IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 13842 of 2015

Dipankar Mukherjee
-Vs-
State Bank of India & Ors.

For the Petitioner	: Mr. Ranjit Chatterjee Mr. Victor Chatterjee
For the Respondents	: Mr. S.K. Sinha Mr. S. Sinha Mr. Sudip Pal Chowdhury Ms. Shilpi Paul
Heard on	: 27.06.2024, 10.07.2024, 31.07.2024, 11.09.2024, 07.11.2024, 27.11.2024
Judgment on	: 16.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner has prayed for a writ in the nature of mandamus commanding the respondent authorities and each one of them, their men, agents, assigns and/or subordinate to certify and transmit to this Hon'ble Court the records of the case including the charge-sheet dated 21.10.2013, the findings of the Enquiry Officer dated 27.12.2013, the penalty order of dismissal from service dated 01.03.2014 and the order of the Appellate Authority dated 25.10.2014.

2. The petitioner had joined the service of the respondent bank on 8th September, 1984 as a Civil Engineer and ultimately superannuated from the post of Deputy Manager in MMGS-II on 30th November, 2013, while a disciplinary proceeding against him remained pending. At the time of his retirement, a writ petition being W.P. No. 34 of 2013 was also pending before this Court in which the earlier penalty order reducing his rank and scale of pay dated 1st April, 2012 was under challenge. Subsequently, the petitioner was dismissed from service with retrospective effect from the date of his superannuation by a penalty order dated 26th April, 2014 passed by the Disciplinary Authority. The said order was later confirmed by the Appellate Authority vide order dated 25th October, 2014.
3. It is the case of the petitioner that the Disciplinary Authority had passed the order of dismissal with retrospective effect on 26th April, 2014, even though this Court had already set aside the earlier penalty order of reduction in rank and pay scale by its judgment in W.P. No. 34 of 2013 on 22nd June, 2014. The said writ was disposed of in favour of the petitioner prior to the issuance of the order by the Appellate Authority. The respondents included statutory authorities and public servants amenable to the writ jurisdiction of this Court. The respondent no. 4 was the appointed Enquiry Officer who had conducted the enquiry proceeding.
4. The disciplinary proceeding in question had been initiated in connection with the execution of civil construction work at the Chinsurah and Tamluk Railway Station Branches of the respondent bank, where the petitioner had been alleged to have deviated from the Reserve Bank of India's guidelines concerning

the construction of currency chests. The petitioner was posted at the Howrah Regional Office of the bank from 28th February, 2009 until his transfer on 2nd December, 2011 to the Local Head Office at Strand Road. During this period, the construction of the Tamluk Railway Station Branch had commenced in rented premises. The petitioner submitted the final plan and drawing on 3rd November, 2011, and the same was approved by the competent authority of the bank on 8th November, 2011. Despite this, the execution of the construction work was curiously allotted to the landlord by the bank.

5. Just before his transfer on 2nd December, 2011, the petitioner was instructed to visit the site at Tamluk, and upon inspection he noted certain irregularities and deficiencies, which he reported to the Deputy General Manager (B & O), Howrah. Notably, after nearly 1½ years, on 9th April, 2013, the Deputy General Manager (B & O), Howrah, requested the Zonal Office, Kolkata, to depute the petitioner once again to ensure completion of construction, particularly of the currency chest, and to confirm compliance to the said Deputy General Manager on the eve of a visit by officials from the Reserve Bank of India. In May, 2013, the petitioner, upon being instructed by the Kolkata Zonal Office, visited the branch and submitted a report dated 30th May, 2013, marking the deviations in a sketch plan with red ink.

6. Subsequently, a show cause notice dated 13th August, 2013 was issued to the petitioner by the Deputy General Manager (B & O), calling upon him to explain deviations from the Reserve Bank of India's specifications with respect to the construction of the currency chest at the Chinsurah Branch. The petitioner

submitted a detailed reply dated 17th September, 2013, asserting that construction had been undertaken as per the "Approved Layout Plan."

7. Thereafter, by letter dated 5th October, 2013, the Deputy General Manager (B & O), Howrah informed the petitioner that the bank's Civil Engineer had inspected the Tamluk Railway Station Branch and found deficiencies in the construction of the AA-class currency chest. A memorandum of charges dated 21st October, 2013 was issued to the petitioner, alleging failure to ensure construction of the currency chests at Chinsurah and Tamluk as per RBI guidelines.

8. In his reply, the petitioner addressed each of the allegations. With respect to Chinsurah Branch, he submitted that the deviations had been unavoidable and had been duly reported to the Assistant General Manager (BPR) and Assistant General Manager (Admin), both of whom were Scale-V officers and his superiors. He further stated that all deviations were undertaken only with their knowledge and approval, and no independent decision had been taken by him as he was only a Scale-III Manager (Engineering).

