

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Arijit Banerjee

And

The Hon'ble Justice Supratim Bhattacharya

APO/65/2022

with

IA NO: GA/2/2021

Rana Mazumder

-Vs.

Punjab National Bank (Formerly Known as United Bank of India) & Ors.

For the Appellant : Mr. Sudeep Sanyal
Mr. Sukanta Das
Mr. Chandrachur Lahiri

For PNB : Mr. R. N. Majumdar
Mr. S. M. Obaidullah

Heard On : 22.04.2024
Judgement Delivered On : 19.07.2024

Supratim Bhattacharya, J.:-

1. The appellant has preferred this instant appeal being aggrieved by and dissatisfied with the order and Judgment passed in WP No. 379 of 2017 dated 13.05.2020.
2. Through the said judgment, the Ld. Court has dismissed the writ petition filed by the appellant herein. The Ld. Judge has been pleased to pass the following:

“ ... the decision and the penalty imposed upon the petitioner appears to have been passed in accordance with the service regulations and to conformity with the principles of natural justice. There is hardly any reason to interfere with the proceedings and the final order impugned herein.”

3. The appellant herein namely Rana Majumder was the writ petitioner while the respondents herein namely Punjab National Bank (formerly United Bank of India) and others were the respondents before the writ court.
4. The fact of the instant lis is that the appellant herein was an employee serving as an officer in the United Bank of India. He was sent on deputation as the Chairman of the Bangiya Gramin Vikash Bank (hereinafter referred to as BGVB) and the said person served the said bank from 20th April 2010 till 3rd of November 2012. Thereafter Mr. Majumder was repatriated to his parent bank that is the Union Bank of India and was posted as the Deputy General Manager (priority sector and recovery) at the head office of the said bank.
5. A charge-sheet was issued against the said appellant on 26.03.2004 pertaining to his tenure as the Chairman of BGVB. The appellant retired from service from the United Bank of India on 31.03.2014 on attaining his normal age of superannuation. Later another charge-sheet has been issued against the said person on 04.08.2014 relating to the charges which had cropped up against him during his tenure as the Chief Manager of the Purba Medinipur region of the United Bank of India for the period between 23.04.2005 to 15.10.2008.

- 6.** A disciplinary proceeding was held against the petitioner and the disciplinary authority passed the final order on 07.05.2016 imposing major penalty of *removal from service* not being disqualified for future employment in terms of regulation 4 Clause I of the United Bank of India Officer Employees'(Discipline and Appeal) Regulations, 1996 with immediate effect. Order was also passed to the effect that save and except what has been paid to him on account of his own contribution to Provident Fund and Provisional Pension he will not be entitled to any other Terminal Benefits that is pension/commutation in terms of Regulation 22 read with Regulation 46 of the UBI (employees) Pension Regulations, 1995 (hereinafter referred to as Pension Regulation) , gratuity in terms of Regulation 46 Clause 1 sub Clause E and encashment of accrued leave as on the date of superannuation in terms of the regulation 38 of the United Bank of India Officers Service Regulation's, 1979(hereinafter referred to as the Service Regulations).
- 7.** Statutory appeal was preferred by the appellant challenging the said order of the disciplinary authority which stood dismissed by the appellate authority on 19.01.2017.
- 8.** Thereafter the appellant banking upon a circular issued by the UBI on 21.07.2015 regarding entitlement of encashment of privileged leave for office employees inflicted with the punishment of the compulsory retirement, applied before the respondent authority praying for releasing

his leave encashment benefit but the said prayer was rejected on 27.01.2017 by the General Manager (Human Resource) of the UBI.

9. The appellant herein being aggrieved by the order passed by the disciplinary authority and the appellate authority challenged both the orders by filing the writ petition.
10. Through the writ petition the appellant had prayed for setting aside the order passed in the disciplinary proceeding and also prayed for a declaration that the Regulation 46 (1)(E) of the Service Regulations is ultra vires the provisions of Section 4 and Section 7 of the Payment of Gratuity Act , 1972 and had further prayed for a declaration that the regulation 38 of the Service Regulations, 1979 is ultra vires the provisions of Articles 14, 21 and 300 of the Constitution of India and had also prayed for releasing his gratuity leave encashment and pensionary benefits.
11. The Ld. Single Judge of the writ court after elaborate discussion has dismissed the said prayers of the appellant herein, thus, the appellant has preferred the instant appeal.
12. Heard Mr. Sudip Sanyal, Ld. Advocate being assisted by Mr. Debasish Basu, Sukanta Das, Ms. Lopamudra Moitra and Mr. Arun Bandyopadhyay on behalf of the appellant during his exhaustive submission has stated as follows:
 - i) The Ld. Counsel representing the appellant during his elaborate submission has submitted that the appellant who

was employed as the Deputy General Manager of the UBI was to retire from service on 31.03.2014 but just before his retirement a charge-sheet being dated 26.03.2014 was served upon him implicating 25 charges which related to his tenure of service as the Chairman of the BGVB. He further submitted that the appellant was the Deputy General Manager of the UBI during the year 2010 when he was appointed as the Chairman of the BGVB and the said appointment was with the consensus of the NABARD and the Central Government in terms of the Rural Banks Act.

