

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)
APPELLATE SIDE**

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 6755 of 2018

Indranath Mukherjee

Vs.

United Commercial Bank (UCO Bank) & Ors.

For the petitioner : Mr. Kallol Basu,
Mr. Samik Sarkar.

For the Bank : Mr. S. Pal Choudhary,
Ms. Shilpi Paul.

Heard on : 16.07.2025

Judgment on : 22.07.2025

Partha Sarathi Chatterjee, J.:-

Preface:

1. The present writ petition has been filed challenging the legality and justifiability of the charge-sheet dated 29.08.2013, the enquiry report, the final order of punishment dated 28.09.2013 whereby the petitioner was dismissed from service, and the appellate order dated 31.12.2014 affirming the said punishment. The petitioner prays for the issuance of a writ of certiorari for quashing the aforementioned documents. Additionally, the petitioner prays for an appropriate order, or direction or a writ, particularly in the nature

of mandamus, directing the concerned respondents to release and pay all terminal benefits lawfully due to the petitioner.

2. Before delving into the contours of the controversy, it would be prudent to first set out the essential facts that led to the filing of the present writ petition, which are as follows:

- i) The petitioner joined United Commercial Bank (hereinafter referred to as "UCO Bank") on 27.03.1981 as a Clerk. Over the years, he was promoted from time to time, and was lastly posted at the Hastings Branch of the Bank on 09.06.2012. In the year 2013, he was serving as a Special Assistant at the said branch.
- ii) On 29th August 2013, approximately one month prior to his scheduled date of retirement, the petitioner was served with a charge-sheet dated 29.08.2013, containing the following allegation:

“One Current Account no. 02770210000892 in the name of Global Construction was introduced by Shri Tapas Kumar Banerjee (SWO-B) using his consumer ID no. 204591744, which is of M/s. A.S. Construction. You verified the same. Due to this modification and the fact that account opening form does not contain the signature of Branch Head, the account opening form was replaced with a fresh one at a later stage. Thus, the original account opening form was removed bearing introduction of the account by Shri Tapas Kumar Banerjee (SWO-B) and signature of the Branch Head and substituted it with

another account opening form being introduction by M/s A.S. Construction without signature of Branch Head.

The above allegation constitutes Gross Misconduct on your part as under: -

Doing any act prejudicial to the interest of the Bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss, in terms of clause 5(j) of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen signed between Indian Bank's Association and Workmen Unions on 10.04.2002 and circulated by the Bank vide Circular no. CHO/PAS/07/2002 dated 21.06.2002, as amended."

- iii) In his written statement of defence, the petitioner contended that the current account of Global Construction Company was opened on 25.09.2012, shortly after he had joined the Hastings Branch. The account was opened by one Mr. Tapas Kumar Banerjee and was authorised by Mr. Sitangshu Chowdhury, a Scale-II Officer, who was then serving as the Branch Manager. The petitioner submitted that, as per bank norms, a current account can only be opened upon the introduction of an existing current account holder. In this case, the account of Global Construction Company was introduced by Mr. Tapas Banerjee, an SWO-B. The petitioner categorically denied having any role in the opening of the said account and asserted that it cannot be alleged that the opening of the account

was confirmed or signed by the Senior Manager. He further stated that the account continued to operate in this manner thereafter.

iv) The petitioner further stated that, as per established procedure, the account opening form was required to be kept in the custody of the Senior Manager. However, in the present case, the form was kept in an open cabinet without any lock, thereby creating an opportunity for misuse. This lapse, according to the petitioner, facilitated the execution of a fraudulent scheme to defraud the bank. As a result, there existed ample scope to tamper with the original form, specifically, to replace the form bearing his introduction with another form reflecting the introduction of M/s. A.S. Construction.

