IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 2648 of 2010

Sri Susanta Kumar Sikdar

Vs.

The Managing Director, SBI & Ors.

For the Petitioner	: Mr. Partha Sarathi Bhattacharya, Mr. Raju Bhattacharyya, Mr. T.J. Mondal.
For the Respondents	: Mr. S. Pal Chaudhuri, Ms. Tithi Paul, Ms. Shilpi Paul.
Hearing concluded on	: 21.08.2024
Judgment on	: 19.09.2024

<u>Shampa Dutt (Paul), J.</u>

1. The present Writ Petition has been preferred praying for the following reliefs:-

> *"……a) A writ of and/or writs in the nature of mandamus directing the respondents, their men, agents or assigns from canceling and/or rescinding and/or setting aside the charge sheet dated 09.12.2006, enquiry report dated 11.01.2008, penalty order dated 22.04.2008, appellate order dated 18.04.2009 and all proceedings in relation thereto.*
>
> *b) A writ in the nature of prohibition, prohibiting the respondents to proceed with penalty order dated 22.04.2009 and appellate order dated 11.04.2009……."*

2. The petitioner's case:-

> *"…….1. The petitioner was kept under suspension vide Memo No. 20/HDW/DSP/71 dated 17.05.2006 and thereafter the writ petitioner was served with a show cause notice dated 21.06.2006 issued by the Deputy General Manager State Bank of India under Memo No. 20/HDW/DSP/71 on some purported alleged irregularities.*
>
> *2. The petitioner submitted his reply on 24.07.2006 stating inter alia that-*
>
> *i) He was not in service at Bagmari from, 04.01.2000 to 06.01.2006 and thus regarding any incidence beyond the said period he cannot be held liable, to which the authorities have never replied.*
>
> *ii) He was duty bound to release one STDR No.450835 since the matured value of the same in the name of Sri Sikdar, exceeded the cash credit limit by Rs. 1.6 lacs. And for the same as per rules he did not require any permission from any other higher authority since he himself had authority of sanctioning upto Rs. 2 lacs.*
>
> *3. That the acts have been done in compliance with customers written instructions and as per Banking Rules and norms hence no irregularity was there.*

4. On 09.02.2006 a charge sheet was issued to the petitioner on the following charges inter alia that-

> *i) Twenty (20) produce Marketing Loans (PML) (as detailed in Annexure-III) aggregating Rs. 1.15 crores against the cold storage bond of M/s Muktakeshi Cold Storage Pvt Ltd., (MCSPL) were sanctioned by him during the period March 2002 to April, 2002. Another 06 (six) more PMLs were also sanctioned by him in April 2003 (Annexure- V) under the same scheme. Though, renewal of credit limits were not allowed under the PML scheme, he renewed all 26 (twenty six) loans in the year 2003-2004 without observing Bank's laid down instructions for the scheme (Annexure –V).*
> *ii) Shri Sikdar freely allowed the borrowers for transferring the funds from one account to another (Annexure- VI) to enable them to liquidate the old outstanding and to get sanction of fresh loans by the same borrowers.*
> *iii) It is reported that loans were sanctioned to persons who are either close relative of the Directors (Sri Basudeb Ghosh) of MCSPL or were employees of the firm at the material time (Annexure- VIII).*
> *iv) Further it is observed that before sanctioning the loans farmers were not identified as genuine framer growers by the BDO/AE/Gramsevak/Anchal Prodhan / Fram Adbyaksha.*
> *v) He had also not obtained the Title deed/Pattas of land from them for identification of the farmer growers.*
> *vi) In contravention of AGL Circular No.212A of 1974 dated 10.03.1979 a loan was sanctioned by him to Shri Amit Kumar Pal, A/C. No. 01670081065 who deals in Motor parts and is not a potato grower.*

5. The proceedings was held from 09.08.2007 to 13.09.2007.

6. On 15.01.2008 the disciplinary authority forwarded the enquiry report dated 11.01.2008.

7. On 05.06.2008 the Writ petitioner submitted his defence statement to enquiry report dated 10.01.2008.

8. On 22.04.2009 the Disciplinary authority imposed a punishment order inflicting dismissal as per Rule 67(1) of S.B.I. office circular Rules (SBI DSR).

9. The writ petitioner made an appeal followed by Amended Appeal dated 05.06.2008, 09.09.2008, 16.02.2009 praying for reconsideration in terms of order dated 22.08.2007 by Judicial Magistrate 1st Court whereby and hereunder the writ petitioner has been exonerated of all the charges identical to charge sheet dated 09.02.2006.