- ii)** He has further submitted that the charges related to the loan which had purportedly turned to be non performing asset on a certain date. He has further submitted that many of such loans had been sanctioned by the General Manager of the BGVB.
- iii)** The Ld. Counsel has further submitted that the departmental proceeding continued after the retirement of the appellant from service on the basis of a legal fiction created by the second proviso of the Regulation 48 sub-regulation 1 of the Pension Regulations.
- iv)** He has further submitted that on 04.08.2014 other charges were levelled against the appellant relating to loans granted during his tenure as the Chief Regional Manager, Purba

Midnapore of the UBI. The Ld. Counsel has raised the issue that these charges related to the matters more than 4 years prior to the institution of the departmental proceeding. He has further submitted that the petitioner has protested against such inequity but there had been no answer.

- v)** The Ld. Counsel has further submitted that during the departmental proceeding there were 152 management exhibits among them there were 21 identical exhibits being letters of 21 BGVB Bank officers informing the bank authorities that is the UBI that they were coerced and suborned by the appellant/petitioner to sanction the loans which had turned to non performing assets.
- vi)** The Ld. Counsel has further submitted that there were 60 defence exhibits. The Ld. Counsel has also submitted that the writ petition was dismissed on the ground that the petitioner was allowed to cross-examine the witnesses and there was no violation of natural justice. He has further submitted that there was only one witness on behalf of the management.
- vii)** Ld. Counsel has further submitted that the Ld. Judge has also expressed that the persons who wrote 21 identical letters were not at all necessary to have been examined at

the departmental enquiry and there was no violation of the principle of natural justice.

viii) The Ld. Counsel has further submitted that the Hon'ble Judge has stated that the addendum charge-sheet dated 04.08.2014 was validly issued as it was in continuation of the charge-sheet that had been issued earlier when the petitioner was in service and the later incorporation by the disciplinary authority of a charge not mentioned in the charge-sheet typically could be read into the charges and construed harmoniously and as many as 152 management exhibits and 26 defence exhibits had been considered in the departmental proceeding which stretched over two years and the petitioner was afforded ample opportunity to defend himself.

ix) The Ld. Counsel has further submitted that the departmental proceeding and the judgment and decree of the Hon'ble Single Bench assailed on the ground that there has been palpable violation of the principles of natural justice, reasonable opportunity and fairness in conducting the departmental enquiry and in not affording the petitioner the opportunity to cross examine the 21 officers of the BGVB who wrote 21 identical letters to the management of the UBI.

- x)** The Ld. Counsel has further submitted that 34 defence exhibits were erased by the enquiry officers for extraneous purposes thus openly manifesting the enquiry officers' imbalance, impropriety and proclivity to the bank's case. He has further submitted that the additional charge-sheet is invalid and without jurisdiction for it is a travesty on the regulations which were obliquely bent and all these actions are evidence of malice in law and malice in fact on the part of the bank management who were bent upon punishing the petitioner.
- xi)** The Ld. Counsel has further submitted that the charge No. 20 in the charge-sheet *"all the above mentioned credit limits excepting serial No. 19 above, were frequently reviewed, virtually to give favour to the particular borrowers who by any means. In reality, the loan to the extent of Rs. 2491.81 Lakh were extracted by you from the bank in collaboration with Siraj Khan and his group within the persons involved in the process of initiation, recommendation and even sanction in some cases under duress. In all the cases, documents remained either defective or deficient somehow or other"*. In this context the Ld. Counsel has further stated that no proof was given about the extraction of the money with the help of the particular family except surmise and conjecture.

xii) The Ld. Counsel has further submitted that the said charge No. 20 is cardinal to the success of all the other charges and had to be proved but by clever manipulation identical 21 letters written by 21 officers of the BGVB subordinate to the appellant were produced at the enquiry to prove the crucial charge and care was taken not to produce those officers at the enquiry list in the cross-examination so that the fraud will get unearth, even one of those letters was unsigned, relying upon this facts the Ld. Counsel has submitted that principles of natural justice and fair play was violated during enquiry. He has further submitted that non-production of those officials during the enquiry was clearly malice in law and the basic legal proposition being that he who brings the allegations/charges must prove it and the onus of proof lies on him which cannot be manoeuvred and the basic laws of evidence cannot be relegated even though the strict rules of evidence do not apply to disciplinary proceedings.

xiii) The Ld. Counsel has further submitted that it is not that each and every charge needs prove by oral evidence nor is the cross-examination of the witnesses explicit in the success of the management in a departmental enquiry but it is mandatory when the proof of the issue is cardinal to the enquiry which is the core issue. He has further stated that if

material factual evidence is in dispute then it can only be properly resolved by cross examination and that will require an oral hearing, the decision making body cannot rely upon disputed evidence to the prejudice of the individual unless it has been raised by cross-examination.

- xiv)** The Ld. Counsel has further relied upon “protection from Power Hamlin Lectures” wherein it has been stated that
“at a hearing to determine the facts under investigation one of the parties is , without good reason denied the opportunity of questioning the witness put against him, of producing a material and available witness on his side, no one say that the dictates of natural justice had been observed.”

