submitted that completion letters had been received from all borrowers and kept in the Branch record, and were available at the time the petitioner left the Branch on 21st May, 2004. It appeared, he submitted, that the record had been tampered with subsequently.

57. The IO noted that the applicable instructions required the branches to insist on a certificate from the engineer/architect of the borrower, regarding the stage of completion of. No such certificates, from the engineers/architects of the borrowers and listed at Serial No's 7 to 11 of Annexure A to the charge-sheet were, it was noted, available. The petitioner had also acknowledged, in his defence, that he had merely obtained letters from the borrowers. This, too, proved that completion certificate from the Engineers/Architects of the projects had not been obtained, as required. Subsequently, it was found that the projects in



respect of the borrowers at Serial Nos 7, 8, 10 and 11 of Annexure A show were incomplete. The allegation was, therefore, held to be partly proved.

58. The DA concurred with the IO. The Appellate Authority further noted that completion letters/certificates could have been obtained even from the concerned borrowers as regards stage to stage completion, but no such letters were forthcoming on record. The appeal was, therefore, rejected.

Article 3

59. Article 3, similarly, was divided into 2 imputations.

Article 3(i)

60. Article 3(i) alleged that, contrary to the existing instructions, the petitioner had sanctioned and disbursed housing loans to borrowers without obtaining the required number of Post Dated Cheques (PDCs) from the borrowers. As such, monthly repayment of the loans was not ensured.

61. The petitioner, in response, contended that no instruction had been issued by the Bank regarding the number of PDCs to be obtained against housing loans. The Circular, on which reliance was placed in the charge-sheet, it was submitted, referred to Banking Advances. As such, the petitioner submitted that he had acted as per prudence and had obtained 8 to 10 cheques, against each loan, which was sufficient to ensure that the interests of the Bank was not prejudiced or jeopardised.



62. The IO held, *per contra*, that, as per the instructions issued by the Bank, at least 48 cheques, or cheques covering the full repayment, whichever was less, was required to be obtained. These instructions, it was noted, covered all personnel segment advances, of which housing loans and mortgage loans were parts. As such, the instructions applied to housing loans as well. The allegation that the petitioner had not obtained, against the grant of housing loans, the requisite number of PDCs, therefore, it was held, stood proved.

63. The DA, concurring with the IO, noted that, of the 11 accounts enlisted in Annexure A to the charged-sheet, only 8 to 12 cheques, in each case, had been obtained which, too, were undated and not filled. The charge against the petitioner, therefore, stood partly proved to that extent. This finding was upheld by the Appellate authority.

Article 3(ii)

64. Article 3(ii) alleged that, in violation of the instructions issued by the Bank, the petitioner had permitted illegal withdrawal, by one Jitendra Singh Sirohi, of amounts against an undated blank cheque which had been submitted by NareshMudgal and Anita Mudgal against housing loans availed by them.

65. The petitioner asserted, in response, that the Presenting Officer had not produced either the cheque, or the photo copy thereof, under which the amount was alleged to have been illegally withdrawn. He submitted that the payment must have been availed by Anita Mudgal or her



representative, and emphasised the fact that, before the preliminary investigation commenced, there was no complaint by Anita Mudgal, which was highly improbable, if money had illegally been withdrawn from her account. He also placed reliance on the statement, of the witness of the Bank, to the effect that the signature on the cheque, under which the amount had been withdrawn, was unclear.

66. The IO rejected the defence of the petitioner. He observed that the documents revealed that the cheque book containing 10 cheques, bearing numbers 382741 to 382750 had been handed over by Anita Mudgal to the petitioner, at the time of availing the housing loans. The passbook of the account of Anita and Naresh Mudgal, which was joint, revealed that, on 14th July 2003, ₹ 35,300/- had been withdrawn via cheque number 382741, favouring “self”. Both Anita and Naresh Mudgal stated that they were unaware of the said withdrawal. The Statement of Account of the housing loan availed by Anita and Naresh Mudgal for the period 9th July, 2003 to 30th September, 2005 did not reveal any credit entry of ₹ 35,300/-. During this period, cheque 382741 was in the custody of the Bank and, therefore, it was clear that the Bank had parted with the cheque. As the cheques had been handed over by Anita Mudgal to the petitioner, the liability rested on the petitioner for this default. The charge of permitting ₹ 35,300/- to be illegally withdrawn from the account of Anita Mudgal and Naresh Mudgal, using the PDC presented by them as security against the housing loans availed, therefore, stood proved against the petitioner. However, the IO held that the evidence was insufficient to identify the person who had illegally withdrawn the money and, therefore, the charge that the money was allowed to be illegally withdrawn by Jitendra Singh



Sirohi, it was held, was not proved. As such, Article 3(ii) was held to be partly proved against the petitioner.