v) The petitioner asserted that the introduction in the original account opening form was made by Mr. Tapas Banerjee with fraudulent intent. He contended that in the functioning of a bank branch, staff members are required to rely on one another and perform their duties in good faith. In addition to handling KYC formalities and opening of savings accounts, the petitioner was also responsible for disbursing pensions and attending to various emergent duties as required. He alleged that Mr. Tapas Banerjee, taking advantage of an opportune moment, specifically, when the petitioner had briefly stepped out to respond to the call of nature, managed to confirm a new introduction using the petitioner's password. The petitioner

submitted that past records of Mr. Banerjee support this assertion. He further stated that he had no knowledge that the account opening form had been tampered with or replaced, and only became aware of the same upon receiving a show-cause notice from the Zonal Manager, Kolkata, dated 10.05.2013. He, therefore, prayed for condonation of any unintentional lapse, if any, that may have occurred on his part.

vi) However, the aforesaid explanation submitted by the petitioner was found to be unsatisfactory by the Disciplinary Authority (hereinafter referred to as "DA"). Consequently, the DA decided to initiate a departmental enquiry against the petitioner. Mr. Utpal Kumar Banerjee, Senior Manager, Zonal Office, Kolkata, was appointed as the Enquiry Officer (hereinafter referred to as "EO"), while Mr. Anjan Ghosh was appointed as the Presenting Officer (hereinafter referred to as "PO").

vii) The enquiry proceedings were conducted on 12.09.2013 and 16.09.2013. During the course of the enquiry, the petitioner contended that he had verified the transaction, as reflected in the document marked as 'ME-1', in good faith. He further contended that in the routine functioning of a bank, it is not always feasible to adhere strictly to every formality, and staff members are often required to act in good faith and without negligence. The petitioner categorically stated that he had not seen the account opening form at the time of verifying the

transaction, nor was it customary or practicable at the branch to refer to the account opening form during the verification or modification of transactions relating to an account. He further stated that, at the time of verification, Mr. Tapas Banerjee had informed him that the customer had merely requested a change in his mobile number and not a change in the introduction.

viii) Upon evaluation of the evidence placed on record by the Management, the Enquiry Officer (EO) concluded that the petitioner had failed to exercise the minimum level of caution at the time of verifying the data, and had instead verified the modification of introducer's name using his ID in the system in the account no. 02770210000892 entered by Tapas Kumar Banerjee on 9.1.2013, in a routine manner. The EO further observed that the evidence and depositions on record did not indicate any mala fide intention on the part of the petitioner and that the error committed was, in all likelihood, unintentional. Nevertheless, the EO concluded that the allegations levelled against the petitioner stood proved.

ix) In his reply to the enquiry report, the petitioner contended that on 09.01.2013, he had verified a non-financial transaction in good faith and without negligence, which did not result in any financial loss to the Bank. He stated that customer IDs for Global Construction and Ashis Chakraborty were created on 25.09.2012 for opening current accounts. However, the name of the introducer in the customer ID of Global Construction was

changed from Tapas Banerjee to M/s. A.S. Construction only on 09.01.2013, with Mr. Banerjee initially shown as the introducer. The petitioner argued that since both accounts were for sole proprietorships, the customer ID is treated as a single entity, typically introduced by the same person, and the change in introducer's name had no adverse legal or financial implications for the Bank.

x) The petitioner further argued that, as per the provisions of the RBI regulations aimed at controlling benami transactions, a proper introduction is required for opening an account. However, the liability of the introducer is limited solely to the identification of the customer, a requirement now governed by Know Your Customer (KYC) norms. The petitioner submitted that the KYC documents of Global Construction were duly preserved by the Bank, and therefore, the Bank's interests had not been compromised in any manner. Lastly, he once again prayed for exoneration from the charge.

xi) However, the Disciplinary Authority (DA) concurred with the findings of the Enquiry Officer (EO) and held that the evidence on record during the enquiry sufficiently established the charge against the petitioner. Accordingly, the DA proposed the punishment of dismissal from service without notice and issued a show-cause notice to the petitioner, calling upon him to explain why such punishment should not be imposed.