He has further submitted that it is observed that

“ whether an oral hearing is necessary will depend upon the subject matter and circumstances of the particular case and upon the nature of the decision to be mentioned. It will also depend upon whether there are substantial issues of fact which cannot be satisfactorily resolved on the available written evidence. ... whilst this did not necessarily require an oral hearing it would generally do so if there were central issues of fact to be determined. Although these could not inevitably have to be resolved by cross-examination, because, for example, one version may be inherently unlikely, cross-

examination could be required save were the conflict were peripheral to the central issue”

- xv)** The Ld. Counsel has further submitted that there was absolutely no evidence in support of the charges framed against the appellant and the entire findings recorded by the enquiry officer are vitiated by the fact that they are not supported by any evidence on record and are wholly perverse.
- xvi)** The Ld. Counsel has relied upon the judgment passed by the Hon’ble Apex Court in the case between Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd. And another reported in (1999) 2 SCC 21.
- xvii)** The Ld. Counsel has also relied upon the Constitutional Bench judgment of the Hon’ble Supreme Court passed in State of Mysore and others vs. Shivabasappa Shivappa Makapur published in AIR 1963 SC 375.
- xviii)** The Ld. Counsel has further relied upon the judgment passed by the Hon’ble Apex Court between Hardwari Lal Vs. State of U.P. and others published in (1999) 8 SCC 582.
- xix)** The Ld. Counsel has further relied upon the judgment passed in UCO Bank and another vs. Rajinderlal Capoor reported in (2007) 6 SCC 694.

xx) The Ld. Counsel has further relied upon a judgment of the Hon'ble Apex Court passed in the case between Vineeta Sharma vs. Rakesh Sharma and ors. cited in (2020) 9 SCC 1 wherein the Hon'ble Apex court has stated in Paragraph 109 which is as follows:

“A legal fiction created in law cannot be stretched beyond the purpose for which it has been created”

xxi) He has further relied upon the judgment passed between Sant Lal Gupta and ors. Vs. Modern Cooperative Group Housing society Ltd. and ors. 2010 13 SCC 336. Paragraph 21 of the said judgment is laid as follows:

“It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of “quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud”. An authority cannot be permitted to evade a law by “shift or contrivance”.”

xxii) The Ld. Counsel has further stressed upon the point that in spite of 60 marking defence exhibits the enquiry officer in his report dealt with only 26 defence exhibits and there is no reason as to why the enquiry officer has obliterated the remaining 34 defence exhibits.

xxiii) The Ld. Counsel has further stressed upon the point that the Hon'ble Single Judge has erred in law in holding that the charges could be harmoniously construed. He has further

submitted that vague charges cannot be so construed because charges must be specific to enable the delinquent to appreciate and answer them.

xxiv) The Ld. Counsel has further submitted that the process adopted in the disciplinary proceeding to find the petitioner guilty of the charges is totally perverse, illegal, violates the principles of natural justice and fair play and is malice in fact as well as malice in law.

xxv) The Ld. Counsel has relied upon the judgment passed in the case between Smt. S.R. Venkataraman vs. Union of India and another cited in (1979) 2 SCC 491. In the paragraph Nos. 6, 7, 8 the following has been laid down:

“6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard. C.J. in Pilling v. Abergele Urban District Council [(1950) 1 KB 636 : (1950) 1 All ER 76] where a duty to determine a question is conferred on an authority which state their reasons for the decision,

and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.

7. The principle which is applicable in such cases has thus been stated by Lord Esher, M.R. in Queen on the Prosecution

of Richard Westbrook v. The Vestry of St. Pancras [(1890) 24 Q BD 371, 375 : 62 LT 440] :

“If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.

8. We are in agreement with this view. It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go these may well be said to run into one another.”

xxvi) The Ld. Counsel has further relied upon a judgment of the Hon’ble Apex Court in the case between **Union of India and ors. vs. P. Gunasekaran**. In the said judgment distinction has been laid down as regards to judicial review and appeal. The extent and scope of judicial review has been dealt elaborately in the said judgment.

Banking upon the aforesaid facts and circumstances and relying upon the judgments cited the Ld. Counsel has prayed for interference of this Court.

13. Mr. R.N. Majumder being assisted by Mr. Saurav Chakraborty and Mr. S.M. Obeidullah on behalf of the respondents during his exhaustive submission has submitted the following:

i) The appellant has committed various acts of misconduct for which charge-sheet dated 26.03.2014 was issued against the

appellant and subsequently additional charges were incorporated on 04.08.2014.

- ii)** The Ld. Counsel has submitted that the appellant and his representative participated in the enquiry proceedings and were given full opportunity to defend.
- iii)** The Ld. Counsel has further submitted that the respondent bank exhibited 152 management exhibits while the appellant herein exhibited 26 documents in his defence. The departmental enquiry continued for several days wherein the appellant was provided adequate opportunity to cross examine the management witnesses.
- iv)** The Ld. Counsel has further submitted that the enquiry officer in his findings and /or report dated 01.12.2015 held that all the charges levelled against the incumbent had been proved except the Charge No. 6 of the charge-sheet. He has further submitted that in respect of the Charge No.6 only one ingredient namely the compliance of the KYC part was not proved but all the other ingredients had been proved.
- v)** The Ld. Counsel has further submitted that in respect of the addendum charge-sheet dated 04.08.2014 the enquiry officer came to a finding that the Charge No.1 was not conclusively proved, charges No. 2 and 3 were proved while the charge No. 4 was partly proved. He has further

submitted that in any event the petitioner cannot be absolved of all the liabilities as the other charges stand proved.

