

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.03.2019

Dated 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.2607 of 2013

G.S.Subbaraman

.. Petitioner

Vs.

1. Indian Bank  
Rep. by its Executive Director/  
Appellate Authority  
Corporate Office  
254-260, Avvai Shanmugam Salai  
Royapettah, Chennai 600 014.

2. General Manager / Disciplinary Authority  
Indian Bank  
Corporate Office  
Vigilance Department  
254-260, Avvai Shanmugam Salai  
Royapettah, Chennai 600 014.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 04.08.2012 confirming the order dated 19.09.1994 bearing No.2529:94:VC of the 2nd respondent as illegal, arbitrary and in gross violation of principles of natural justice and consequently direct the respondents to pay the back wages to the petitioner for the period from 19.09.1994 to 30.09.1994, pay all the terminal benefits including pension, arrears of pension, gratuity, provident fund etc., along with 18% interest.

For Petitioner : Mr.Balan Haridas

For Respondent : Mr.Mrs.Rita Chandrasekar  
for M/s.Aiyar & Dolia (for R1 & R2)

O R D E R

The instant writ petition is filed challenging the order dated 04.08.2012, passed by the Executive Director/Appellate Authority, Indian Bank, Corporate Office, Chennai, who affirms

the order dated 19.09.1994 bearing No.2529:94:VC passed by the General Manager / Disciplinary Authority, Indian Bank, Corporate Office, Vigilance Department, Chennai.

2. The petitioner while working as a Chief Manager in Mylapore branch at respondent bank, was served with a charge memo stating that on 20.12.1991, the petitioner unauthorizedly purchased the foreign cheque bearing No.79584032 account with Union Bank, Switzerland, Zurich for SN Fr.1 Lakh issued by one Ms.Mallika Saravanamuthu payable to one NIFE.AB. The instrument was endorsed by the payee to one G.Ramachandran, Managing Director of M/s.Nurit Inks Pvt. Ltd. The petitioner credited the proceeds of the instrument to the account of G.Ramachandran. G.Ramachandran was allowed to withdraw the amount covered by the purchase of above instrument. The cheque was report as unpaid on 08.01.1992 with the endorsement "Cheque Blocked" and the petitioner had debited the FBP returned unpaid account for Rs. 18,63,932.00 and reversed the FBP liability covered by the above purchase on 14.01.92. The amount for the reversal of the above FBP returned unpaid liability was remitted by one Shri N.Kumar, a close relative of Mr.G.Ramachandran. An amount of Rs.12lacs, Rs.5 lacs, and Rs.2 lacs were remitted on 23.01.92, 24.01.92 and 25.01.92, respectively which was kept in Sundry Deposit account and the above said liability was finally reversed on 04.02.92. The petitioner failed to report either about the purchase or about the return of the instrument to the higher authorities and the purchase made by him was far in excess of his powers.

3. It is further stated in the statement of imputation annexed to the charge memo that on 5.2.92, the petitioner knowing fully the past transactions of the party above mentioned, again unauthorizedly purchased another cheque 79584035 issued by the same party viz. M/s. Malliga Saravanamuthu alias M.S.Anitha drawn in favour of Shri N.Kumar and on the same account with the Union Bank of Switzerland, Zurich for US \$ 1 lac and credited the SB a/c No.46366 of the above said Shri.N.Kumar with Rs.20 lacs and utilized the balance of Rs.5,45,625.00 to create a short term deposit bearing No.304039 dated 05.02.92 for 46 days in the name of Shri N.Kumar. Petitioner had also allowed the above said Shri N.Kumar to withdraw the entire amount of Rs.20lacs by case on the very same day viz. 05.02.92.

4. The petitioner had also sanctioned a loan of Rs.4,09,000 to the above said Shri N.Kumar against the above said short term deposit created as mentioned above on 07.02.92 and credited the proceeds to the account of M/s.Nurit Inks P. Ltd. Without obtaining authorization letter from Shri.N.Kumar. It is further stated that the above said instrument sent for collection was returned unpaid on 19.02.1992 with the endorsement "Account Close". The imputation of misconduct with the charge memo states that the petitioner, instead of reversing the FBP liability created on account of the above

said FBP and taking the same to FBP returned unpaid account, he had represented the above said instrument once again on 30.3.92. This time also the instrument was returned on 09.04.92, for the same reason mentioned above. Despite this, without immediately reversing the FBP account, he had taken this to BP returned unpaid account only on 02.07.92 for Rs.30,30,303,00 after a delay of more than four months. The petitioner failed to report either about the purchase or about the return of the instrument to the higher authorities and the purchase made by him was far in excess of his powers.