10. On 18.04.2009 the appellate authority being the Chief General Manager passed a non-reasoned, non-speaking, cryptic order without applying its mind on the appeal of the petitioner.

11. On 01.06.2009 the writ petitioner preferred detailed petition to the Deputy Manager Director & Corporate Development Officer and further on 16.06.2009, 01.07.2009. 26.11.2009 the writ petitioner made further prayers. But the same has not been disposed of till date by the Reviewing authority.

12. The petitioner states that the Criminal case being GR 116/2007 Garbata P.S. Case No. 07/07 dated 22.08.2007 under section 420/483 Indian Penal Code which was based on identical charge as initiated under Charge Sheet dated 21.12.2006 and on similar facts, same sets of material and witnesses, have resulted in exoneration and acquittal of the charged Susanta Sikdar, on merits. The disciplinary proceedings ought to have culminated into exoneration from the charges, but the authorities have repeatedly turned a deaf ear to the prayer of the petitioner.

His prayer for release of superannuation benefit has yielded no fruitful result………"

3. Hence, the Writ Petition.

4. The said Article of Charges are as follows:-

"……….IRREGULARITIES AT GARBETA BRANCH

CHARGE NO. (i):

“Twenty (20) Produce Marketing Loans (PML) (as detailed in Annexure III) aggregating Rs. 1.15 crores against the Cold Storage bond of M/S Muktakeshi Cold Storage Pvt. Ltd. (MCSPL) were sanctioned by him during the period March 2002 to April 2002. Another six more PMLs were sanctioned by him in April 2003 (Annexure-IV) under the same scheme. Though, renewal of credit limits were not allowed under the PML scheme, he renewed all 26 (twenty six) loans in the year 2003-2004 without observing Bank's laid down instructions for the scheme (Annexure-v)”

CHARGE NO.(ii):
"Shri Sikdar freely allowed the borrowers for transferring the funds from one account to another (Annexure VI) to enable them to liquidate the old outstanding Prosecution Brief:

CHARGE NO. (iii):
"It is reported that loans were sanctioned to persons who were either close relative of directors (Sri Basudeb Ghosh) of MCSPL or were employees of the firm at the material time (Annexure-VII)".

CHARGE NO. (iv):
"Further, it is observed that before sanctioning the loans farmers were not identified as genuine farmer growers by the BDO /AE /Gramsevak /Anchal pradhan /Gram Adhyaksha.

CHARGE NO. (v):
"He had also not obtained the title deeds/pattas of land from them for identification of farmer growers".

CHARGE NO. (vi):
"In contravention to AGL Circular No. 21A of 1974 dated 10.03.1979, loan was sanctioned by him to Sri Amit Kumar Pal, a/c No. 01670081065 who deals in Motor parts and is not a Potato grower". (The Ammended Articles of Charge dated 19.03.2007 was served whereby the AGL Circular No. 21A of 1974 dated 10.03.1979 was amended to AGL Circular No. 21A of 1979 dated 10.03.1979).

CHARGE NO. 2:
“Your above acts have exposed the Bank to a possible financial loss to the tune of Rs.1.46 crores approximately”.

IRREGULARITIES AT SBI BAGMARI SAB:

CHARGE NO(i):
“A special TDR No. 450235 for Rs. 1,08,110/-, kept as collateral security against cash credit limit of Rs. 2.00 lacs sanctioned to Smt. Ira Sikdar, was released on 06.01.2006 and the maturity proceeds of above mentioned STDR were issued by Shri S. K. Sikdar to issue a draft bearing No. 965302 for Rs.1,13476/- on 06.01.2006 drawn on Midnapore Branch in favour of Smt. Nanda Rani Sikdar, his mother. The above STDR was released from the collateral security by him without obtaining approval from the sanctioning authority”.

CHARGE NO.(ii):
"The said draft No. 965302 was reportedly handed over to one Sri Roysuddin Mallick, a borrower of the Branch by him. Sri Roysuddin Mallick however denied having known either Smt. Ira Sikdar or Sri Susanta Kumar Sikdar. Sri Roysuddin Mallick has also stated that he has not collected any draft on behalf of the Sikdars".

CHARGE NO.(iii):
"There is a wide gap between the signatures of Smt. Ira Sikdar and Sri Susanta Kr. Sikdar and the contents of their alleged request letter dated 27.12.2005. It is, therefore, evident that Sri Sikdar has taken signatures of Smt. Ira Sikdar and Sri Susanta Kumar Sikdar on a blank paper and later he got typed the existing contents on the said blank paper".