9. As regards Tamluk Railway Station Branch, the petitioner contended that the construction had been carried out by the landlord and it was the responsibility of the Regional Business Office, Tamluk, to hand over specifications and plans. The layout plan had been revised twice and approved by the Regional Manager. The petitioner had no role in site selection or the hiring of the premises. He had only submitted plans as per the site handed over to him. It was further stated that the Chinsurah plan was revised seven times and the Tamluk plan thrice on instructions from the Regional Managers.

10. The Disciplinary Authority informed the petitioner about the appointment of an Enquiry Officer through a letter dated 5th November, 2013. The enquiry commenced on 22nd November, 2013 and concluded on 25th November, 2013. The prosecution examined five witnesses, namely: Mukta Sarathi Bhattacharyya, Chief Manager (Admin), RBO-II, Chinsurah (PW-1), Sujoy Roy, Manager (Civil) at LHO (PW-2), Manas Kumar Biswas, Chief Manager (Civil), LHO (PW-3), Goutam Maity, Desk Officer-cum-Premises Officer, RBO, Tamluk (PW-4), and Subrata Bhattacharyya, Chief Manager (Admin), Tamluk (PW-5). Defence documents were introduced and exhibited during cross-examination of prosecution witnesses.
11. The petitioner was due to retire on 30th November, 2013, and meanwhile, the disciplinary authority had extended his service solely for the purpose of concluding the enquiry, by communication dated 26th November, 2013, under Rule 19(3) of the State Bank of India Officers' Service Rules. On the same date, a letter of appreciation for his service on retirement was also issued. The report of the Enquiry Officer dated 27th December, 2013 was forwarded to the petitioner under cover of the letter dated 31st December, 2013.
12. The petitioner relied upon several documents, including RBI guidelines dated 23rd February, 2004; circulars dated 21st April, 2009 and 2nd January, 2012; instructions dated 12th October, 2007 and 11th November, 2008; and internal communications including the letter dated 11th May, 2011 by AGM (BPR), inspection report dated 24th April, 2013, Note dated 29th January, 2010, selection committee proposal dated 15th March, 2011, and correspondence

dated 7th January, 2011, 19th May, 2010, 15th July, 2013, and 21st December, 2012.

13. The petitioner contended that the Enquiry Officer had failed to apply his mind and had mechanically adopted the prosecution's narrative without due consideration of defence materials. The findings, as per the petitioner, were based on erroneous assumptions and a lack of understanding of the petitioner's actual role. A representation dated 20th January, 2014 was made to the Disciplinary Authority raising these objections.
14. As the Disciplinary Authority did not have the power to impose major penalty of dismissal under the applicable Service Rules, the matter was referred to the Appointing Authority by communication dated 1st March, 2014. A personal hearing was held on 5th March, 2014, and the petitioner submitted his written representation therein. The penalty order dated 26th April, 2014 was issued thereafter, which the petitioner received on 29th April, 2014.
15. The petitioner further contended that although the recommendation of the Disciplinary Authority was considered by the Appointing Authority while issuing the penalty order, the same was never supplied to him. The writ petition filed by the petitioner against the earlier penalty order dated 1st April, 2012 was allowed on 22nd June, 2014, while the Appellate Authority's order on the dismissal had not yet been passed. The bank filed a Mandamus Appeal before the Hon'ble Division Bench which was disposed of on 23rd April, 2015.
16. The learned advocate for the petitioner submitted that the disciplinary proceeding against the petitioner was fundamentally flawed due to procedural irregularities, the non-application of mind by the Enquiry Officer and the

Appointing Authority, and a general failure to assess the petitioner's limited role in the administrative framework of the respondent bank. The learned advocate for the petitioner emphasized that the charges were based on erroneous assumptions regarding the petitioner's duties and responsibilities, and the conclusions drawn in the enquiry report were unsupported by the materials on record.

17. It was contended that in respect of all the charges levelled, the Enquiry Officer had disregarded the core defence of the petitioner, namely, that he neither had any role in the selection of the premises nor in the commencement of construction activities at the Chinsurah and Tamluk Railway Station Branches. The learned advocate for the petitioner submitted that the site in question had been selected on 24th October, 2008, long before the petitioner was posted at the Howrah Regional Office on 28th February, 2009. The petitioner had merely complied with instructions to prepare layout drawings for the pre-selected sites.