5. The petitioner arranged for creation of equitable mortgage of house property belonging to one smt. C.K.Chandrakantamma purportedly to secure the above liability but however they said Smt.C.K.Chandrakantamma denied creation of the alleged mortgage.

6. That on account of the irregularities committed by Shri. B.S.Subbaraman, the Bank is exposed to a financial loss to the extent of Rs.30,30,303.00.

7. The petitioner gave his reply denying his charges. The commissioner of departmental enquiry of Central Vigilance Commission was appointed as the enquiry officer. Preliminary enquiry was held on 19.01.1994. During the departmental enquiry, the petitioner pleaded guilty and accepted all charges. Since the petitioner had pleaded guilty, the commissioner of departmental enquiry submitted the report dated 21.01.1994 to the disciplinary authority with the records of enquiry. The disciplinary authority called for the comments of the petitioner on the enquiry report. By an order dated 19.09.1994, the punishment of dismissal from service was passed. The Disciplinary Authority while passing the order of dismissal from service, found that the petitioner had failed to discharge his duties with diligence, devotion and failed to protect the interest of bank.

8. The petitioner thereafter filed an appeal against the order of punishment to the Appellate Authority who is the Executive Director. The Executive Director by his order dated 27.05.1996, signed on 30.05.1996, rejected the appeal. The petitioner filed a review on 22.09.2000, which was declined on 14.10.2000.

9. Challenging the orders, the petitioner filed WP.No.38378 of 2002 in this Court. This Court by an order dated 28.02.2012, allowed writ petition stating that the Appellate Authority had not applied his mind all the aspects of the case. The Appellate Authority observed as under:-

7. At the outset, it is to be stated that a perusal of the impugned order passed by the appellate authority dated 27.05.1996 reveals that even in the subject, it was referred only as Appeal dated 09.05.1996 preferred by the petitioner and

there is absolutely no reference whatsoever in respect of the main appeal preferred by the petitioner dated 26.09.1994. Not only in the subject, the appellate authority referred the appeal dated 09.05.1996 even in the contents of the order at several places it was only referred as the appeal dated 09.05.1996 and not in respect of appeal dated 26.09.1994. It is further relevant to note that even in the covering letter attached to the impugned order dated 31.05.1996 there is only a reference about appeal dated 09.05.1996 and there is no mention about the main appeal dated 26.09.1994.

8. At this juncture, it is to be stated that the appeal preferred by the petitioner dated 26.09.1994 runs several pages. A perusal of the appeal discloses that the petitioner has raised several contentions apart from highlighting the appreciation letters received by him by enclosing the appreciation letter. It is further relevant to note that one of the main contentions of the petitioner is to the effect that he has given the facility of purchase of the cheque from the regular customer one Mr. Kumar only after obtaining legal opinion dated 25.04.1992, 25.08.1992, 10.06.1993 and 26.09.1994. On the other hand, a perusal of the further representation of the petitioner dated 09.05.1996 discloses that the said factors have not been reiterated. Therefore, this Court is of the considered view that by no stretch of imagination, it could be stated that the appeal preferred by the petitioner dated 26.09.1994 and the further representation of the petitioner dated 09.05.1996 are one and the same.

9. Apart from the above factors, it is pertinent to note that a perusal of the order passed by the appellate authority dated 27.05.1996 reveals that the appellate authority has also taken note of the earlier punishment of censure imposed on the petitioner dated 23.06.1981 and the said factor was not brought to the notice of the petitioner.

10. ....

11. As a matter of fact, it is seen from the appeal preferred by the petitioner on 26.09.1994, the petitioner has highlighted his unblemished record of service and the appreciation received by him from the bank. Apart from such letters, the petitioner also highlighted that he has not committed any misconduct deliberately and has transacted only on the basis of the sanction given by the legal experts of the Bank. All these factors have been simply overlooked by the appellate authority in view of excluding the main appeal

preferred by the petitioner dated 26.09.1994 from its consideration. In view of the aforesaid reasons, this Court has come to the irresistible conclusion that the impugned order passed by the appellate authority is unsustainable in law as the same was passed in flagrant violation of the principles of natural justice.