- vi)** The Ld. Counsel has further submitted that the appellant was supplied with the findings of the enquiry officer and he was given the opportunity to submit on the same and availing the said opportunity the appellant has submitted his reply by the letter dated 06.02.2016 and upon considering all the material facts available in the enquiry proceedings and after perusal of the findings of the enquiry officer and the evidences produced during enquiry the disciplinary authority concurred with the findings of the enquiry officer by a reasoned order dated 07.05.2016 and thereafter imposed major penalty upon the appellant in terms of Regulation 4 Clause I of the Regulations, 1976 that is *“removal from service which will not be a disqualification for future employment”*
- vii)** The Ld. Counsel has further submitted that the appellant thereafter preferred an appeal against the said order of removal and the appellate authority by a reasoned order dated 19.01.2017 confirmed the punishment that was imposed by the disciplinary authority.

- viii)** The Ld. Counsel has further submitted that as a disciplinary proceedings was pending at the time of retirement of the appellant the period for disciplinary proceedings was extended after due retirement of the petitioner by invoking Regulation 20 (3) of the Service Regulations.
- ix)** The Ld. Counsel has relied upon Regulation 20 (3)(III) of the United Bank of India Regulations 1979 and has reiterated that the officer against whom disciplinary proceedings is initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and /or allowance after the date of superannuation. He will also not be entitled for payments of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to Contributory Provident Fund.
- x)** The Ld. Counsel has relied upon the Regulation 48 of the Pension Regulations, 1995 Act which lays down as follows:

“Recovery of pecuniary loss caused to the bank – I) the competent authority may withhold or withdraw pension or part thereof whether permanently or for a specified period and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if any departmental or judicial proceedings the pensioner is found guilty of grave

misconduct or negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service.

II) No departmental proceedings if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than 4 years before such institution:

Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

III) where the competent authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding 1/3 of the pension admissible on the date of retirement of the employee.”

- xi)** The Ld. Counsel has further submitted that in the instant case the departmental proceedings was initiated prior to the retirement of the appellant and by virtue of invocation of Regulation 20 (3)(III) of the United Bank of India Officers Service Regulation. The Limitation of 4 years as provided under the Pension Regulations is not applicable in the context of the present case.
- xii)** The Ld. Counsel has further submitted that encashment of leave is a privilege conferred upon the employees of the Respondent Bank and forfeiture thereof by virtue of a statutory regulation such as the regulations of the Respondent Bank cannot be termed as violative of the rights guaranteed under the Constitution of India.

- xiii)** He has further submitted that there is no question of discrimination as it is equally applicable to all the officers employee of the Respondent Bank who are imposed with a major penalty.
- xiv)** The Ld. Counsel has further stated that acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24 and no further proof of loss is really necessary.
- xv)** The Ld. Counsel has relied upon the judgment passed by the Hon'ble Apex Court in the case between Disciplinary Authority-cum-Regional Managers and ors. Vs. Nikunja Bihari Pattanayak (1996) 9 SCC 69 in the said Judgment Paragraph 7 has been laid down:

“It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the bank 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. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is ‘misconduct’ within the meaning of Regulation 24. The findings of the Inquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a number of instances the respondent allowed overdrafts or

passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a bank — for that matter, in the case of any other organisation — every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority — that too a course of conduct spread over a sufficiently long period and involving innumerable instances — is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organisation and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdrawals allowed by

the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit — huge profit, as the High Court characterises it — they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class I Officer was not aware of the limits of his authority or of his powers. Indeed, Charge 9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Inquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge 8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit “Control Returns” to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24”

xvi) The Ld. Counsel has further submitted that there has not been any violation of principles of natural justice and it is settled law that a writ court does not sit in appeal over the findings of the enquiry officer unless such findings suffer from perversity. In this context the Ld. Counsel has relied upon the judgment passed in the case between Lalit Popli vs. Canara Bank reported in (2003) 3 SCC 583 In paragraph 17 of the said judgment the following has been laid down:

“While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to

manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.”

xvii) The Ld. Counsel representing the respondents has also relied upon the judgment passed by the Hon’ble Apex Court in the case between Sub-Divisional Officer Konch Vs. Maharaj Singh cited in (2003) 9 SCC 191. Paragraph 5 of the said judgment has been relied upon which states as follows:

“In view of the submissions made at the Bar, we have scrutinised the impugned order of the High Court. A bare perusal of the same makes it crystal clear that the High Court in exercise of its jurisdiction under Article 226 has reappreciated the entire evidence, gone into the question of burden of proof and onus of proof and ultimately did not agree with the conclusion arrived at by the enquiring officer, which conclusion was upheld by the disciplinary authority as well as the U.P. Public Service Tribunal. It has been stated by this Court on a number of occasions that the jurisdiction of the High Court under Article 226 is a supervisory one and not an appellate one, and as such the Court would not be justified in reappreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiring authority. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction under Article 226 in interfering with the findings arrived at by the enquiring authority by reappreciation of the evidence adduced before the said enquiring authority. We, therefore, set aside the impugned order of the High Court and the writ petition filed stands dismissed. This appeal is allowed.”

xviii) The Ld. Counsel on the question of integrity and honesty of a bank officer has relied upon a judgment published in the case between Tara Chand Byas vs. Chairman and Disciplinary Authority and ors. Published in 1997 SCC (L&S)

1241 and has relied upon Paragraph 2 of the said judgment which is as follows :