CHARGE NO. (iv):
“Again, it is observed that there is a wide gap between the signatures of Sri Roysuddin Mallick and contents of alleged request letter dated 27.12.2005 submitted by Smt. Ira Sikdar and Smt. Susanta Sikdar. It is therefore constructed that Shri Sikdar has taken signature of Sri Roysuddin Mallick on a blank paper and later he got typed existing contents on the said blank paper.”

CHARGE NO. (v):
"The above draft No. 965302 for Rs. 1,13476/- was deposited in Sri Susanta Kumar Sikdar's joint account NO. 01190011196 with his month maintained at Midnapore at Midnapore Branch. A sum of Rs. 1,50,000/- was withdrawn on 10.01.2006 through cheque No. 561403

from the S/B a/c No. 01190011196 signed jointly by Sri S. K Sikdar and Smt. Nanda Rani Sikdar. The balance in the said S/B a/c was Rs. 46,576.07 before crediting the proceeds of draft No. 965302 issued by Sri Sikdar on 06.01.2006. Thus he has misappropriated the funds for his personal gain"…………"

5. On completion of the disciplinary proceedings, the enquiry officer gave his findings in an detailed enquiry report as follows:-

"………. i) Charge No (i)- *In analyzing the charge and evaluating the counter arguments, I find that the prosecution with the deposition of PW2, evidencing the authenticated order of CSO in PEX/B-21 established that CSO has allowed the premature withdrawal and partial release of the STDR No. 450235 for Rs. 1,08,110/- held as collateral security against the Cash Credit Limit of Rs. 2.00 lac sanctioned by the controlling authority at Zonal Office. Defence also never contested that prior or post facto approval was obtained for the purpose and instead claimed (without substantiating it with any documentary evidence) that CSO have had the discretionary powers in effecting such release and in the process implies that the CSO has consciously allowed the release of the said collateral security. Moreover, whether or not such act of CSO is in conformity with the extant norms of the institution do not come under the domain of the Enquiry. Again the Defence's claim on motivated replacement of COS 49X otherwise would have had least to do with the rebuttal of charge or my findings in the enquiry, thus as it can be derived that the CSO while allowing the partial release of the collateral security and permitted its premature encashment without obtaining any pre or post facto approval, I find that* ***Charge No (1) stands conclusively PROVED.***

ii) Charge No. (ii): *Analysing all the evidences, submission and the brief I find that PW-5 confirmed (Page-38) that the signature on PEX/B-24 (Draft Application Form) belongs to him but expressed his ignorance of its importance. Prosecution excepting the submission of PW-2 that the Draft did not come back to him after its signature by CSO, does not imply that the Draft was not delivered to PW-5. The prosecution could not furnish any submission or documentary evidence to establish that the draft was not* *handed over to Shri Roysuddin Mallick, even when PW-5 was presented as witness at the Enquiry. Though PW-5 deposed that PW-3 & PW-4 were not known to him, but no question was asked for his deposition on whether he had taken delivery of the said Draft from the Bank. Moreover when he had confirmed that the signature for acknowledgement of taking delivery of the Demand Draft is his own, therefore even after considering that Sikdars were not known to him, it will not be fair to derive that he had not taken the delivery of the Draft, as the documents clearly evidences so. If we draw any inference otherwise for him being an illiterate, then we have to agree that all other documents and acknowledgement that he has signed otherwise without knowledge of English for availing the Bank Loan will not bind him to the contract. Thus I find that the prosecution had failed to establish the allegation contained in the instant charge and therefore the* ***Charge No. (ii) is NOT PROVED.***

iii) Charge No. (iii): *So, it is clear evident from the PEx-B/21 that the CSO had taken the signatures of Shri Susanta Kumar Sikdar and Smt. Ira Sikdar on a blank paper and later he got typed the contents on the said blank paper. There was a wide gap between the signatures of Shri Susanta Kumar Sikdar and Smt. Ira Sikdar and the contents of their alleged request letter dated 27.12.2005.*

Hence, the charge stands proved.