18. The learned advocate for the petitioner further submitted that the construction at the Tamluk Railway Station Branch was undertaken by the landlord, who had contractually agreed to bear the costs of all civil modifications required for the branch, including the currency chest. The petitioner's involvement was limited to prepare layout plans in accordance with the bank's technical and administrative parameters. These plans, and the subsequent revisions, were duly approved by the Regional Manager and the Assistant General Manager (Administration), as well as by the higher functionaries in the Local Head Office. It was further submitted that obtaining approval from the Reserve Bank

of India for the construction of currency chests was not the petitioner's responsibility, and the delay in obtaining such approval in 2013 could not be attributed to him.

19. The learned advocate for the petitioner then delineated the chain of command in the bank, which included the petitioner in the role of Civil Engineer, subordinate to the Regional Manager, AGM (Administration), AGM (Business Process and Engineering), AGM (MBPM) at the Local Head Office, the General Manager, and ultimately the Chief General Manager. It was submitted that all major decisions, including site selection and coordination with the Reserve Bank of India, fell within the remit of these senior officers, and the petitioner was not authorised to independently act beyond the scope of his duties.

20. With respect to the charges, the learned advocate for the petitioner contended that the petitioner had provided appropriate responses in his defence, each of which was supported by factual documentation. It was submitted that the grade of concrete used in the construction was consistent with Reserve Bank of India specifications. There was no mandate in the guidelines requiring the grade of concrete to be specifically mentioned in the layout plan. In relation to the alleged non-use of 18mm diameter steel bars, it was explained that due to unavailability of 18mm bars, 12mm bars spaced at 75 mm centre-to-centre were used, which resulted in a higher percentage of reinforcement and thus exceeded the required standards.

21. The learned advocate for the petitioner also submitted that the required dimensions for patrol corridors were reflected in the revised plans and that the site constraints, which were known to the authorities at the time of selection,

did not permit deviation. Any variance from the guidelines was therefore inevitable due to the inherent limitations of the site. With regard to the provision of a toilet in the Guard Room, it was submitted that this requirement was incorporated into the revised plans. On the allegation of improper alignment of the vault entrance through the patrol corridor, The learned advocate for the petitioner reiterated that this arrangement was approved by the bank authorities in the finalised layout.

22. As regards the failure to provide a 450 mm thick concrete roof above the currency vault, The learned advocate for the petitioner submitted that the petitioner had no discretion in altering the structural layout of the building. To address this shortcoming, the locker room was constructed on the first floor directly above the ground floor vault, thereby offering a protective buffer that addressed security concerns. The petitioner, it was argued, had acted within his technical remit and had neither the authority to select the premises nor to override the constraints imposed by them.

23. The learned advocate for the petitioner submitted that despite detailed defence submissions and the production of documentary evidence, the Enquiry Officer proceeded to adopt the prosecution's brief in its entirety, without independent evaluation. It was argued that the petitioner's representation dated 20th January, 2014 had specifically drawn attention to the absence of reasoning in the enquiry report, but the Appointing Authority ignored this and proceeded to impose the penalty of dismissal from service by order dated 26th April, 2014.

24. It was further contended that the Disciplinary Authority's recommendations, which were relied upon by the Appointing Authority while imposing the

penalty, were never disclosed to the petitioner. As such, the penalty order was based on material which was not furnished to the petitioner, resulting in a denial of natural justice. The learned advocate for the petitioner submitted that in a quasi-judicial proceeding such as a departmental enquiry, it was impermissible for the authorities to act upon undisclosed materials.

25. The learned advocate for the petitioner further argued that the hearing before the Appointing Authority on 5th March, 2014 was rendered ineffective, as the authority merely concurred with the Disciplinary Authority's recommendation without independent assessment of the defence case or any explanation as to why such concurrence was appropriate. It was pointed out that the Appointing Authority himself had acknowledged that other senior officers had also been negligent in respect of the RBI guideline violations, yet no action had been initiated against them. The petitioner alone had been singled out for penal action, despite being of lower rank.

26. It was submitted that the prosecution witnesses, including those in senior administrative and engineering roles, had deposed in a manner that partly supported the petitioner's version, but this had not been considered by either the Enquiry Officer or the Appointing Authority. Reference was also made to a note prepared by the Chief General Manager dated 27th July, 2013, which recorded the involvement of other senior officials in the flawed site selection and construction oversight, but this document too had been overlooked.

27. The learned advocate for the petitioner submitted that the Appellate Authority failed to appreciate the petitioner's role and merely upheld the findings of the subordinate authorities without critical analysis. It was contended that the

petitioner had inspected the sites and duly recorded irregularities in red ink in the inspection reports, but the construction had nevertheless proceeded on instructions from higher authorities.