- xii) In the final order of punishment, the Disciplinary Authority (DA) noted that he had examined all relevant documents and concluded that the petitioner had failed to discharge his official duties by verifying the revised introduction in the said account. The DA observed that the petitioner, in his reply, had admitted to having committed the mistake. Considering the gravity of the misconduct, the DA was of the view that the penalty of dismissal from service would be appropriate and just. Accordingly, by an order dated 28.09.2013, the petitioner was dismissed from service.
- xiii) The petitioner preferred statutory appeal. In his petition of appeal, he contended that initially, Tapas Banerjee acted as introducer of the current a/c holder. However, subsequently, he deleted his name with an ulterior motive and asked the petitioner to verify the modification of mobile number which the petitioner did in good faith. Upon detection of such fraud, one criminal case was initiated against Mr. Banerjee and 4 others. Mr. Banerjee was arrested and suspended.
- xiv) The petitioner further contended that, after a considerable lapse of time, a show-cause notice was served upon him only on 21.05.2013. He argued that the act in question was committed without any mala fide intention and, therefore, did not constitute misconduct. He further submitted that the punishment imposed was grossly disproportionate to the alleged lapse. However, his appeal was ultimately rejected. The

petitioner contended that the appellate authority dismissed the appeal in a mechanical manner, without properly considering or addressing the specific issues raised by him.

xv) The petitioner filed an application seeking leave to adduce additional evidence. The record reflects that a Co-ordinate Bench of this Hon'ble Court, by an order dated 24.03.2025 passed in the present writ petition, allowed the said application. Accordingly, the document annexed to that application is required to be taken into consideration.

xvi) In the said application, the petitioner placed on record the final order of punishment dated 12.02.2015 issued against Mr. Tapas Banerjee. The said order indicates that, as per the charge-sheet served upon Mr. Banerjee, he had opened a current account in the name of Global Construction on 25.09.2012, in which certain irregularities were subsequently detected. The account was introduced by Mr. Banerjee himself using his customer ID on 25.09.2012. This introduction was later modified in the system on 09.01.2013 by substituting the introducer's customer ID with that of M/s. A.S. Construction. The modification was carried out by Mr. Banerjee personally. As a result of this change, the account opening form did not contain the signature of the Branch Head. Furthermore, Mr. Banerjee, acting with mala fide intention, surreptitiously replaced the original account opening form with a fresh one bearing the introduction of M/s. A.S. Construction at a later stage.

- xvii) The order further indicates that the EO of that proceeding returned his findings that allegation no.1 and allegation no.2 stood proved against Mr. Banerjee and DA agreed with such findings of that EO. The DA of that case held that Mr. Banerjee himself modified introduction in the system with mala fide intention.

Respondents' case:

3. The crux of the defence, as set out in the affidavit-in-opposition duly affirmed on behalf of the Bank, is as follows:
 - i) That the petitioner is an award staff employee and, therefore, had an adequate alternative remedy available under the provisions of the Industrial Disputes Act. As such, the present writ petition is not maintainable.
 - ii) There were no procedural irregularities in the decision-making process, and there was no violation of the principles of natural justice. The respondent authorities acted strictly in accordance with the applicable rules and regulations.
 - iii) The petitioner committed misconduct by verifying the modified introduction presented to him by Mr. Tapas Banerjee. In his defence, the petitioner sought to shift responsibility for his actions and/or omissions to Mr. Banerjee, contending that the smooth functioning of a bank is based on mutual trust among colleagues, and that he had verified the document in good faith. He further submitted that, in addition to recording KYC details,

he was also responsible for pension-related work and other major tasks. The petitioner had alleged that Mr. Banerjee took advantage of a moment when the petitioner had briefly left his desk to use the restroom, and during that time, Mr. Banerjee confirmed the new introduction using the petitioner's password. The petitioner claimed he had no knowledge that the account opening form had been changed.

- iv) The enquiry was conducted in a fair and transparent manner, strictly in accordance with the established procedure. The petitioner was afforded the opportunity to engage a defence counsel, cross-examine the management witnesses, present defence witnesses, and produce documents in support of his case.
- v) Upon conclusion of the enquiry proceedings, the Enquiry Officer submitted his report to the Disciplinary Authority on 23.09.2013. A copy of the report was duly furnished to the petitioner. Thereafter, the petitioner was granted a personal hearing on 28.09.2013. Following the hearing, the DA, by an order dated 28.09.2013, imposed the penalty of dismissal from service, having found that the charges levelled against the petitioner stood proved. The punishment was deemed proportionate to the gravity of the misconduct. The petitioner preferred an appeal against the final order of punishment, which was subsequently dismissed.