Again it is very misleading that why CSO who received the application himself and instructed PW2 to effect release of the collateral security, arranging for its premature encashment and issuing a Draft favoring his Mother, did not object on the intent of PW-3 & PW-4 being his own relative, for requesting its delivery to another crop loan borrower named Roysuddin Mallick(PW-5)? To my understanding any Bank Official of normal prudence under the same circumstances definitely would have raised query on why a third person has been entrusted to take delivery of a Draft meant for the official's mother, so as to safeguard the interest of the parties including the Bank and would not allow it to happen, unless being completely satisfied with the intent of the applicant. The fact remains that the Draft was finally credited to the account of Smt Nanda Rani Sarkar (CSO's mother) therefore it will not be unreasonable to assume that CSO was aware and satisfied with the intent of the applicants *and also of the reason of handing over of the Draft favoring his mother to a third person i.e. PW-5 (Roysuddin Mallick, a crop loan borrower of the Branch). Depending on the aforesaid analysis and the depositions made in the enquiry and the evidences furnished and the circumstantial evidences derived from analysis bases on the preponderance of probabilities the* ***Charge No (iii) stands PROVED.***

iv) Charge No. (iv): *My findings of this charge should be read in conjunction with my findings of Charge No. (iv). There was a lot of quibbling, argument and counter argument in the Enquiry to establish and for rebuttal of this charge by the prosecution and defence respectively.*

During prosecution examination, PW-5 deposed that though he could sign his name in Bengali, he is an illiterate in English, and he had signed many documents and paper at the instance of CSO for continuance and enhancement of his crop loan. He could not remember which paper he had or had to sign. Thus the reason for which gap appearing between the main letter and the signature that appeared to be illogical in the case of PW-3 & PW-4 might not be made applicable in his case. Moreover he confirmed that the signature appearing on PEX/B-21 was his own signature. Though he deposed that he did not know PW-3 or PW-4 at the time of the incident therefore based on his deposition it could only be inferred that PW-3 & PW-4, might not have authorised an unknown person to take the delivery of the draft, but it cannot be conclusively construed that CSO has taken the signature of Roysuddin Mallick on a blank paper and later got the existing contents typed above it. Thus based on the aforesaid analysis I find that ***Charge No. (v) is NOT PROVED.***

v) Charge No. (v): *For want of such facts evidencing the consideration for a flight of money from the account of a customer of the Branch to the Joint personal account of an Official, especially when the customer has complained and deposed that the transaction has taken place without their instruction or knowledge can only be coined as "misappropriation". The reasoning submitted by the Defence on the necessity and purpose of including the name of CSO while living away from her in a separate residence do not absolve the CSO of his knowledge & responsibility for effecting the transfer of the sum of Rs.*

1,50,000/- (comprising of the amount of the Demand Draft issued by Garbeta Branch) for its parking with the Midnapore Collectorate Post Office in the name of his own Mother and Sister.

Thus from the analysis of the conclusive evidence furnished by the prosecution and after thorough study of the cross examinations of the witnesses by the Defence and their subsequent arguments furnished in their Brief and weighing them against the depositions and evidences furnished by the Prosecution, I affirm that the ***Charge No. (v) as conclusively PROVED………"***

6. On considering the report of the enquiry authority the appointing authority by a detailed order held as follows:-

*"…….After applying my free and fair mind independently to the full facts and circumstances of the case, the inquiry proceedings and estimated loss of Rs. 1,56,58,171/-, I General Manager, Network-II, SBI, Local Head Office, Kolkata, as the Appointing Authority, agree with the recommendations of the Disciplinary Authority, and am of the opinion that the ends of justice would be met if Shri Sikdar is inflicted with the penalty of "**DISMISSAL**" as per Rule **67(j)** of State Bank of India Officers Service Rules (SBIOSR) with the further stipulation that "**Period of suspension will be treated as such**" and order accordingly.*

Sd/-
Appointing Authority
General Manager (Network-II),
State Bank of India,
Local Head Office, Kolkata.
Date: 22.04.08………"

7. The Respondent Vide letter dated 22.04.2008 informed the Writ Petitioner as follows:-

"…….(VIG)/ BKN/ 43 Dated: 22.04.2008

Dear Sir,

<u>DISCIPLINARY PROCEEDINGS</u>

IRREGULARITIES AT BAGMARI SAB & GARBETA BRANCHES
PENALTY ORDER

I refer to your letter dated 31.01.2008.

2. I, General Manager, Network-II, LHO, Kolkata, as appointing authority, have carefully examined the Inquiry Report, Inquiry Proceedings, related documents and your submission dated 31.01.2008 and observe that while posted as Manager (DBD) at Garbeta Branch from 14.01.2002 to 02.10.2004 and as Branch Manager at Bagmari S.A.B. from 04.10.2004 to 06.01.2006, you committed certain serious irregularities/lapses in connection with sanction and disbursement of produce Marketing Loans and misappropriation of customer's funds, as a result of which, the Bank has sustained estimated monetary loss of Rs. 1, 56, 58, 171/-.