67. In his representation against the Enquiry Report, on this Article of charge, the petitioner contended that, possibly, at the time of acceptance of cheques, the number of cheques had not been properly counted. This submission was rejected by the DA, as it amounted to questioning even the integrity of the borrower Anita Mudgal. Even on the basis of documents, it was found that this defence was not sustainable, as the letter under which the cheques had been handed over clearly indicated that 10 cheques, bearing numbers 382741 to 382750 had been handed over by Anita Mudgal. As against this, later, cheques 382742 to 382750 were found in the cheque book, indicating that cheque number 382741 was missing. This substantiated the allegation, against the petitioner, of allowing money to be illegally withdrawn under the said cheque No. 382741. The DA, therefore, concurred with the IO that, to this extent, the charge stood proved against the petitioner. This finding of the DA was upheld by the Appellate Authority.

Article 4

68. Article 4 alleged that, in violation of existing instructions, the petitioner had sanctioned and disbursed consumer loans to borrowers, enlisted in Annexure C to the charge-sheet, for purchase of computers, without ensuring end use of the funds. Subsequently, it was alleged that the borrowers had submitted bogus quotations/bills without purchasing any computer.



69. The petitioner, in his defence, contended that the extant instructions required remittance to be made directly by the Bank to the supplier/dealer by crossed account payee demand draft/bankers cheque. This instruction had been scrupulously followed. The instructions further stated that the physical inspection of the articles/obtaining of certificate of possession was waived in the case of Standard Assets. The Inspection Report, on which reliance was placed in the charge-sheet, it was submitted, was irrelevant, as inspection had been conducted on 12th September, 2006, whereas the computer loans had been sanctioned in February-March 2003. The loan accounts were regularly repaid and all accounts were fully insured by a nationalised Insurance Company which, too, would insure the goods only after physical verification of the assets.

70. The IO noted that the relevant instructions required, in order to ensure proper use of the funds, that receipts of the goods purchased be obtained and retained along with the documents. No such receipts were, however, enclosed with the documents. This itself indicated that receipts for the goods were not obtained.

71. This view was echoed by the DA. The DA further noted that, in respect of four accounts, invoices/bills were also not enclosed with the documents. As such, the DA found the allegation of failure to verify proper use of the computer loads extended by the Bank to have been established against the petitioner. The Article of Charge was, therefore, held to be partly proved.



72. Before the Appellate Authority, the petitioner contended that the advances had been cross checked by 6 other officers, none of whom had reported any irregularity. Nor was any irregularity pointed out by the Concurrent Auditor. All the accounts, he submitted, were regular, and none of them was an NPA. The Appellate Authority, however, rejected the contention, opining that the petitioner could not absolve himself of his lapses by submitting that other officers had not reported irregularities. The findings, of fact, returned by the IO and DA were reiterated by the Appellate Authority who, too, therefore, held the imputations against the petitioner to be partly proved.

Article 5

73. Article 5 merely alleged that the plaintiff had, without authorisation, and entrusted the work of the Accounts to an officer who was already designated as Deputy Manager (P). This, in my view, cannot legitimately be regarded as a misconduct, especially as no conclusive finding, which could justify such a conclusion, emerges from the observations of the IO, the DA or the Appellate Authority.

Article 6

74. Article 6 alleged that the petitioner had, despite having been restrained, by the Controlling Authority from advancing further housing loans till rectification of the irregularities pointed out in the Special Audit Report dated 12th December, 2003, continued to sanction and disbursed loans. Specific reference has been made, in sub-article (ii) of Article 6, to



a mortgage loan of ₹ 5 lakhs extended to one Geetam Prasad, who had purchased a plot, just a day earlier, for ₹ 13,500/—.