12. It is seen that even in the review petition, the petitioner has raised many grounds and the appellate authority has not considered the main appeal dated 26.9.1994. But the reviewing authority has not given any finding on such grounds and as such, the order passed by the reviewing authority, namely, the first respondent dated 14.10.2000 is also liable to be set aside."

10. On remand, the petitioner gave his representation. The Executive Director after perusing all the documents gave the following observations:

"1. The appellant was a senior level officer in the rank of Chief Manager of the Bank who was in the equal rank of a Regional Manager at the relevant point of time. The acts of the appellant in committing lapses of not reporting to his higher authorities about the unauthorised purchase of cheques or subsequent return of cheques, in purchasing another cheque of the same drawer once again even after knowing that previous cheque was returned unpaid and re-sending the cheque to the drawee Bank despite the same cheque having been already returned by the Bank for the reason that the account stood closed are quite serious in nature. The justification given by the appellant for his actions by putting forth lame excuses viz., he purchased the cheques for the purpose of increasing the deposits for the Branch is not at all acceptable.

2. The purchase and re-purchase of the cheques by the appellant in the manner in which he has done, does not signify a bonafide commercial decision, but smacks of misuse of official position. Hence, keeping in view the public money involved, the Bank lost its faith in the appellant and consequently Bank could not continue him in the services of the Bank. The fact and reality is that the Bank is still struggling hard in cumulative litigation to recover the money involved. All his submissions in the appeal are not acceptable and therefore the punishment imposed on the appellant is appropriate. Furthermore, the claim of the appellant that he has been maintaining clean record and received appreciation for his earlier work do not entitle the appellant to indulge in such acts and ultimately putting the Bank a huge possible

loss.

3. The appellant abused his position as Chief Manager of the Branch in committing serious irregularities by unauthorisedly purchasing cheques far beyond his discretionary power. Further, he did not report the purchase or subsequent return of the cheques to his higher authorities. These clearly show that he had unduly favoured the parties. Because of the serious irregularities committed by him, Bank is facing a huge financial loss and is unnecessarily constrained to enter into litigation for the recovery of sizeable amount and even today Bank has not come out of the litigation. The punishment imposed on the appellant was only in conformity with the gravity of the irregularities committed by him.

4. In response to the explanation memo dated 12.08.1992, the appellant had given his reply dated 28.08.1992, wherein he admitted that he had purchased a cheque for an amount in excess of his powers, in his anxiety to get foreign deposits from the party. He had also admitted therein that his failure to get permission from his higher authority was only a slip. It is not a case of mere slip but a case of abuse of position and discretionary power.

5. The Appellant was given enough opportunity to defend the charges leveled against him right from the initiation of Disciplinary Proceedings. He was given opportunity to submit his reply in defence to the chargesheet. In his reply dated 14.06.1993 in defence to the chargesheet, he himself has stated that he has nothing to deny the statements contained in the chargesheet / statement of imputations, but he may be allowed to explain the reasons and circumstances under which he had committed these acts. Due notice of Order for departmental nqu was given to him. The preliminary inquiry was held on 19.01.1994 in the presence of the Presenting Officer, Inquiring Authority and his own Defence Assistant. At the inquiry he was afforded his right of defence and was accordingly permitted to have the assistance of his defence assistant, Mr.T.T.Natarajan, for defending his case. In the preliminary inquiry, he voluntarily pleaded guilty of all the charges before the Commissioner for Departments inquiry Inquiring Authority, in the presence of the Presenting Officer and also his Defence Assistant Mr T.T.Natarajan. His admission was duly recorded and the proceedings thereof was signed by all present,

including the appellant himself and his Defence Assistant, Mr.T.T. Natarajan.