3. After applying my free and fair mind independently and examining the case in its entirety, I observe that your such action has not only exposed the Bank to a loss of Rs. 1, 56, 58, 171/-, but has also eroded the image of the Bank in the eyes of the public.

*4. I am of the opinion that the end's of justice would be met if you are inflicted with the penalty of "**DISMISSAL**" as per **Rule 67 (j)** of State Bank of India Officers Service Rules (SBIOSR) with further stipulation that period of suspension will be treated as such. A copy of the order is enclosed.*

5. You may, if you so desire, prefer an appeal to the Appellate Authority against the order imposed upon you within the stipulated time in terms of Rule 69 of SBIOSR.

6. Please acknowledge receipt along with date on the duplicate of this letter as well as the order served on you.

Yours faithfully,

Sd/-
Appointing Authority
General Manager, Network-II,
Local Head Office, Kolkata.

Encl.: As stated above........."

8. The Appellate Authority considered the appeal of the writ petitioner and held as follows:-

"……..<u>ORDER</u>

I have seen the appeal made by Shri Susanta Kumar Sikdar, MMGS-II (Since dismissed) and the relevant documents that have led the Appointing Authority deciding to inflict the penalty of "Dismissal" as per Rule 67 (j) of State Bank of India Officers Service Rules (SBIOSR) with the stipulation that the period of suspension to be treated as such, along with the judgment dated 25.11.2008 in the Ld. Court of Judicial Magistrate, 1st Class, 1st Court, Garbeta against Garbeta P.S. Case No. 07/07 dated 22.08.2007. On a perusal of the appeal petition and the relative papers/ documents submitted by him, I observe that Shri Sikdar holding a responsible position in the Bank, failed to comply with the Bank's extant instructions, whereby the Bank has sustained monetary loss of Rs. 1.56 cores.

2. Therefore, I am of the view that there is no reason to allow the appeal. The appeal is turned down and I order accordingly.

3. The order may be communicated to the appellant by the General Manger (Network-II) Local Head Office, Kolkata.

SD/-

STATE BANK OF INDIA	***CHIEF GENERAL MANAGER***
LOCAL HEAD OFFICE	***AND APPELLATE AUTHORITY***
KOLKATA	***18/04/2009……."***

9. The Petitioner has then relied upon the Judgment dated 25.11.2008 passed by the Judicial Magistrate, 1st Court, Garhbeta in G.R 116/2007 wherein the complaint was under Sections 420/423 IPC registered against the petitioner. The case was related to the alleged misappropriation at

Garhbeta Branch and this was all done while the petitioner was posted at Bagmari SAB Branch.

10. The Court on considering the materials on record held as follows:-

> ***"……..<u>REF: - G.R 116/2007</u>***
>
> ***<u>Dated: 25.11.2008</u>***
>
> *………..It can in no way therefore, be said that the prosecution has been succeeded to any extent in substantiating any of the allegations labeled against the accused person so that the accused person may reasonably held to be guilty of the alleged offenses U/Ss. 420 or 423 of I.P.C. The accused person cannot therefore be made liable to convictions of either description in charges of the offenses punishable under either of the Sections 420 or 423 of the I.P.C. he has been labeled with. Rather the accused person is reasonably and invariably entitled to an order of acquittal of all the charges he has been labeled in this case…….*
>
> ***Sd/-***
> ***Judicial Magistrate, 1st Class,***
> ***1st Court, Garhbeta………"***

11. Vide a letter dated 15.07.2008 the bank initiated the process for the petitioners Super annuation Benefit and later released the same which were admissible under the rules.

12. Both parties have filed their written notes with the Judgments relied upon:-

a) Judgments relied upon by the Petitioner:-

i) Meena Janah Vs. The Deputy Director of Tourism (Calcutta) and Ors., (Constitutional Writ Jurisdiction Matter No. 184 of 1971).

ii) Roop Singh Negi Vs. Punjab National Bank and Ors., (2009) 2 SCC 570.

iii) Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Ors., (2006) 4 SCC 713.

iv) United India Insurance Co. Ltd. vs Narinder Mohan Arya, (2006) 4 SCC 731.

v) Kuldeep Singh Vs. Commissioner of Police and Ors., (1999) 2 SCC 10.

vi) S.K. Giri Vs. Home Secretary, Ministry of Home Affairs and Ors., 1995 Supp (3) SCC 519.

vii) Mahesh Lall Vs. The Union of India., 2024 (1) CHN (CAL) 892.

b) Judgments relied upon by the Respondents:-

i) K. Vinod Kumar Vs. S. Palanisamy and Ors., (2003) 10 SCC 681.