75. It is not necessary to advert to the defence put up by the petitioner to this Article of Charge, as the IO held the Article of Charge were not to be proved except in respect of the borrowers at Serial No's 2 and 3 of Annexure D to the charge-sheet. Even in respect of the said borrowers, the charge was held to be proved only because of want of any noting by the Controlling Authority, recording satisfaction of rectification of irregularities pointed out in the Special Audit Report. These findings stand upheld by the Disciplinary and Appellate Authorities.

Article 7

76. Article 7 generally alleged that, by reason of the misconducts committed by the petitioner and as delineated, specifically, in Articles 1 to 6 of the Articles of Charge against him, the Bank had been exposed to a likely financial loss of ₹ 59,24,245.88 as on 31st December, 2006. Moreover, 13 accounts, enlisted in Annexure E to the charge-sheet had become NPAs and, therefore, difficult to recover.

77. The IO held that this Article of Charge could be treated as proved only to the extent that Articles 1 to 6 were proved against the petitioner, as the petitioner had demitted office at the Branch of the Bank on 22nd May, 2004, and the account position, as cited in the Article of Charge was as on 31st December, 2006. If, therefore, accounts had turned NPA in the interregnum, the petitioner could not be entirely blamed. Nonetheless, as



the petitioner had been found to be remiss on various counts, and his negligence had also resulted in financial loss to the Bank, Article 7 was held to be partly proved. This finding was upheld by the DDA and the Appellate Authority.

Petitioner's Contentions and Findings

78. I proceed, now, to deal with the contentions of Ms. Chatterjee, regarding the findings of the authorities below against her client.

79. Regarding Article 1, Ms Chatterjee submitted that the Appellate Authority had not dealt with the petitioner's submission that verification of title of the properties was not entered in the Inspection Register, but in the Title Deeds Register. In the first place, this contention was placed, for the first time, in appeal, and was not raised before the IO. That apart, the allegation against the petitioner was that he had failed to conduct pre-sanction inspection. The stand of the petitioner, before the IO, was that the details of pre-sanction inspection were contained in the Inspection Registers, pertaining to the borrowers at S. Nos. 1, 2, 3, 4, 5 and 9 of Annexure A to the charge-sheet. Further, the IO has held that the exercise of pre-sanction was for verification of the authenticity of the title, to the property, by the beneficiary of the housing loans, who desired to put up the property by way of mortgage and security. Ms Chatterjee does not dispute the fact that pre-sanction inspection was necessary as per the Circulars issued by the Bank.



80. Ms Chatterjee has further contended that the IO had not taken, into account, the evidence of DW-2 or of the Concurrent Auditor. As has already been noted herein before, the IO proceeded on the basis of documentary material, in the form of the Inspection Registers. In any event, this contention of Mr. Chatterjee, even if accepted, cannot constitute the basis to set aside the impugned order, as a reappraisal of evidence cannot be undertaken by this Court, in writ jurisdiction.

81. With respect to Article 1(ii), Ms Chatterjee submitted that, as Rakesh Kumar Sharma and Satyendra Kumar Agarwal had not been produced during the enquiry, nor reliance could have been placed on the communication purportedly issued by him. This contention might have merited consideration, as the IO proceeded merely on the basis of the statements of Rakesh Kumar Sharma and Satyendra Agarwal. That is, however, not so. The IO found the statement of Rakesh Kumar Sharma to have been corroborated by that of Satyendra Kumar Agarwal. The statement of Satyendra Kumar Agarwal was witnessed by a Bank official. These facts were also corroborated by the spot verification report, signed by 4 Bank officials, as well as the valuation report of the property in question, dated 28th February, 2003. In the face of this material, this Court cannot, in the exercise of its writ jurisdiction, interfere with the finding of the authorities below regarding Article 1(ii), solely on the ground that Rakesh Kumar Sharma and Satyendra Kumar Agarwal had not been brought into the witness box. That apart, the Investigating Officer M.L. Sharma was called into the witness box by the Bank. Strict procedures of evidence, it is well settled, are not mandatorily required to be followed in disciplinary proceedings. If the IO held this charge to be proved on the



basis of the cumulative assessment of the Investigation Report, the statements of Rakesh Kumar Sharma and Satyendra Kumar Agarwal, the Bank official who witnessed the statement of Satyendra Kumar Agarwal, the spot verification report signed by 4 members/officers of the Bank, the valuation report, dated 28th February, 2003, in respect of the property, and the evidence of the Investigating Officer, recorded during enquiry, it cannot be held that the findings of the IO, which were accepted by the DA and upheld in appeal, merit interference.