- vi) The petitioner filed an application before the Controlling Authority under the Payment of Gratuity Act, seeking a direction for release of gratuity. The application was allowed by order dated 15.09.2016. The respondent Bank preferred an appeal challenging the said order; however, the appeal was dismissed. Consequently, the Bank complied with the order and paid gratuity to the petitioner. It is pertinent to note that the present writ petition has been filed nearly five years after the date of the final order of punishment.

Submission:

4. Mr. Bose, learned Advocate appearing for the petitioner, submitted that the alleged incident took place on 09.01.2013, whereas the charge-sheet was issued only on 29.08.2013, more than seven months after the occurrence of the alleged incident and just one month prior to the petitioner's scheduled date of retirement. He contended that the alleged act or omission attributed to the petitioner does not constitute misconduct as defined under the applicable service rules.
5. Mr. Bose, learned Advocate for the petitioner, drew my attention to the enquiry report and submitted that the Enquiry Officer (EO) himself had concluded that there was no mala fide intention on the part of the petitioner and that the lapse was, at best, an instance of unintentional negligence. Nevertheless, the EO held that the allegation stood proved. Mr. Bose further submitted that the Disciplinary Authority (DA) concurred with the findings of the EO and treated the petitioner's act or omission as gross misconduct.

However, the DA, by passing a non-speaking order, proceeded to impose a major penalty of dismissal from service.

6. He argued that the decision of the Disciplinary Authority is perverse, which, according to him, is predominantly a question of law and therefore does not fall outside the scope of judicial review. Mr. Bose asserted that negligence, in the absence of any element of mala fide, cannot constitute misconduct and, in any event, the Bank did not suffer any pecuniary loss. He submitted that the punishment imposed upon the petitioner is shockingly disproportionate to the alleged lapse.
7. To bolster his submission, he cited certain decisions, reported in (1977) 2 SCC 724 (*State of UP & Ors. vs. M/s. Indian Hume Pipe Co. Ltd.*), (2007) 11 SCC 668 (*Shakuntala Chandrakant Shreshti vs. Prabhakar Maruti Garvali & Anr.*) and 2023 SCC OnLine SC 95 (*Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum- Assessing Authority & Ors.*).
8. *Per contra*, Mr. Pal Chowdhury, learned Advocate appearing for the respondent Bank, contended that the petitioner was a workman and, as such, had an alternative statutory remedy available under the Industrial Disputes Act. He submitted that the petitioner, without exhausting the said remedy, has directly approached this Court by way of a writ petition. Therefore, according to him, the present writ petition is not maintainable.
9. He argued that there was no illegality in the decision-making process and that the petitioner was afforded a fair opportunity to present his defence. He further contended that a writ court cannot act as an appellate authority over the findings of the disciplinary authority, nor can it re-appreciate the evidence on record.

10. He argued that, in view of the gravity of the misconduct committed, the Disciplinary Authority (DA) had rightly imposed a major penalty. He contended that the nature of the misconduct was such that it could have exposed the bank to substantial pecuniary loss. He further asserted that, in the context of banking services, even an act of negligence by an employee can result in significant financial consequences. Therefore, taking this aspect into account, the DA imposed the penalty of dismissal from service on the petitioner.
11. To invigorate his submission, he relied on certain decisions, reported in *(1996) 9 SCC 69 (Disciplinary Authority-cum- Regional Manager and Ors. vs. Nikunj Bihari Patnaik)*, *(2003) 3 SCC 583 (Lalit Popli vs. Canara Bank & Ors.)*, *(2005) 7 SCC 435 (State Bank of India & Anr. vs. Bela Bagchi & Ors.)*, *AIR 2022 SC 943 (United Bank of India vs. Bachan Prasad Lall)* and one unreported decision rendered by a Hon'ble Division Bench of this Court in *FMA no 1512 of 2000 (Webel Video Devices Ltd. Vs. Prasanta Kumar Das & Ors.)*.
12. In reply, Mr. Bose submitted that the petitioner had joined the Bank as a clerk and was subsequently promoted to the position of Special Assistant, drawing a pay of more than Rs. 40,000/-. Therefore, in his view, the petitioner could not be classified as a "workman" within the meaning of the Industrial Disputes Act. He refuted Mr. Pal Chowdhury's contention that the petitioner had an alternative remedy before the Industrial Tribunal.