ii) Ramchandra Wahiwatdar vs Narayan and Ors., (2003) 10 SCC 685.

iii) Union of India & Ors. Vs. P. Gunasekaran., (2015) 2 SCC 610.

iv) Pravin Kumar Vs. Union of India and Ors., (2020) 9 SCC 471.

v) Apparel Export Promotion Council Vs. A.K. Chopra., (1999) 1 SCC 759.

vi) Lalit Popli Vs. Canara Bank and Ors., (2003) 3 SCC 583.

vii) Deputy General Manager and Ors. Vs. Ajai Kumar Srivastava., (2021) 2 SCC 612.

viii) Disciplinary Authority-cum- Regional Manager and Ors. Vs. Nikunja Bihari Patnaik., (1996) 9 SCC 69.

ix) State Bank of India and Ors. Vs. T.J. Paul., AIR 1999 SC 1994.

x) Damoh Panna Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain, (2005) 10 SCC 84.

xi) State Bank of India and Ors. Vs. Ramesh Dinkar Punde, (2006) 7 SCC 212.

xii) Pravin Kumar Vs. Union of India and Ors., (2020) 9 SCC 471.

xiii) United Bank of India Vs. Bachan Prasad Lall., AIR 2022 SC 943.

xiv) National Fertilizers Ltd. and Anr. Vs. P.K. Khanna., (2005) 7 SCC 597.

xv) R.P.Bhatt Vs. Union of India and Ors., (1986) 2 SCC 651.

xvi) The State Bank of India and Anr. Vs. H.K. Dogra and Anr., L.P.A No. 387/ 1989.

xvii) State of Rajasthan and Ors. Vs. Heem Singh., 2020 SCC OnLine SC 886.

13. The Writ Petitioner's argument is as follows:-

"15. ....a) *The language of the charge-sheet shows pre-judgment of guilt in view of the judgment reported in* ***Meena Janah vs Deputy Director, Tourism, 1974 (2) SLR 466, para 17.***

b) *The appellate authority should pass order based on reasons and a decision must be arrived at on some evidence which is legally admissible,* ***2009 (2) SCC 570 para 23 (Roop Singh Negi -vs- Punjab National Bank & Ors.)*** *and* ***2006 (4) SCC 713, paras 32 to 36 (Narinder Mohan Arya -vs- United India Insurance Co. Ltd)****.*

c) *If there is no evidence to sustain the charges framed against the delinquent he cannot be held to be guilty and findings recorded by Inquiring Officer would be perverse,* ***99 (2) SCC 10 Paras 7 and 8 (Kuldeep Singh -vs- Commissioner of Police and Ors).***

d) *The punishment of dismissal from service is disproportionate to the alleged charges-****95 Supplementary (3) SCC 519- para 6.***

e) *The documents which have been relied upon by the prosecution to prove charges have not been called or allowed to be cross-examined and thus there is violation of principle of natural justice.*

f) *There is no quantification of the amount of monetary loss sustained by the bank and the bank had initiated different money suits to realize the amount from the customers which have been decreed with adequate costs and interests.*

g) *The acquittal in the criminal proceeding has a direct nexus with the departmental proceedings and the petitioner is entitled for quashing of the order of dismissal in view of the judgment delivered by the competent criminal court and also in view of the judgment* ***in Maheshlall -vs- Union of India delivered on 22.12.2023 in WPCT No.64 of 2023 and reported in 2024 (1) CHN (Cal) 892.***

h) ……………..

i) *Right from Rule 68(2)(v) till Rule 68(5) of the State Bank of India Officers Service Rules there was no adherence of the procedures in terms of State Bank of India Officers Service Rules.*

j) ……………….

k) *The writ petitioner is now aged about 75 years and the date of superannuation, of the petitioner was 31.8.2009 and the petitioner was paid the gratuity amount of Rs.3,50,000/- (at page 145) and Provident Fund of Employees portion of Rs.7,38,776.24 had been paid (at page 145).*

16) *The order for dismissal from service dated 22.4.2008 is liable to be quashed and/or set aside in view of the judgment of acquittal by the competent criminal court on 25.11.2008 and the petitioner is entitled to the following benefits:-*

a) *Provident Fund (employer share) not given.*

b) *Un-availed leave encashment of petitioner not given.*

c) *Pension from 31.8.2009 till the date was not given and the petitioner may kindly be granted pension from 31.8.2009 till date along with interest and arrear salary from the date of suspension i.e. from 19.5.2006 till the date of superannuation i.e. on 31.8.2009 along with interest be paid and other incidental benefits which the petitioner is entitled to may kindly be granted and the writ petition may kindly be allowed and the departmental proceeding may kindly be quashed and/or set aside and the writ petition may kindly be allowed……..”*