6. During the preliminary enquiry, he had given a letter dated 19.01.1994 to this effect wherein he had requested the CDI to treat it as his unconditional and unqualified acceptance to all the charges leveled against him. He had further requested that he did not want a personal hearing and in view of his unconditional and unqualified acceptance, he requested that the inquiry against him may be closed. In view of the request made by the appellant, there was no need for the CDI to hold further inquiry. The proceedings of the preliminary inquiry were duly recorded by the Inquiring Authority by obtaining the signatures of the appellant along with the signatures of the Presenting Officer and the Defence Assistant. Hence, CDI / IA closed the inquiry only at the request of the appellant.

7. He was given the opportunity to submit his comments on the IA findings dated 19.01.1994 given by the CDI / Inquiring Authority. In the comments dated 29.04.1994 also the Appellant did not raise the issue of violation of principles of natural justice. He had only stated that the party exerted a lot of psychological pressure for discounting the cheque. He had also mentioned that he wanted to report to the higher authorities about discounting the cheques after collecting the deposits from the party as assured by them but the party could not bring the deposits as promised and kept on informing him that the deposit amount would come at the earliest. From the above submissions of the appellant, it is evident that he yielded to the pressure of the party and favoured them by purchasing cheques beyond his discretionary power and without the knowledge of the higher authorities. The acts of the appellant amount his misusing his position as Chief Manager / Branch Manager. His not reporting to higher authorities is therefore not an inadvertent slip, but a deliberate omission, with the intention of informing the higher authorities only after salvaging the consequences of his actions. His claim of having purchased the cheques (beyond his discretionary authority) on the expectation of obtaining foreign deposits from the party sounds hollow, since no such deposits in fact came into the Bank.

8. The appellant ought to have taken up before the prosecution authority, his submissions, viz., without specific orders from competent Disciplinary Authority like ED / CMD papers relating to him were handed over to the CBI and without any prior intimation to him and that he had been unfairly

kept in dark about bank's intention to give papers to CBI etc. The initiation of criminal case by CBI against the appellant has no bearing upon the departmental action taken against him and hence irrelevant in the context of these proceedings.

9. The appellant had acted beyond his vested discretionary powers by purchasing a foreign cheque for SW Fr 1 lakh drawn by Ms.Malliga Saravanamuthu on 20.12.1991 favouring NIFE.AB. The cheque was endorsed to Mr.G.Ramachandran and the amount was credited to the SB account of Mr.G.Ramachandran. The cheque was returned unpaid on 08.01.1992 for the reason 'Cheque Blocked' and FBP Returned Unpaid account was debited on 14.01.1992. The amount was remitted by one Mr.N.Kumar, the relative of Mr.G.Ramachandran in three instalments and ultimately the liability under FBP Returned unpaid account was reversed only on 04.02.1992.

10. In spite of knowing the fact of returning of the first cheque, and recovery of the BP amount with difficulty in instalments, he once again unauthorisedly purchased another cheque for US\$ 1 lakh drawn by the same party, Ms.Malliga Saravanamuthu for the benefit of Mr N.Kumar. This second cheque was purchased on 05.02.1992, the very next day (the liability of the previous cheque was realized only on 04.02.1992). This second cheque was also returned unpaid on 19.02.1992 for the reason 'Account closed'. When the cheque was drawn on a closed account, the cheque had no realizable value. The appellant should have rightly taken recovery as well as legal action on the parties right at that point of time. He did not do so. Instead, he re-presented the cheque on 30.03.1992, as if the cheque which was drawn on a closed account would be honoured if presented again. His such action, knowing fully well that the account on which the cheque was drawn has already been closed, defies logic and tells upon his intentions, as anyone would know that the cheque would get returned again with the same endorsement, 'Account Closed'.

11. The fact remains that the appellant had gone out of the way to purchase foreign cheques without any authority and did not keep the higher authorities informed about it. These acts had been carried out by the appellant in a clandestine manner. He had in fact abused his position as Chief Manager by showing undue favours to the parties, Mr.G.Ramachandran and Mr.N.Kumar. Due to the serious irregularities committed by him, the Bank had to suffer possible huge loss and is unnecessarily constrained to enter into litigation for recovery which is still underway. The

appellant's contention that he did all this with the deposit interest of the Bank in mind simply does not hold water, since he did not take his higher authorities into confidence and take their permission, before exceeding his authority. Hence, the contention of the appellant that hoping to receive sizeable deposit benefit, he agreed to party's request to purchase the cheque or that the act of purchase of cheque BP was solely for the growth of deposits in the Bank, is untenable and is liable to be dismissed as an afterthought.