82. Apropos Article 1(iii), Ms Chatterjee submits that the IO did not consider the photographs of the properties forming subject matter of the Article of charge, or the title deeds register. She has also referred to a newspaper publication extract, dated 30th October, 2009, filed with the writ petition, purportedly reflecting 2 properties of Gajendra Pal Sharma.

83. The IO proceeded, while examining the aforesaid Article of charge, on the basis of the spot verification report of the property of RadheyShyam Sharma, given by 3 officers of the Bank, which showed that the property was an open plot. The Valuation Report filed by the petitioner was also examined, and several discrepancies were noted therein. As regards the property given against the loans extended to Gajendra Pal Sharma, the IO again relied on the spot verification report, which indicated that 1 of the properties was an open plot, which was also borne out by the photograph attached to the valuation report produced by the petitioner. Inasmuch as the allegation against the petitioner was that, in the Inspection Register, “were shown as constructed properties, and were overvalued”, the findings of the IO, which had been accepted by the



DA and the Appellate Authority, cannot be said to suffer from any infirmity. The newspaper extract, on which Mr. Chatterjee relies, does not find any place in the material produced before the IO and cannot, therefore, be examined in the present case. That apart, in the face of the spot verification report, the IO cannot be faulted at not having relied on any collateral evidence. Significantly, Ms Chatterjee has not, at any point of time, discredited the spot verification report, which constitutes the basis for many of the findings of the IO.

84. Regarding Article 2(ii), the IO proceeded on the basis of the Spot Verification Reports, prepared in the presence of various Bank officials, which indicated that many of the plots, provided for mortgage against sanction of loans, were overvalued; in some cases, the plots were shown as constructed, though they were vacant. Ms Chatterjee has not seriously contested these findings, but has sought to submit that the charge against the petitioner was that he had, instead of taking 2 properties into consideration against each of the loan accounts forming subject matter of the said Article of charge, taken only one property into consideration. She submits that the finding, of the Appellate Authority, that the value of 1 of the 2 properties mortgaged with the Bank was inflated at the time of sanction of the loan itself indicated that there were 2 properties mortgaged for each loan. This, according to her, discredited the Article of charge.

85. The submission of Mr. Chatterjee is not acceptable, as the precise allegation against the petitioner, in Article 2(ii), was that, in violation of the Circulars issued by the Bank, the petitioner did not verify the value of the immovable properties mortgaged against the loan is mentioned in



Annexure B to the charge-sheet by conducting personnel investigations and confirming the value from market sources, before disbursing loans. The petitioner had, in his defence, questioned the veracity of the Valuation Reports on the basis of which the charts had been framed. The IO has considered the defence and has also relied on the Spot Verification Reports prepared in the presence of various officials of the Bank, which revealed that the properties were overvalued and shown as constructed even where they were vacant plots. The submission of Mr. Chatterjee cannot, therefore, constitute a legitimate basis to interfere with the findings of the IO, as accepted by the DA and Appellate Authority.

86. Adverting, now, to Article 2(iii), the submission of Mr. Chatterjee is that, admittedly, in cases of properties which had resulted from conversion of land use, it was not possible to obtain the complete chain of title deeds. She submits that there was no dispute about the fact that the properties were unencumbered. By observing that there was no written order of the SDM or certified copy of the Khasra, she submits that the IO had changed the nature of the charge, which was impermissible. She also faults the IO, as well as the DA and the Appellate Authority for not having taken sufficient stock of the evidence of DW-1, who confirmed that there was no incompetence in the properties forming subject matter of the Article of charge.

87. The submissions of Mr. Chatterjee, in my view, do not answer the findings of the IO, as affirmed by the DA and the Appellate Authority. The charge against the petitioner was that he had failed to obtain the complete chain of title deeds in respect of the mortgage or immovable