14. The Respondent Bank has argued as follows:-

*“……..**2.** The petitioner worked as Manager (DBD) at Garbeta Branch from 14.01.2002 to 02.10.2004 and as Branch Manager at Bagmari SAB during a period of 04.10.2004 to 06.01.2006. The petitioner committed several irregularities following which a disciplinary proceeding was initiated against the petitioner on December 9, 2006 following issuance of charge Sheet which was received by him on December 22, 2007.*

3. *The Petitioner duly submitted its reply to the charge sheet on January 4, 2007 denying all material allegations against him.*

4. *Following his denial, a domestic inquiry was ordered and during the inquiry, petitioner was supplied with all documents relied upon by the allowed to examine witness and cross-examine* *the Bank's witness and all shorts opportunity was given following the natural justice.*

5. *After completion of the disciplinary proceeding, the Disciplinary Authority forwarded the Enquiry report dated 15.01.2008 wherein the Enquiry Officer in his findings stated that the charges no. (i), (iii) and (v) relating to charges of Bagmari SAB and all the charges except charge no. 1(vi) relating to Garbeta Branch are proved.*

6. *The petitioner on 31.01.2008 replied to the enquiry report dated 15.01.2008 The Appointing Authority on 22.04.2008 imposed a punishment order inflicting dismissal as per Rule 67(j) of State Bank of India Officers Service Rules (SBIOSR).*

7. *That the Petitioner on 05.06.2008 preferred an appeal against order dated 22.04.2008 communicated vide State Bank of India, LHO Letter bearing no. VIG/BKN/43. That again on 09.09.2008 the petitioner amended the appeal. That again on 16.02.2009 vide a letter the petitioner submitted an amendment to the original appeal dated June 5, 2009 in view of the order passed by the Ld. Judicial Magistrate 1st class, 1st court, Garbeta vide order dated 25.11.2008.*

10. *On or about June 1, 2009, the Petitioner filed a Review Application in respect of the order passed by the Appellate Authority.*

11. *The Reviewing authority passed its order dated 30th October, 2010 by a details order confirming the order passed by the Appointing authority and Appellate Authority respectively.*

12. *The respondent states that before disposal of the Review Application the petitioner challenged the aforesaid order of the Appellate Authority before this Hon'ble High Court at Calcutta by filing the instant Writ Petition as such said Writ Petition is premature one.*

19. a) *It is further submitted that in the instant case the Competent Authority of the Bank has conducted the enquiry proceedings strictly in accordance with the provisions of Rule by observing the Principles of natural justice. There is also no allegation that the Competent Authority of the Bank has proceeded with the departmental proceedings violation of any provisions of law It is settled principles of law that the Scope of Judicial Review is confined to the decision making process and does not extend to the merits of the decision taken as held in* ***K. Vinod Kumar Vs. S. Palanisarry & others reported in (2003) 10 SCC Page 681 at Para 11, Union of India & others Vs. P. Gunasekaran reported in (2015)2 SCC 710 paragraph 12 - AIR 2015 SC 545, paragraph 13, Pravin Kumar -Vs- Union of India & Others reported (2020) 9 Supreme Court Cases 471, paragraph 25 to 30.***

b) It is submitted that it is also settled principle of law that if the departmental proceedings started and concluded strictly in accordance with law, the High Court under Article 226 should not have normally interfere with disciplinary matters and punishment as held in ***Apparel Export of promotion Vs. A.K. Chopra reported in (1999)1 SCC Page 759 paragraph 16-AIR 1999 SC - Page 625 at Para 17.***

c) It is submitted that it is also the settled principles of law that in disciplinary enquiry the technical Rule of evidence have no manner of application. The doctrine of proof beyond doubt has also no manner of application. The preponderance of probabilities and some materials on record are only necessary to arrive at the conclusion as held in ***Para 16 of the Lolit Popli Case (2003) 3 SCC Page 583 at Para 11 & 12.*** *Examination by Court is limited to determining whether (i) Enquiry was held by competent authority; (ii) whether there was compliance with principal of natural Justice; and (iii) whether findings were based on some evidence and whether authority had jurisdiction to arrive at conclusion as held in* ***para 25 in Deputy General manager (Appellate Authority) and Others -Vs- Ajay Kumar Srivastava reported in (2021) 2 SCC Page 612...."***