12. In his reply dated 14.06.1993 in defence to the chargesheet the appellant has mentioned that he quite well remembers to have obtained necessary authorisation letter from Mr.N.Kumar. In another letter dated 22.06.1993 written by the appellant, he has stated that the letter from Mr.N.Kumar authorising the Bank to credit the loan proceeds to the account M/s Nurit Inks has since been obtained and kept with the documents by Mylapore Branch. From these letters, it can very well be understood that the appellant had not obtained any authorisation letter from Mr.N.Kumar on the date of transferring the amount of Rs.4.09 lakhs, i.e., on 07.02.1992. Notwithstanding the above, the appellant had, by his own admission, granted loan against the amount retained as deposit. In effect, this amounted to parting with whatever amount was withheld. This per se defeats the justification put forth by the appellant that he did all these for the purpose of mobilizing deposits.

13. He has claimed to have got the instructions from Zonal Manager for the cheque purchased. But there is no material evidence of either receipt of such instructions. If he had taken the oral instructions of the Zonal Manager, nothing deterred him from reporting the same for written confirmation. He did not seek any written confirmation from the Zonal Manager. He did not also report the return of the cheque, but chose to buy time by re-presenting a cheque which was drawn on an already closed account. His contention that he took the permission of the Zonal Manager, is therefore, an afterthought.

14. There is also no material evidence for making the registers disappear willfully. In fact, in his comments dated 29.04.1994 on 1A's findings itself the appellant had stated that the party exerted a lot of psychological pressure for discounting the cheque. He had also mentioned that he wanted to report to the higher authorities about discounting the cheques after collecting the deposits from the party as assured by them but the party could not bring the deposits as promised and

kept on informing him that the deposit amount would come at the earliest which resulted in non-reporting the discounting of the cheque. Right at the stage of submitting his reply to the explanation memo, he had admitted that he failed to get permission from his higher authority, although on the pretext of slip on his duty, which reason is found unacceptable. It is not a case of mere slip but a case of abuse of position and discretionary power. Thus it is evident that the claim of the appellant that he got instructions from Zonal Manager is only an afterthought. The admitted fact is that he yielded to the pressure of the party and favoured them by purchasing cheques beyond his discretionary power and without the knowledge of the higher authorities.

In the absence of any material evidence for having reported to ID / RM / ZM in the audit reports, the contention of the appellant is untenable.

15. The EM created at the instance of the appellant and alleged to be for safeguarding the interests of the Bank is still sub-judice. Mrs. Chandrakantamma has denied having visited the Branch and signed any document before the officials and contended that her original title deeds to her properties and her signature in blank paper and in blank printed forms had been obtained by deceitful means by one Mr. M. Ramalingam in a different context. The DRT case is still pending. Thus in real terms the security alleged to have been obtained from Ms. Chandrakantamma has not been realized so far and Bank has not been able to come out of the litigation.

16. Another property which the appellant has quoted as having obtained to safeguard the interest of the Bank (Extension of EM property already mortgaged for the credit facilities extended to M/s Nurit Inks Pvt. Ltd.) is also fraught with problems of realization, as Bank is having rights over the building only, while the possession of the land is with Vedanta Desika Madam.

17. Notwithstanding the above, the creating of mortgage by the appellant does not absolve him of his acts of misconduct which have caused prejudice to the interest of the Bank. The salvaging efforts taken by the appellant to undo the after-effect of his misconduct have ended in litigation, causing difficulties and problems to the Bank. Merely because the appellant exceeded his powers and favoured the parties with cheque purchases even

without taking the permission of his higher authorities, the Bank is now frittering its valuable human and financial resources in avoidable litigation. It was not given to the appellant to act in an indiscriminate and ultra-vires manner and then throw the blame and burden of his actions on the Bank.

18. When the issue of EM creation with regard to the property of Ms.Chandrakantamma is sub-judice with DRT, the appellant's other contentions that Ms.Chandrakantamma visited the Branch, deposited the documents at the Branch, and signed the D-34 form etc. cannot be taken as conclusive facts and therefore do not stand to his advantage.