Discussion and Conclusion:

13. The scope of judicial review is based on the grounds such as illegality, irrationality (Wednesbury unreasonableness), and procedural impropriety. The principle of reasonableness gives the way to the doctrine of proportionality. The purpose of judicial review of administrative actions is to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. While the scope of judicial review is generally limited to examining the decision-making process, if a decision is found to be perverse, irrational, or grossly disproportionate, it falls within the domain of judicial review.
14. In disciplinary proceedings also, the scope of judicial review is generally limited to examining the decision-making process. The authority to punish an employee lies within the employer's domain, and courts typically refrain from intervening unless it is established that the enquiry proceedings have been tainted due to the failure to adhere to established rules or principles of natural justice. This includes the denial of a reasonable opportunity for the employee to defend themselves, or where the punishment is found to be disproportionate to the proven misconduct.
15. In the present case, the Court is called upon to determine the following issues:
 - (i) whether the writ petition is maintainable in view of the existence of an efficacious alternative remedy and the petitioner's failure to exhaust the same;
 - ii) whether the present writ petition is liable to be dismissed on the ground of delay'
 - (iii) whether the acts of omission and/or commission by the petitioner, in the absence of mala fide intent, can still amount to misconduct;

(iv) whether the findings recorded by the Enquiry Officer and/or the decision rendered by the Disciplinary Authority are perverse; and whether the findings of the EO and order of the DA and AA are non-speaking;
 (v) whether the punishment imposed is so disproportionate as to shock the conscience of the Court.

Issue no. (i):

16. The issue of non-maintainability of the writ petition has been raised in the affidavit-in-opposition and during the final stage of hearing. However, the records do not indicate that such a plea was raised at the earliest possible opportunity, namely, at the stage of admission of the writ petition.

17. It suffices to note that the High Court's decision not to entertain a writ petition on the ground of availability of an efficacious alternative remedy is a self-imposed limitation. This is essentially a rule of policy, convenience, and judicial discretion, rather than a rule of law or a restriction on jurisdiction. There is no absolute bar on the exercise of writ jurisdiction in such cases. Whether or not the extraordinary jurisdiction under Article 226 is to be invoked depends on the specific facts and circumstances of each case. It is a well-established principle of law that, notwithstanding the existence of an alternative remedy, a writ petition may still be entertained, particularly where the petition involves the enforcement of fundamental rights, a violation of the principles of natural justice, a proceeding or order that is wholly without jurisdiction, or a challenge to the vires of a statute.

18. It is apposite to refer to the authoritative pronouncement in *Union of India v. R Reddappa*, reported in (1993) 4 SCC 269, wherein the Hon'ble

Supreme Court held that once the Court is satisfied that injustice and/or arbitrariness has occurred, any restriction, whether self-imposed or statutory, stands lifted, and no rule or technicality concerning the exercise of power can impede the rendering of justice.

19. Mr. Pal Chowdhury contended that the petitioner had an efficacious alternative remedy before the Industrial Tribunal. Admittedly, the petitioner initially joined the Bank as a clerk and was subsequently promoted to the position of Special Assistant. Mr. Bose submitted that the petitioner was drawing a pay in excess of Rs. 40,000/- per month and in this writ petition, he has questioned the legality of the disciplinary proceeding and the charge-sheet and orders passed in connection therewith. As per the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947, an employee engaged in supervisory work or attached to an office and drawing wages exceeding Rs. 10,000/- per month is excluded from the ambit of 'workman'. In view of the petitioner's designation as Special Assistant and the salary drawn, he does not fall within the definition of 'workman' as contemplated under Section 2(s) of the Act. Accordingly, for the reasons stated in the foregoing paragraphs, the contention advanced by Mr. Pal Chowdhury regarding the non-maintainability of the present writ petition on the ground of alternative remedy lacks merit and as such, stands overruled.

Issue no. (ii).