15. It is appears that in ***Mahesh Lall Vs. The Union of India, 2024 (1) CHN (CAL) 892,*** the Court held:-

*"**2.** The above finding was made on preliminary enquiry by the respondents. The petitioner's conduct was found to be "grossly immoral, indisciplined and detrimental to the reputation and discipline of the force". Applying rules 8.39, 8.40, 8.42, 8.45 and 8.45 of the Andaman and Nicobar Police Manual, 1963, it was alleged that the above conduct made the petitioner unworthy of being a member of the force and liable to receive punishment under rule 9.3.*

***18.** The petitioner once again approached the tribunal which by its judgment and order dated 24th May, 2023 upheld the decision of the disciplinary proceeding and that before the Appellate Authority dismissing the writ petitioner from service.*

19.** This writ application challenging the said order of the tribunal dated 24th May, 2023 is sought to be maintained by the writ petitioner on a solitary ground. It is this.* ***When the criminal court, on the self same charges as were the grounds for dismissal of the writ petitioner from service, has acquitted him, should the Disciplinary Authority have followed the findings of the criminal court and returned a decision exonerating him from the charges? In the alternative, how relevant were the findings of the criminal court before the Disciplinary Authority? How, the tribunal ought to have dealt with the matter in view of the said order of the acquittal of the writ petitioner?"

16. In Part –II, Para 20(i) of the Judgment in *Mahesh Lall Vs. The Union of India (Supra),* the Court further held:-

"20. From the said series of events as noted above it is evident that :

(i) On full consideration of the prosecution evidence on record, before the Sessions Court, (even if the complainant and the victim had not turned hostile, and on careful reading of the entire judgment, it appears that acquittal of the petitioner/accused was inevitable, as the other evidences on record being the medical and forensic report also did not support the prosecution case, nor did the other witnesses. The said materials on record has thus given the petitioner an honourable acquittal……….."

17. **In the present case,** the enquiry authority, disciplinary authority and the appellate authority **have all followed the rules of natural justice.** The orders, findings and finally the penalty have all been given **on proper reasoned and clear findings, based on clear evidence.** The reasoning's given on findings have proved that the petitioner has committed the irregularities and misappropriation of customer funds, causing monetary loss to the Bank of an amount of Rs. 1, 56, 58, 171/-.

18. The Appellate Authority in its **well reasoned detailed order,** gave specific findings proving the charges of misconduct against the petitioner. ***(State of Rajasthan and Ors. Vs. Heem Singh., 2020 SCC OnLine SC 886)***

19. **The said findings are balanced and not biased, considering that benefit of certain charges not being proved was also given to the petitioner.**

20. The penalty as imposed by the appointing authority is *prima facie* appropriate keeping in view of the magnitude and gravity of the misconduct. ***(B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749)***

21. The Writ petitioner was acquitted by the criminal court in respect of the misconduct at Bagmari Office.

22. There was no criminal case in respect of the misappropriation and irregularities at Garbeta Branch.

23. The contention of the Writ Petitioner that as he was acquitted by a criminal court in respect of part of the charges, the findings in respect of the said charges in disciplinary proceedings is not tenable, considering that the findings and consideration in **the two proceedings are entirely different, one to be proved beyond all reasonable doubt, and the other only on the basis of "Pre-ponderance of probability."** ***(Union of India & Ors. Vs. Dalbir Singh, AIR 2021 SC 4504)***

24. The Writ Petitioner, being the Branch manager of a nationalized Bank (State Bank of India) was discharging his duty towards public service and as such the nature of mis-conduct has been rightly dealt with, to maintain discipline in service and efficiency of public service.

25. The findings of the disciplinary authority in this case is principally based on documents relating to the transactions done by the Writ Petitioner. The findings are based on strong evidence and shows that the writ petitioner did not follow the discipline required to be conformed to where the transaction involve matter of security/finance and such indiscipline relating to several transactions, leading to huge financial loss to the authority concerned, deserves appropriate/proportionate penalty, not only to punish the wrong doer, but to also prevent such acts in future (deterrent).

26. Thus, the decision of the disciplinary authority being in accordance with law having been done by following the rules of natural justice, and being based on proper evidence, suffers from no perversity, as there is sufficient evidence to support the charge of misconduct and the findings are also well reasoned and as such the findings require no interference by this court.

27. The Writ Petition in WPA 2648 of 2010 is accordingly dismissed.

28. No order as to costs.

29. All connected applications, if any, stand disposed of.

30. Interim order, if any, stands vacated.

31. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)