“2. Economic empowerment is a fundamental right of the weaker sections of the people, in particular the Scheduled Castes and Scheduled Tribes, ensured under Article 46 as a part of social and economic justice envisaged in the Preamble of the Constitution; the State is enjoined to promote their welfare effectuated under Article 38. Distribution of material resources to elongate that purpose envisaged in Article 39(b) is the means for the development of the weaker sections. The banking business and services were nationalised to achieve the above objects. The nationalised banks, therefore, are the prime sources and pillars for establishment of socio-economic justice for the weaker sections. The employees and officers working in the banks are not merely the trustees of the society, but also bear responsibility and owe duty to the society for effectuation of socio-economic empowerment. Their acts and conduct should be in discharge of that constitutional objective and if they derelict in the performance of their duty, it impinges upon the enforcement of the constitutional philosophy, objective and the goals under the rule of law. Corruption has taken deep roots among the sections of the society and the employees holding public office or responsibility equally became amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The banking business and services are also vitally affected by catastrophic corruption. Disciplinary measures should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary action to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system. What is more, the nationalisation of the banking service was done in the public

interest. Every employee/officer in the bank should strive to see that banking operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society.”

xix) The Ld. Counsel has also relied upon a judgment of the Hon’ble Apex court passed in the case between State Bank of India and ors. T. J. Paul published in (1999) 4 SCC 759 Paragraphs No. 15 and 16 of the said judgment the following have been mentioned:

“15. Taking up the definition of “gross misconduct” in para 22(iv), it is obvious that clause (h) does not apply because the charge is not one of insubordination or disobedience of specific orders of any superior officer. Coming to clause (l) of para 22(iv), the doing of any act prejudicial to the interests of the Bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss is gross misconduct. In other words likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct. The enquiry officer's finding of “gross misconduct” on the ground of not obtaining adequate security is, therefore, correct and cannot be said to be based on no evidence as held by the High Court. This can be contrasted with para 22(vi)(c) under minor misconduct which deals with “neglect of work and negligence in performing of duties”. In our view, the contention of the learned Senior Counsel for the appellants, Shri T.R. Andhyarujina is, therefore, entitled to be accepted.

16. The contention of the learned Senior Counsel for the respondent ignores the fact that “gross negligence or negligence likely to involve the Bank in serious loss” would come under major misconduct within para 22(iv)(l). As stated

above, even assuming that there is no gross negligence, simple negligence will come under major misconduct if accompanied by “likelihood” of serious loss and this is clear from para 22(iv)(l). Hence the finding of the enquiry officer regarding gross misconduct is correct and could not have been set aside by the High Court. The findings of the enquiry officer clearly bring the case under “major misconduct”. As held in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] proof of loss is not necessary.”

xx) The Ld. Counsel has further placed decision of the Hon’ble Supreme Court passed in the lis between Union Bank of India vs. Vishwa Mohan reported in (1998) 4 SCC 310. He has relied upon paragraph 12 of the said judgment:

“12. After hearing the rival contentions, we are of the firm view that all the four charge-sheets which were enquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. 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. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him.”

xxi) The Ld. Counsel on the question of proportionality of punishment has relied upon a judgment passed by the Hon’ble Apex Court between the Government of Andhra Pradesh and ors. Vs. P. Chandramouli and another and has

relied upon Paragraph 14 of the said judgment which states as follows:

“14. It is trite that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere, unless it is found that either the enquiry, proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defend, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee. All these principles have been highlighted in Indian Oil Corpn. Ltd. v. Ashok Kumar Arora [(1997) 3 SCC 72 : 1997 SCC (L&S) 636] and Lalit Popli v. Canara Bank [(2003) 3 SCC 583 : 2003 SCC (L&S) 353] , SCC pp. 77-78, para 20.”

xxii) The Ld. Counsel has further relied upon the judgment passed in the case between Divn. Controller KSRTC (NWPRTC) vs. A.T Mane paragraphs 12 and 13 have been relied upon:

“12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal..

13.. This Court in the case of B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469] held in similar circumstances that the act was either dishonest or was so grossly negligent that the

respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punish”

xxiii) The Ld. Counsel has relied upon the judgment passed in the case between Chairman and managing director United commercial Bank and ors. P.C. Kakkar reported in the (2003) 4 SCC 364. Paragraph 11 of the said judgment held as follows:

“11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision”

xxiv) The Ld. Counsel has also relied upon the judgment passed in Syed Yakoob vs. K.S. RadhaKrishnan and ors. Published in AIR 1964 SC 477 . Paragraph 7 of the said judgment states as follows:

“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 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 properly, as for instance, it decides a question without giving an opportunity, 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 a 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 [(1955) 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])”

xxv) The Ld. Counsel has also relied upon the judgment passed in the case between Union of India and ors. Vs. P. Gunasekaran published in (2015) 2 SCC 610. The Ld. Counsel has relied upon Paragraphs No. 12, 13, 15, 20 and 24 which state as follows:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

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

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

15. In State of A.P. v. Chitra Venkata Rao [(1975) 2 SCC 557 : 1975 SCC (L&S) 349 : AIR 1975 SC 2151] , the principles have been further discussed at paras 21-24, which read as follows: (SCC pp. 561-63)

“21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] . First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in *Railway Board v. Niranjan Singh* [(1969) 1 SCC 502 : (1969) 3 SCR 548] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjan Singh* case [(1969) 1 SCC 502 : (1969) 3 SCR 548] this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on 31-5-1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

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

the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. (See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477] .)