20. The issue of delay was raised by the respondent Bank in its affidavit-in-opposition. It is well settled that there is no prescribed time limit for filing a writ petition, nor can it be said that Courts are absolutely barred from exercising their writ jurisdiction merely due to the passage of time. There is no

rigid or inflexible rule as to when a delayed writ petition may be entertained and when it may be declined. However, if there is an inordinate delay on the part of the petitioner and the delay remains unexplained or inadequately explained, the High Court may, in its discretion, refuse to intervene and grant relief. Where the demand of justice is compelling, the Court may still choose to interfere despite the delay. If circumstances exist that justify the petitioner's conduct, and the illegality complained of is patent and manifest, the writ petition ought not to be dismissed at the threshold on the ground of delay alone. When the cause of substantial justice is pitted against technical objections, it is the former that must prevail.

21. In the present case, the delay has been explained in paragraph 35 of the writ petition. The petitioner, having been dismissed from service, had been pursuing his claim for gratuity before another forum and has taken the plea that due to financial constraints and other limitations, he was unable to file the writ petition promptly after the order passed by the Appellate Authority. In my considered view, given the factual circumstances of the case, the present writ petition ought not to be rejected solely on the ground of delay.

Issue no. (iii):

22. The term 'Misconduct', as defined in the Stroud' Judicial Dictionary, means misconduct arising from ill motive, acts of negligence, errors of judgement, or innocent mistake do not constitute misconduct. The Black's Law Dictionary, 6th Edn., defines the word 'Misconduct', which means a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behaviour, wilful in character, improper or wrong

behaviour, its synonyms are demeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement offense, but not negligence or carelessness. The word 'Misconduct' has been also defined in P. Ramanatha Aiyar's Law Lexicon, which implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct in office may be defined as unlawful behaviour, neglect by a public officer, by which the rights of a party have been affected. Concise Law Dictionary defines that term 'Misconduct' which implies wrongful intention, and a not mere error of judgment.

23. Any action of an employee which is detrimental to the prestige of the institution or employment, would amount to misconduct. However, error of judgment resulting in doing of negligent act does not amount to constitute misconduct.
24. In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct. A single act of omission or error of would ordinarily not constitute misconduct though if such error of omission results in serious or atrocious consequences, the same may amount to misconduct. (See, the judgments delivered in case of P.H. Kalyani vs. Air Finance, Calcutta, AIR 1963 SC 1756).
25. A useful reference may be made to the decision, reported in (1992) 4 SCC 54 (*State of Punjab & Ors. vs. Ram Singh Ex-Constable*), a three-judge

Bench of the Hon'ble Supreme Court, while defining the term 'misconduct,' made the following observation:

“Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression or established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

26. In the decision, reported in (1994) 2 Cal LJ 193 (*Dy. Inspector General, CISF, EZ, Govt. of India & Ors. vs. Shib Kumar Roy*), the Hon'ble Division Bench observed that negligence in performance of duty of lapse in performance of duty or error of judgment would not constitute unless there was some ill-motive behind it. The Hon'ble Bench further held that misconduct must stem from ill intent, and negligence or an innocent mistake cannot be considered misconduct.

27. In the decision of reported at (1984) 3 SCC 316 (*A.L. Kalra vs. Project and Equipment Corporation of India Ltd.*), it was ruled that an act of misconduct must be explicitly defined in the applicable rules and what in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary, define it with precision and accuracy so that any *ex post facto* interpretation of some incident may not be camouflaged as misconduct.
28. Therefore, there can be no dispute in accepting the proposition that the term 'misconduct' is incapable of precise definition. Terms like 'misconduct' cannot be exhaustively defined, and it is not possible to compile a comprehensive list of actions or enumerate the specific actions in any Service Rule that would constitute misconduct. It may involve moral turpitude, improper or wrongful behaviour, unlawful conduct, wilful actions, forbidden acts, or a transgression of an established and definite rule of conduct or code of behaviour. 'Negligence' can be defined as the omission of an act that should have been done or the commission of an act that should not have been done in a given circumstance. Thus, negligence with ill motive would constitute 'misconduct'.
29. The word 'mistake' has been defined in Section 72 of the Indian Contract Act, 1872 comprises within its scope a mistake of law as well as a mistake of act. Mistake of fact takes place when some fact which really exists is unknown; or some fact is supposed to exist which really does not exist whereas a mistake

of law occurs when a person having full knowledge of facts comes to an erroneous conclusion as to their legal effect. The Concise Law Dictionary defines that terms as an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract, or a belief in the present existence of a thing material to the contract, which does not exist; some intentional act, omission, or error arising from ignorance, surprise, imposition or misplaced confidence; in a legal sense, the doing of an act under erroneous conviction, which act, but for such conviction would not have been done.