properties. The IO noted that the applicable instructions required the petitioner to examine the title deeds, verify that they were in order and ascertain that the property was unencumbered. The fact that the properties might not have been encumbered cannot be a basis for the petitioner to seek absolution from failing to perform his duties with the applicable instructions. As the IO has noted – which is not disputed by the petitioner – the applicable instructions required intending mortgagor to supply a copy of the missing documents, as certified by the Registrar, adduce the reason for not being able to provide the original. The complete chain of title deeds, it was observed, had not been obtained by the petitioner in respect of any one of the borrowers forming subject matter of the charge. The IO also found the contention, of the petitioner, that a complete chain of title deeds was not required where the colonies had been converted from agricultural land, not to be borne out by the instructions issued by the Bank. Ms Chatterjee has not been able to draw my attention to any instruction, which did away with the requirement of obtaining complete chain of title deeds, where the colonies were converted from agricultural land. The submission, of Ms. Chatterjee that the IO had altered the charge in the Articles of charge is without substance, as the IO was dealing with the defence put forward by the petitioner, in respect of which he found that the petitioner had not provided any document issued by the Municipal authorities which provided full and legitimate title to the owners. Again, these findings cannot be interfered with, by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India.

88. Qua Article 2(iv), the submission of Ms Chatterjee is that the instructions contained in the Circular dated 12th June, 2002 too were not



mandatory, as the circular used the word “may”. This contention, she submits, though advanced even in the response, of the petitioner, to the charge-sheet, has not been considered by the authorities below.

89. The contention of Ms. Chatterjee is not entirely correct. In his response to the charge-sheet, the petitioner denied the allegation that he had not obtained completion letters from the concerned borrowers/engineers regarding completion of the Housing Projects, and that these documents were available with the Branch record at the time he demitted office, but were probably tampered with, subsequently. The IO relied on the acknowledgement, by the petitioner, in his defence to the Article of charge, that he had obtained letters from the borrowers. It was also observed, by the IO, that no certificates from the engineers/architects, in respect of the borrowers enlisted at Serial No’s 7 to 11 of Annexure A to the charge-sheet were available on record. The fact that, later on, it was subsequently found that the projects in respect of these borrowers were incomplete also indicated that completion letters had not been obtained from the borrowers, all from the architects/engineers.

90. A reading of the Enquiry Report does not disclose that, in the enquiry proceedings, any particular emphasis was laid, by the petitioner, on the use of the word “may” as contained in the Circular dated 12th June, 2002, to contend that the requirement of obtaining completion certificate was not mandatory. In any event, interpretation of an administrative instruction, especially in the nature of an interdepartmental or intradepartmental communication, cannot be informed by the strict principles of interpretation of statutes. Whether the requirements in a



communication, regulating the working of government departments, are mandatory or directory, is essentially a matter to be decided by the officers in the Department. Ordinarily, in the banking Sector, such requirements, which are aimed at ensuring integrity and transparency of the banking operation, may have to be treated as mandatory, rather than dispensable at the will of the officer concerned. I do not, however, propose to return any authoritative finding on this issue; suffice it is to state that the interpretation of the Circular, as adopted by the IO and upheld, successively, by the DA and Appellate Authority, cannot be interfered with, in exercise of Article 226 jurisdiction.

91. This principle would also apply to Mr. Chatterjee's contention with respect to Article 3(i) of the Articles of Charge against the petitioner. The charge against the petitioner was that the petitioner had failed to obtain 48 PDCs from the borrowers to whom the housing loans had been advanced. On facts, this allegation was admitted by the petitioner, and also stands admitted in the tabular statement of submissions filed by Ms Chatterjee before this Court. The stand taken by the petitioner, as vocalised by Mr. Chatterjee is that, if 48 PDCs would ensure the integrity of the borrower and safeguard the interests of the bank, 8 to 10 PDCs would equally suffice. This contention, I may note, was somewhat at variance with the main defence put forward by the petitioner before the IO. Before the IO, the contention of the petitioner was that the Circular, on which the Bank placed reliance, was inapplicable to housing loans, and pertains only to banking advances. This contention was rejected by the IO, the DA and the Appellate Authority, and Ms. Chatterjee has not sought to question the correctness of the rejection. What instead has sought to be contended



before this Court is that 8 to 10 PDCs, if obtained from any borrower, would be sufficient to ensure protection of the interest of the Bank. Even one cheque, if submitted, would be sufficient.