19. It was the appellant, who, without powers and without taking permission from the higher authorities, purchased the cheque and credited the cheque proceeds to the account of the party, thereby making the cheque proceeds available for use by the party. Had he not done so in the first place, the question of passing of the cheque by another officer would have simply not arisen at all. Hence, the argument of the appellant is frivolous.

20. In his reply dated 28.08.1992 to the explanation memo he admitted that he purchased the cheque in excess of his powers and he failed to get permission from his higher authority. In his reply dated 14.06.1993 to the chargesheet also the appellant had admitted that he has nothing to deny the statements contained in the chargesheet / statement of imputations, but he may be allowed to explain the reasons and circumstances under which he had committed these acts. Considering the gravity of the charges and the acts of misconduct of the appellant in favouring the parties under their influence, the reasons and the circumstances were not accepted by the Disciplinary Authority. From this it is clear that even before the inquiry, the appellant had admitted the charges in his reply.

21. In the preliminary inquiry conducted by the CDI / Inquiring Authority in the presence of the Presenting Officer and the appellant's own Defence Assistant, Mr.T.T.Natarajan, the appellant had himself admitted guilty of the charges leveled against him unconditionally. He gave a letter dated 19.01.1994 to the CDI / IA to this effect. The fact of admission by the appellant was duly recorded by the CDI in the proceedings held on 19.01.1994. The

appellant, along with the Presenting Officer and the Defence Assistant, had signed these proceedings. It is to be noted that the defence assistant is none other than the present General Secretary of Indian Bank Officers' Association (TN & Pondy) / Secretary General of AIIBOA / Vice President of AIBOC, in the presence of whom the appellant had accepted that he was guilty of the charges and signed for having admitted the charges. It is not the case that the appellant stood alone without any defence assistance and that he was enticed into admission by the Presenting Officer. The circumstances of the appellant's admission clearly convey that the admission of the appellant was on his own volition. The allegation made by the appellant that he was induced by the Presenting Officer to admit the charges is incredulous and lacks substantive proof.

22. Even while making his comments on 1A's findings holding him guilty of the charges, the appellant did not make any mention about the so-called inducement of the Presenting Officer. He had only stated that the party exerted a lot of psychological pressure for discounting the cheque and that he has not reported the discounting of the cheque hoping that the party will bring in deposits. Thus it is evident that the act of misconduct committed by the appellant was not at all denied by the appellant at any point of time and that on his own volition, he had given admission letter.

23. The appellant was a Senior Officer in Scale IV. It is beyond belief that he could be enticed into admission of guilt by, of all the persons, the Presenting Officer, as if the appellant was a naive illiterate. The contentions in this regard made by the appellant in his appeal are liable to be rejected.

24. Bank had given the appellant enough opportunity in the departmental inquiry, the disciplinary proceedings of which are already completed. He could have very well requested for inspection of any documents or called for any documents in his defence at the inquiry stage itself. He did not call for documents / witness during the inquiry proceedings. Instead, he preferred to unconditionally admit guilt of all the charges before the Inquiring Authority. While submitting his comments on Inquiring Authority's findings holding him guilty also, the Appellant did not request for production of any further

documents. Even in the appeal dated 26.09.1994, he did not call for any further documents.

In view of categorical admission of his guilt and the recorded enquiry proceedings, the question of giving further documents do not arise.

25. As already stated the appellant had indulged in serious acts of misconduct in not only purchasing the foreign cheques unauthorisedly and beyond his discretionary power, but also did not bother to inform the higher authorities when the cheques were returned unpaid.

26. In spite of knowing the fact that the cheques were returned for the reason, 'Account Closed', he again presented the cheque through clearing as per the request of the party.

27. The act of delaying in informing the fact of purchase of cheques and their return for want of funds to the higher authorities only proves that he had acted in clandestine manner in favour of the parties.

28. Whatever accolades / appreciation he received from the Bank / RBI and the unblemished records the appellant has quoted, will not in any way reduce the gravity of the misconduct he committed. More so when the misconduct is so severe that even after a period of more than 20 years, Bank is still suffering a huge possible loss and is not able to recover the legitimate dues."

It is this order which is challenged in the instant writ petition.