30. In the present case, as noted earlier, the EO, in his report, observed as follows:

“ .. From the above, I am of the view that Sri Mukherjee should have taken minimum caution at the time of verifying the above data which he did not and verified the same.

However, although evidences and depositions on record do not suggest any malafide intention on the part of CSE and the mistake so committed, in all likeliness is unintentional, there is no denying the fact that the transaction was verified by Sri Mukherjee in a routine manner.

As such I am inclined to treated the allegation as proved.

In view of what has been stated I am inclined to state the charge levelled against Sri Indranath Mukherjee as proved as under:-

“Doing any act prejudicial to the interest of the Bank, or gross negligence or negligence involving or likely to involve in serious loss, in terms of Clause 5(j) of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen signed between Indian Bank’s Association and Workmen Unions on 10-04-2002 and circulated by the

Bank vide Circular No. CHO/PAS/07/2002 dated 21/06/2002, as amended.”

31. The Disciplinary Authority concurred with the findings of the Enquiry Officer, and the Appellate Authority also affirmed the order passed by the Disciplinary Authority. Notably, the Bank itself acknowledged that the act in question was an unintentional mistake committed by the petitioner in the course of routine work. This inevitably raises the question as to whether such an 'unintentional mistake committed in a routine manner' can fall within the ambit of Clause 5(j) of the Settlement.

32. The expression 'any act' as used in Clause 5(j) of the Settlement does not refer to every act in general, but to those acts which can be considered prejudicial to the interests of the Bank. In the present case, it can reasonably be concluded that an 'unintentional mistake committed in the course of routine work' does not amount to gross negligence. However, an act of 'negligence' that either involves or is likely to involve the Bank in serious loss may indeed fall within the scope of Clause 5(j). In the instant case, no evidence or material has been brought on record to establish that the verification in question caused or was likely to cause any serious loss to the Bank, or that any pecuniary loss actually occurred which could have been avoided had such verification not taken place.

33. Thus, if such an act is considered 'negligence', it is negligence without any mala fide intention. If it is regarded as a 'mistake', it was unintentional and committed in the ordinary course of routine work.

34. In the present case, from the order of punishment passed in the disciplinary proceeding against Mr. Tapas Banerjee, it appears that the Disciplinary Authority found Mr. Banerjee to be the person who had modified the introduction. This indicates that Mr. Banerjee made use of routine banking procedures to secure a verification from a co-employee who acted without any malice or intent to cause serious loss to the Bank. The Bank itself acknowledged that Mr. Banerjee merely utilized the normal course of the Bank's functioning to have the verification carried out by a colleague acting in a routine manner. Therefore, it is evident that Mr. Banerjee, the primary perpetrator of the incident, who acted with mala fide intent, exploited the actions of an employee who was unaware of any wrongdoing.

35. Therefore, the act in question amounts to an innocent mistake, not habitual or gross negligence. It was a solitary act of omission that did not result in any serious or egregious consequences, nor did it arise from any ill motive on the part of the petitioner. In the present case, the alleged omission, mistake, or lapse in the performance of duty, being unintentional and devoid of mala fide intent, cannot be classified as misconduct and, accordingly, does not attract Clause 5(j) of the Settlement. There can be no straightjacket formula to determine misconduct solely on the basis that the petitioner, being a bank employee, occupies a position of responsibility. Every unintentional mistake or lapse in duty, particularly where it does not result in serious loss to the Bank, cannot automatically be treated as misconduct.