24. *The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.*

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

24. *The Central Administrative Tribunal, in the order dated 1-2-2001 in OA No. 521 of 2000, after elaborately discussing the factual as well as the legal*

position, has come to the conclusion that the punishment of compulsory retirement is not outrageous or shocking to its conscience, it was not open to the High Court to interfere with the disciplinary proceedings from stage one and direct reinstatement of the respondent with back wages.”

xxvi) The Ld. Counsel has relied upon the judgment passed in the case between State Bank of Patiala and ors. Vs S.K Sharma published in (1996) 3 SCC 364 and relied upon the paragraphs No. 28 and 33 of the said judgment which states as follows:

“The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [(1949) 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664] .) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] , the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every

complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., *Liberty Oil Mills v. Union of India* [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between “no notice”/“no hearing” and “no adequate hearing” or to put it in different words, “no opportunity” and “no adequate opportunity”. To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin* [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (*Calvin v. Carr* [1980 AC 574 : (1979) 2 All ER 440 : (1979) 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi* [(1984) 1 SCC 43 :

1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

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

xxvii) He has further relied upon a judgment passed in the case between J.D. Jain vs. the Management of State Bank of India and another published in AIR 1982 SC 673. Para 9 has been relied upon which states as follows:

“9. On a perusal of the evidence recorded by the Enquiry Officer, the Tribunal held that on the evidence before it, the appellant could not be held guilty as, according to it, in the absence of the evidence of Kansal, the evidence recorded was hearsay, with the result that it directed reinstatement of the appellant with full back wages from December 22, 1973. The respondent moved the High Court under Articles 226 and 227 of the Constitution of India for quashing the award of the

Tribunal. The High Court held that the charges against the appellant had been established and quashed the award of the Tribunal. It is against this judgment of the High Court that the present appeal by special leave is directed.”

- 14.** Considering the submission of the Ld. Counsels representing the appellant and the respondents it is apparent that the crux of the instant lis is as to whether natural justice has been provided to the appellant or not by the enquiring authority and the disciplinary authority.

The first issue is as to whether the proceeding initiated against the appellant herein is within the period of limitation or not, that is as to whether the incidents which have been alleged against the appellant have taken place beyond 4 years prior to the institution of the departmental proceeding.

In this regard Regulation 20 (3)(III) of the United Bank of India officers Services Regulations, 1979 is laid down which states as follows:

“20 (3) (III) The Officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for payments of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF.”.

The aforementioned regulation is to be dealt with in juxtaposition with the regulation laid down in the Regulation 48(2) of the United Bank of India (Employees) Pension Regulations, 1995, which lays down as follows:

“48(2)No departmental proceedings, if not instituted while the employee was in service, shall be in instituted in respect of an event which took place more than four years before such institution: Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.”

From the aforementioned two regulations it is apparently clear that no departmental proceeding shall be instituted in respect of an event which took place more than 4 years prior to the institution of the said proceeding, if the said departmental proceeding is not instituted while the employee is in service.

In this instant case the first charge-sheet was issued on 26.03.2014 when the appellant was in service. The appellant herein was due to retire on attaining the age of superannuation on 31.03.2014. So, the departmental proceeding was initiated by filing the charge-sheet when the appellant was in service. As such the issue raised on behalf of the appellant as regards to the departmental proceeding being time barred does not have any reason to stand upon.

- 15.** The issue raised on behalf of the appellant as regards to taking into consideration of only lesser number of exhibited documents (26) than the actual number of documents (60) produced on behalf of the appellant cannot be taken into consideration at this stage of the lis. The appellant had several opportunities and forums to raise the said issue and in spite of the same being agitated neither the enquiring

authority nor the disciplinary authority has come to a finding in favour of the said appellant.

In this regard the writ court has dealt with the matter elaborately and relying upon the judgment of Lalit Popli Vs. Canara Bank and Ors. wherein in Paragraphs 17 and 18 the Hon'ble Apex Court has extensively laid down as regards to the authority of the High Court while exercising the jurisdiction under Article 226 of the Constitution. Paragraphs 17 and 18 are laid down which are as follows:

“17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

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

In this regard the judgment passed by the Hon'ble Apex Court in the case between Sub-Divisional officer Konch Vs. Maharaj Singh reported in (2003) 9 SCC 191 is placed. In Paragraph No.5 of the said judgment the following has been laid down:

“5. In view of the submissions made at the Bar, we have scrutinised the impugned order of the High Court. A bare perusal of the same makes it crystal clear that the High Court

in exercise of its jurisdiction under Article 226 has reappreciated the entire evidence, gone into the question of burden of proof and onus of proof and ultimately did not agree with the conclusion arrived at by the enquiring officer, which conclusion was upheld by the disciplinary authority as well as the U.P. Public Service Tribunal. It has been stated by this Court on a number of occasions that the jurisdiction of the High Court under Article 226 is a supervisory one and not an appellate one, and as such the Court would not be justified in reappreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiring authority. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction under Article 226 in interfering with the findings arrived at by the enquiring authority by reappreciation of the evidence adduced before the said enquiring authority. We, therefore, set aside the impugned order of the High Court and the writ petition filed stands dismissed. This appeal is allowed.”