92. The contention, on a plain glance, merits outright rejection. Instructions are instructions. They are meant to be obeyed. This principle would apply with additional emphasis, where it concerns banking operations. If the Circular, applicable, required 48 PDCs to be obtained from the borrowers who are availing housing loans, it did not lie in the mouth of the petitioner to *suo motu* modify the Circular and to, at his own discretion, accept a lesser number of PDCs. Such a contention, if accepted, would be granting premiums of insubordination, and amounts to violation of applicable instructions by officers in Banks. The reliance, by Ms Chatterjee, on Section 138 of the Negotiable Instruments Act, 1881, is neither here nor there. As the petitioner admits having acted in violation of the applicable instructions, there is obviously no scope to interfere with the findings of the authorities below.

93. Article 3(ii), as contained in the charge-sheet, is considerably serious. The submissions of Ms. Chatterjee offers no defence to the findings of the authorities below, and the only contention advanced in the tabular statement filed by Mr. Chatterjee is that the allegation of the blank signed cheque, tendered by Anita Mudgal, against the housing loans availed by her and her husband, was misappropriated and used to withdraw, from the joint account of Anita Mudgal and her husband, an amount of ₹ 35,300/—, by Jitender Singh Sirohi, was not proved. In fact, the precise submission, as contained in the tabular statement filed by Ms



Chatterjee, is that “the imputation of the cheque being unauthorisedly handed over to Sh. Jitender Singh Sirohi was not proved”. This submission is, unfortunately, of no avail to the petitioner, as the authorities below also held that the identity of the person who, without authorisation, withdrew ₹ 35,300/–, from the account of Anita and Naresh Mudgal, was not conclusively established, but that the fact of unauthorised withdrawal stood proved. The IO has held, and the DA and Appellate Authorities have endorsed the finding, that, being in custody of the cheque at the relevant point of time, liability, in this regard, had necessarily to be fastened on the petitioner. The submissions of Mr. Chatterjee do not afford any ground to interfere with this finding. I may note, in this regard, that, apropos this Article of Charge, there is also an allegation, in the charge-sheet, that the petitioner acted deliberately.

94. In the backdrop of the above position, I do not deem it necessary to enter into Articles 4 to 7 of the Articles of Charge against the petitioner, as Articles 4 and 5 were relatively minor, and Articles 6 and 7 have essentially been proved on the basis of the conclusions arrived at with respect to the earlier Articles of Charge. Suffice it is to state that, even on the findings with respect to Articles 1 to 3 of the Articles of Charge against the petitioner, within the parameters of the law that has developed with respect to interference, in writ jurisdiction, with findings in departmental proceedings, no case for interference can be said to be made out. The submissions advanced by the petitioner had been considered, *in extenso*, by the IO, and principles of natural justice have also been duly complied with. The findings of the IO stand affirmed by the DA and upheld in appeal. The contentions advanced by the petitioner have also



been examined by the DA and the Appellate Authority. No procedural infraction can, therefore, be said to have occurred.

95. Submissions were also advanced, by Ms. Chatterjee, on whether a punishment of dismissal could have been imposed under the relevant Rules and instructions. That, however, is beyond the purview of examination by me, as I am bound by the terms of remand, contained in the judgement, dated 25th January, 2016, of the Division Bench of this Court in LPA 51/2016. A holistic reading of para 10 and 11 of the said decision, as extracted in para 8 *supra*, make it clear, without equivocation, that the Division Bench has, *ex debito justitiae* remanded the matter only because, at the prior stages of litigation, no finding, regarding the merits of the charges against the petitioner, as upheld by the DA and the Appellate Authority, was returned by this Court. The remand case for consideration of the petitioner afresh on the ground is urged before the learned Single Judge *as to the findings recorded by the disciplinary authority based upon the conclusions of the enquiry officer's report*. This, in my view, has to be read with the observation, in para-10 of the judgement, that there had been no “consideration of the merits vis-à-vis the contentions of the findings of the enquiry officer as accepted by the disciplinary authority”. The clear intent of the Division Bench was only to afford the petitioner an opportunity to try to convince the Court regarding the unsustainability of the findings, on merits, as returned by the authorities below, on the charges against him.

96. That, despite a valiant and unquestionably sincere effort, Ms Chatterjee has, unfortunately, not been able to do so, essentially because



of the position in law as regards interference by writ courts with findings of the disciplinary authority, especially in the case of bank officials.

Conclusion

97. For the aforesaid reasons, this petition is devoid of merits and is accordingly dismissed with no orders as to costs.

C. HARI SHANKAR, J.

JANUARY 28, 2022

Kr/r.bararia/dsn/ss