11. The petitioner has challenged the order stating that the enquiry has not been conducted in accordance with regulations framed by the bank. It has been stated that the petitioner has sanctioned the transaction only in accordance with the previous practice of the bank. It is also stated that it is not as if the petitioner alone is responsible for the transaction and it is only one of the officers in the chain of hierarchy. People junior to him or senior to him are a part of the chain and are equally responsible for the transaction. The petitioner stated that the vital documents like FBP register have not been produced or shown and therefore the decision making process is not in consonance with the principle of natural justice. The petitioner also contend that he had worked diligently and was responsible in the management of the business in the bank. He as stated

earlier, said that the cheque got returned. To protect the interest of the bank, he had taken two properties as a collateral security.

12. The respondent has filed a counter primarily reiterating the findings in the impugned order. It is categorically stated that the petitioner had flouted the norms of the bank. It is also stated that the petitioner had repeatedly taken cheques and credited it in favour of few favoured persons causing loss to the bank.

13. Heard the counsel for the parties.

14. The learned counsel for the petitioner would contend that the authorities have not considered the case in proper perspective. The learned counsel would contend that the principles of natural justice has not been followed and that he was not supplied the relevant material documents to demonstrate that, it is not the petitioner alone who is responsible for entire transaction. The petitioner was not given the FBP register and the FBP funds book which should have been very important for his defense. Mr. Balan Haridas, learned counsel for the petitioner would states that FBP book would have actually shown the sequence of events and the petitioner would have been able to show that both senior and juniors to the petitioner were aware of the transactions and nobody had objected to the same. Mr. Balan Haridas, learned counsel for the petitioner would contend that the petitioner had been acquitted in the criminal case and he would state that the petitioner should not have been given the extreme penalty of dismissal from service, especially, when the so called misconduct would only amount to a case of error of judgment. Mr. Balan Haridas, learned counsel for the petitioner contend that, it cannot be said that the petitioner intentionally caused loss to the bank.

15. On the other hand, the learned counsel for the respondent would state that the petitioner had not followed the procedure properly. The learned counsel for the respondent would state that there is a gross negligence and dereliction of duty. The petitioner had unauthorizedly purchased the foreign cheque beyond his discretionary power and he did not returned the purchase or subsequent return of cheques to the higher authorities. He said this would have been done only to help some persons. It is also stated that once the petitioner admitted the guilt and it is proved that the petitioner had blatantly violated the procedures, then the petitioner does not deserves any indulgence.

16. This Court has gone through the records of the case. It can be seen that the impugned order by the Executive Director / Appellate Authority is an extremely detailed order. The petitioner is guilty of serious dereliction of duty. The appellant has misused his position as Chief Manager and

violated the regulations. It cannot be said that the findings of the Appellate Authority that the appellant yielded to the pressure of certain persons and has purchased the cheques beyond his discretionary powers without informing to the higher authorities is perverse and without any material. It is also noted that even after the cheque which is endorsed to Mr.G.Ramachandran was returned and unpaid, since the cheque has been blocked. He once again unauthorizedly purchased another cheque for US\$ one lakh drawn by the same party and the cheque which has also returned unpaid. The petitioner had given out of the way to purchase foreign cheques without any authority and because of the actions, the bank has suffered huge loss, since the bank was not yet recovered entire amount.

17. The contention of Mr.Balan Haridas, learned counsel for the petitioner is that the FBP book has not been shown by the petitioner would not advance this case. The petitioner has already admitted his guilt. The petitioner is the Chief Manager, equal to the rank of Regional Manger. The action of the petitioner cannot be called as an error of judgment. Not reporting the return of cheques and then purchasing repeatedly cheques from the same party to favour another person cannot by any stretch of imagination be called a mere error of the judgment.

18. The fact that the petitioner has been acquitted in the criminal proceedings by this Court does not mean that the departmental enquiry must also end in favour of the petitioner. It is well settled that in a criminal proceeding prosecution, the prosecution must prove its case beyond all reasonable doubt, while the proof in a departmental proceeding is based on preponderance of probabilities. The standard of proof in both cases being entirely different, it cannot be said that the petitioner have being acquitted must be exonerated in the departmental enquiry also. Further as noticed above for some reason, the petitioner had repeatedly deposited the cheques given by closed accounts to favour Mr.G.Ramachandran who withdrew the money, even before the amount is credited. This cannot be ignored. There is therefore material against the petitioner and the impugned order cannot be called as perverse.