From the aforementioned authorities delivered by the Hon’ble Apex Court the ambit and scope of this forum has been laid down, as such this forum cannot go back or look back at the initial stage and reconsider the entire evidence at this stage.

16. It has also been argued on behalf of the appellant that the additional charge-sheet which has been stated on behalf of the appellant to be addendum charge-sheet dated 04.08.2014 has not been issued in accordance with law and is an invalid one has also been dealt with by the Hon’ble Single Judge.

17. The Hon’ble Single Bench has dealt with the aforementioned issue at length and has considered the pros and cons of the issue extensively.

- 18.** The issue raised on behalf of the appellant that there has not been any intentional laches on behalf of the appellant as regards to his duties for which loss has effectuated for the bank on the contrary on several occasions the bank has made enormous profit because of the initiatives taken by the appellant. This issue has also been dealt by the Hon'ble Single Bench.

In this regard the judgment passed by the Hon'ble Apex Court in the case between Disciplinary authority-cum- Regional Manager and Ors. Vs. Nikunja Bihari Patnaik published in (1996) SCC (L&S) 1194 has dealt with the issue in Paragraph 7 of the said judgment which is set out as follows:

"7. It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the bank 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. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is 'misconduct' within the meaning of Regulation 24. The findings of the Inquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large

number of transactions. In the case of a bank — for that matter, in the case of any other organisation — every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority — that too a course of conduct spread over a sufficiently long period and involving innumerable instances — is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organisation and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdrawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit — huge profit, as the High Court characterises it — they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class I Officer was not aware of the limits of his authority or of his powers. Indeed, Charge 9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Inquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of

disobedience of lawful orders. Similarly, Charge 8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24."

In the case at hand the issues which have been raised on behalf of the bank have been extending for a long period of time involving huge number of transactions. The appellant herein has been a dominant feature as regards to the transactions by virtue of the capacity of the posts held by him. A few judgments have been cited in this aspect which are dealt with in the judgment passed by the Hon'ble Apex Court in the case between State Bank of India and ors. vs. T.J. Paul (supra).

19. Thus from the aforesaid discussion it is apparent that the Hon'ble Single Bench has dealt with the issues raised on behalf of the appellant and has come to the conclusion which this Court finds that it does not require interference.
20. The judgment passed by the Hon'ble Single Bench in **W.P. NO. 379 of 2017** stands affirmed and this instant appeal being **APO/65/2022** with **IA NO: GA/2/2021** is dismissed.
21. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

- 22.** Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)

Arijit Banerjee, J. :-

1. I have read the detailed judgment of my Learned Brother. I agree with the conclusion reached by His Lordship. However, I take this opportunity of adding a few words.
2. The facts which are not in dispute are that the appellant/writ petitioner was an employee of the United Bank of India (in short “UBI”). He was sent on deputation as Chairman of Bangiya Gramin Vikash Bank (in short ‘BGVB’) for the period April 20, 2010, till November 3, 2012. Thereafter, he was repatriated to UBI at its head office and was posted as Deputy General Manager (Priority Sector and Recovery).
3. A charge sheet was issued to the appellant on March 26, 2014, pertaining to his tenure as Chairman of BGVB. The charges related to dereliction of duty. The substance of the charges was that the appellant had sanctioned loans to various parties without following due procedure. Many of

such loans became non-performing assets resulting in huge loss to BGVB in excess of Rs. 23 crore.

4. The petitioner retired from service on March 31, 2014, on attaining the age of superannuation.

5. On August 4, 2014, an additional charge sheet was issued to the appellant relating to his tenure as Chief Manager of Purba Medinipur region of UBI from April 23, 2005 to October 15, 2008.

6. A disciplinary proceeding was held against the appellant. Out of 25 charges levelled against the appellant, the Enquiry Officer found 10 charges to be proved, 12 charges to be partly proved and three charges to be not proved.

7. The enquiry report was supplied to the appellant who filed his reply thereto.

8. The disciplinary authority was of the opinion that 12 charges were proved, 11 charges were partly proved and 2 charges were not proved. On the basis of the charges found to be proved against the appellant, the disciplinary authority passed the final order on May 7, 2016, imposing on the appellant, the major penalty of removal from service, not being a disqualification for future employment. The disciplinary authority directed that the appellant/writ petitioner will not be entitled to receive the retrial benefits of pension/commutation of pension, gratuity and encashment of accrued leave. It was further mentioned in the final order that it would be open to the bank to

recover the financial loss suffered by the bank from the appellant/petitioner, in accordance with law.

9. The appellant herein challenged the order of the disciplinary authority by way of departmental appeal. The appeal was dismissed by the appellate authority.

10. Being aggrieved, the appellant approached a learned Judge of this Court by filing the instant writ petition challenging the disciplinary proceedings, the report of the Enquiry Officer, the order of the disciplinary authority and the order of the appellate authority. He also prayed for direction on the respondent authorities to release his terminal benefits.

11. The learned Single Judge by a detailed judgment, which is assailed in this appeal, dismissed the writ petition.

12. Negating the arguments of the writ petitioner, the learned Judge held, inter alia, as follows:-

(i) The contention of the writ petitioner that the addendum charge-sheet could not be issued after his superannuation, does not have merit. The departmental proceeding was initiated while the petitioner was in service. As per the applicable service rules, he would be deemed to be in service for the purpose of the departmental proceedings. Hence there was no irregularity in issuing additional charge-sheet.