36. In the present case, the records reveal that following the incident, a criminal case was initiated by the Bank against Mr. Banerjee and four other

employees. Notably, the petitioner was not implicated in that case. It is also evident that nearly seven months after the incident, and just one month prior to the petitioner's retirement, the Bank issued a show cause notice, followed by a memorandum of charge for committing an 'unintentional mistake done by the petitioner in a routine manner', despite there being no pecuniary loss suffered by the Bank. Such conduct on the part of the Bank is unbecoming of an institution that claims to be a model employer and is expected to uphold a high standard of fairness and promptness in initiating and conducting disciplinary proceedings against its officers and employees.

37. Therefore, based on the foregoing discussion, considering the facts and circumstances of the case, and in light of the legal principles established in the decisions cited above, I am of the considered opinion that such an 'unintentional mistake committed by the petitioner in a routine manner' does not constitute 'misconduct'.

Issue no. (iv) & (v) :

38. After addressing issue no. (iii), consideration of the remaining two issues would be mere academic. Nonetheless, it is important to observe that the findings of the Enquiry Officer must not be perverse or unreasonable, nor should they be founded on conjectures or surmises. The Enquiry Officer is required to record clear and cogent reasons for arriving at factual findings, particularly in the context of the statute defining misconduct. The enquiry must produce reasoned conclusions demonstrating how the charges levelled against the delinquent have been proved. The primary purpose of the enquiry is not merely to establish the charges but to uncover the truth. It is a

mandatory requirement that, upon appreciation of the evidence, the Enquiry Officer must conclude that there is a preponderance of probability in favour of the charges based on the materials on record. Accordingly, the Enquiry Officer must carefully consider all relevant evidence.

39. In the present case, Mr. Pal Chowdhury contended that the petitioner had admitted to verifying the modification of the introduction, and therefore, there was no necessity to evaluate the evidence further. However, the Enquiry Officer ought to have provided clear reasons explaining how such an 'unintentional mistake committed by the petitioner in a routine manner' could fall within the scope of Clause 5(j) of the Settlement. It is also admitted that neither the Disciplinary Authority nor the Appellate Authority issued reasoned orders. Consequently, their decisions cannot be upheld.

40. In the present case, although the Enquiry Officer, Disciplinary Authority, and Appellate Authority consistently found that the petitioner had committed a mere 'unintentional mistake in the routine course of duty,' the Disciplinary Authority nonetheless imposed the highest penalty by dismissing the petitioner from service.

41. Undoubtedly, it is within the discretion of the Disciplinary Authority to determine the appropriate punishment. It is only when punishment is found outrageously disproportionate to the nature of charge that it shocks conscience of Court and the Court finds it totally unreasonably and arbitrary, the principle of proportionality becomes applicable.

42. In the present case, the DA accepted the findings of the EO that the petitioner committed an unintentional mistake in the routine course of duty, without any intention to cause the Bank serious loss, and that no loss actually

resulted from the verification. Despite this, the Disciplinary Authority imposed the maximum penalty of dismissal from service. Furthermore, the Disciplinary Authority failed to address whether it would be prudent for the Bank to retain an employee who, without malice, committed an unintentional mistake in the routine course of duty, or whether such an act could be regarded as unbecoming conduct for an employee of the Bank. Therefore, although this discussion may now be merely academic, it is evident that the punishment awarded is shockingly disproportionate.

43. There is no scintilla of doubt regarding binding precedent of the decisions relied on by Mr. Pal Chowdhury. However, those are distinguishable on facts.

44. Therefore, in the present case, the memorandum of charge-sheet, the enquiry report, the order of punishment issued by the Disciplinary Authority, and the order of the Appellate Authority are legally unsustainable.

Order:

45. Therefore, based on the discussions and reasons set out in the preceding paragraphs, the Memorandum of Charge-sheet dated 29.08.2013, the Enquiry Report, the order of punishment issued by the Disciplinary Authority dated 28.09.2013, and the order of the Appellate Authority dated 31.12.2014 are hereby set aside. The respondent Bank is directed to disburse all admissible terminal benefits to the petitioner, treating the case as if no disciplinary proceeding had been initiated against him.

46. With these observations and order, the present writ petition is, thus, disposed of without any order as to the costs.

(Partha Sarathi Chatterjee, J.)