19. The Hon'ble Supreme Court in the case of B.C.Chaturvedi Vs. Union of India, (1995) 6 SCC 749, has observed 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 coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 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.

14. In *Union of India v. S.L. Abbas* [(1993) 4 SCC 357 : 1994 SCC (L&S) 230 : (1993) 25 ATC 844] when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of

a government servant. In Administrator of Dadra & Nagar Haveli v. H.P. Vora [1993 Supp (1) SCC 551 : 1993 SCC (L&S) 281 : (1993) 23 ATC 672] it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in State Bank of India v. Samarendra Kishore Endow [(1994) 2 SCC 537 : 1994 SCC (L&S) 687 : (1994) 27 ATC 149 : JT (1994) 1 SC 217] a Bench of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

15. It is, therefore, difficult to go into the question whether the appellant was in possession of property disproportionate to the known sources of his income. The findings of the disciplinary authority and that of the Enquiry Officer are based on evidence collected during the inquiry. They reached the findings that the appellant was in possession of Rs 30,000 in excess of his satisfactorily accounted for assets from his known sources of income. The alleged gifts to his wife as stridhana and to his children on their birthdays were disbelieved. It is within the exclusive domain of the disciplinary authority to reach that conclusion. There is evidence in that behalf.

16. It is true that a three-Judge Bench of this Court in Krishnanand case [(1977) 1 SCC 816 : 1977 SCC (Cri) 190] held in para 33, that if the excess was comparatively small (it was less than 10% of the total income in that case), it would be right to hold that the assets found in the possession of the accused were not disproportionate to his known sources of income raising the presumption under sub-section (3) of Section 5. It is to be remembered that the said principle was evolved by this Court to give benefit of doubt, due to inflationary trend in the appreciation of the value of the assets. The benefit thereof appears to be the maximum. The reason being that if the percentage begins to rise in each case, it gets extended till it reaches the level of incredulity to give the benefit of doubt. It would, therefore,

be inappropriate, indeed undesirable, to extend the principle of deduction beyond 10% in calculating disproportionate assets of a delinquent officer. The salary of his wife was not included in the assets of the appellant. The alleged stridhana of his wife and fixed deposits or gifts of his daughter, in appreciation of evidence, were held to be the property of the appellant. It is in the domain of appreciation of evidence. The Court/Tribunal has no power to appreciate the evidence and reach its own contra conclusions.

17. The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in *State of Orissa v. Bidyabhushan Mohapatra* [AIR 1963 SC 779 : (1963) 1 LLJ 239] held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in *Union of India v. Sardar Bahadur* [(1972) 4 SCC 618 : (1972) 2 SCR 218]. It is true that in *Bhagat Ram v. State of H.P.* [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment

imposed by the disciplinary authority. In Rangaswami v. State of T.N. [1989 Supp (1) SCC 686 : 1989 SCC (Cri) 617 : AIR 1989 SC 1137] a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India case [(1994) 2 SCC 537 : 1994 SCC (L&S) 687 : (1994) 27 ATC 149 : JT (1994) 1 SC 217] where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment.

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

20. This Court does not find any infirmity in the decision making process. In view of the above, this Court has not inclined to interfere with the findings of guilt. Since this court is not inclined to interfere with the findings of guilt, the further question would be as to whether the punishment is shockingly disproportionate to the misconduct. The present case is one of loss of confidence. The petitioner was holding the very responsible post, it is well settled that

once there is loss of confidence, the employer cannot be asked to continue the petitioner in service. The petitioner has attained superannuation. This Court is therefore not inclined to interfere with the punishment also. Writ Petition is dismissed. No Costs.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn.  
To

1. The Executive Director/  
Appellate Authority  
Indian Bank  
Corporate Office  
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Royapettah, Chennai 600 014.

2. The General Manager / Disciplinary Authority  
Indian Bank  
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+1cc to Mr.Balan Haridas , Advocate SR.No. 88578  
+1cc to Mr.Aiyer and Dolia , Advocate SR.No. 88079

A.SK(03/12/2019)

W.P.No.2607 of 2013

सत्यमेव जयते

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