(ii) The petitioner's submission that the Enquiry Officer's report is perverse and based on no evidence cannot be accepted. An enquiry can be said to have been held properly if the delinquent employee has been clearly informed of the charges levelled against him, witnesses are examined in the presence of the employee in respect of the charges, he is given a fair opportunity to cross examine the witnesses, he is given the opportunity to examine witnesses in his defence and the Enquiry Officer records his findings supported by reasons (***Sur Enamel Stamping Works Pvt. Ltd. v. Their Workmen reported at AIR 1963 SC 1914***). In the present case the article of charges issued to the petitioner contained details of the allegations levelled against him. The petitioner contested the proceeding with his defence representative. 152 management exhibits and 26 exhibits of the petitioner were considered by the Enquiry Officer. The petitioner was afforded adequate opportunity to cross examine the management witnesses which he availed of. The report of the Enquiry Officer was forwarded to the petitioner and he submitted his written response thereto.

(iii) The questions of fact raised by the writ petitioner relating to the loans sanctioned by him were essentially to be looked into by the Enquiry Officer, being the fact-finding authority. The petitioner failed to convince the Enquiry Officer with his defence. He also failed to disprove the factual allegations before the appellate authority. It is too late in the day to request the writ Court to go through the evidence relating to the facts of the case. The same is

impermissible in view of the law laid down by the Hon'ble Supreme Court in the decisions relied upon by the respondents.

(iv) The scope of judicial review in matters relating to disciplinary proceedings with regard to service matters is extremely limited. While exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. When the conclusion of the Enquiry Officer has been upheld by the disciplinary authority and the appellate authority, the High Court in judicial review should not alter such findings. The facts of the case and the evidence adduced should not ordinarily be delved into by the High Court.

(v) The petitioner's submission that his decisions to sanction the concerned loans, exposed the bank to likelihood of loss, should not have been a determining factor, is also without substance. There may be instances where rash decisions of an employee of a bank yielded profit to the bank and there may be other instances where the funds of the bank have been placed in jeopardy and the loans have become irrevocable. In the facts of the present case, the bank levelled as many as 25 allegations involving irregularities spread over a prolonged period of time involving several transactions where the loans have been adjudged as Non-Performing Asset and has caused actual loss to the bank to the tune of Rs. 23 lakhs and likely loss of Rs. 2396.71 lakh. Bank

employees deal with public funds and they ought not to embark upon adventures in the pretext of yielding profit, since as acting beyond one's authority is also misconduct.

(vi) The High Court under Articles 226/227 of the Constitution cannot go into the quantum and proportionality of punishment so long as the same is not so unreasonable that it shocks the conscience of the Court. The power to punish an employee is the discretion of the employer and the Court is very slow to interfere.

(vii) The petitioner's contention that the disciplinary authority moulded the charges and introduced new charges, also cannot be accepted. A harmonious reading of the charges and the final order of the disciplinary authority will show that the charges and allegations had all along been the same. The disciplinary authority dealt with each and every charge and recorded its detailed findings. The observations recorded by the disciplinary authority should not be confused as introduction of new charges.

(viii) As the bank has quantified the loss suffered by it due to the petitioner's misconduct, the forfeiture of gratuity cannot be questioned. The bank's circular dated July 21, 2015, specifically clarifies that the bank was entitled to withhold gratuity upon termination of an officer's service on the ground of misconduct if the same has caused financial loss to the bank.

(ix) The service regulation of the petitioner provides for lapse of leave on termination from service. The petitioner's reliance on the bank's circular dated July 21, 2015, in this regard, is misplaced. By that circular, the bank accepted the proposal of the Indian Banks' Association and took a decision that the benefit of encashment of privilege leave will be available to an officer employee whose service has been terminated by imposition of the punishment of compulsory retirement on or after April 30, 2015. Since the punishment imposed upon the petitioner is removal from service and not compulsory retirement, the aforesaid circular would not help the petitioner.

13. In short, the learned Judge rejected all the contentions raised by the writ petitioner. The learned Judge discussed the decisions of the Hon'ble Supreme Court cited before Her Ladyship. The learned Judge, in my opinion, has adopted the right approach and applied the correct principles of law in deciding the writ petition. After all, one must keep in mind that while hearing a writ petition, the High Court does not act as an appellate authority. It exercises supervisory jurisdiction. It is concerned with the decision making process and not with the merits of the decision. In my opinion, the learned Judge was entirely justified in not interfering with the findings arrived at by the disciplinary authority and upheld by the appellate authority.

14. We must also keep in mind that a Division Bench does not interfere with the decision of a Single Judge only because the Division Bench has a different opinion so long as the view of the Single Judge is a plausible one. In this

connection one may note the observations of the Hon'ble Supreme Court at paragraph 14 of the reported judgment in the case of ***Wander Ltd. &Anr. v. Antox India P. Ltd. reported at 1990 (Supp) SCC 727***, which is to the following effect:-

“14.The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph reported at AIR 1960 SC 1156:

“... These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston reported at 1942 AC 130: ‘... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

15. I find no infirmity in the judgment and order under appeal. The appeal and the connected application stand dismissed. There will be no order as to costs.

16. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUPRATIM BHATTACHARYA, J.)

(ARIJIT BANERJEE, J.)