28. It was submitted that the penalty imposed was grossly disproportionate to the nature of the allegations, assuming without admitting that the charges were proved. The learned advocate for the petitioner contended that the imposition of the penalty of dismissal from service with retrospective effect, after the petitioner's retirement on 30th November, 2013, was ultra vires and without legal authority. The petitioner had been dismissed by order dated 26th April, 2014 with effect from the date of his superannuation, in violation of procedural fairness.

29. The Learned Advocate for the Petitioner relied on the following cases:-

a. The Hon'ble Supreme Court held the following in ***Bongaigaon Refinery & Petrochemicals Ltd. v. Girish Chandra Sarma***[1]:-

18. After going through the report and the finding recorded by the Division Bench of the High Court, we are of opinion that in fact the Division Bench correctly assessed the situation that the respondent alone was made a scapegoat whereas the decision by all three Committees was unanimous decision by all these members participating in the negotiations and the price was finalised accordingly. It is not the respondent alone who can be held responsible when the decision was taken by the Committees. If the decision of the committee stinks, it cannot be said that the respondent alone stinks; it will be arbitrary. If all fish stink, to pick

[1] (2007) 7 SCC 206

one and say only it stinks is unfair in the matter of unanimous decision of the Committee.

19. In all the three charges, the respondent has been found to be guilty for not assessing the reasonable price in his report submitted by him where the price indicated by the owner of the land was Rs 30 lakhs. The appointment of Shri I. Sharma as a valuer for land valuation was not also the decision of the respondent alone and the exploration of soil and rock strata given to the company, M/s ESS Pvt. Ltd. was also not the decision of the respondent alone. Therefore, all the three charges which have been framed against the respondent as if he alone is responsible for the deal is not the correct approach. It is also not necessary that the landowner who has given the offer at one point of time at Rs 30 lakhs would stick to that. Instead she has intimated the appellant Company by her letter quoting the price at Rs 61 lakhs and that was subsequently negotiated and brought out to Rs 50.01 lakhs.

20. The preliminary report submitted by the respondent to the Director (Commercial) was after discussion with the landowner at the cost of Rs 30 lakhs yet this cannot work as an estoppel against the landowner. May be the landowner at one point of time might have offered the land at Rs 30 lakhs but that report cannot operate as estoppel against the landowner that she cannot jack up the price for the land. In fact when the Price Negotiation Committee asked for written proposal from the landowner, she quoted it at Rs 61 lakhs and ultimately the Price Negotiation Committee after taking into consideration all the factors negotiated at Rs 50.01 lakhs for 5 acres of land. This was the joint decision of the Price Negotiation Committee which was headed by Shri S.C. Goswami, General Manager (Marketing) as the Chairman. Therefore, from the above discussion, we are of opinion that the view taken in these set of facts by the Division Bench cannot be said to be wrong.

b. The following was held in ***Inspector Prem Chand v. Govt. of NCT of Delhi***[2] by the Hon'ble Supreme Court:-

11. In P. Ramanatha Aiyar's Law Lexicon, 3rd Edn., at p. 3027, the term "misconduct" has been defined as under:
"The term 'misconduct' implies a wrongful intention, and not a mere error of judgment.
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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' literally means wrong conduct or improper conduct."
(See also Bharat Petroleum Corpn. Ltd. v. T.K. Raju [(2006) 3 SCC 143 : 2006 SCC (L&S) 480] .)
12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India v. J. Ahmed [(1979) 2 SCC 286 : 1979 SCC (L&S) 157] whereupon Mr Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292-93, para 11)

[2] (2007) 4 SCC 566

"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pearce v. Foster [(1886) 17 QBD 536, 542 : (1886-90) All ER Rep Ext 1752]). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers [(1959) 1 WLR 698])]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur [(1959) 61 Bom LR 1596] and Satubha K. Vaghela v. Moosa Raza [10 Guj LR 23] . The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

'Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct'."

(emphasis supplied)

c. The following was held by the Hon'ble Supreme Court in ***M.V. Bijlani v. Union of India***[3]:-

25. *It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to*

[3] **(2006) 5 SCC 88**

prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

d. The Hon'ble Supreme Court held the following in ***Union of India v. K.A. Kittu***[4]

13. *The Tribunal also found fault with the report of the enquiry officer as except evidence of one witness the evidence of the other two witnesses of the respondent was not at all considered by the enquiry officer.*

e. The Hon'ble Supreme Court held the following in ***State of Jharkhand v. Jitendra Kumar Srivastava***[5]:-

8. *It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words: (SCC pp. 319-20, paras 18-20)*

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the

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[4] (2001) 1 SCC 65

[5] (2013) 12 SCC 210

contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : (1976) 2 LLJ 377] ."

It is thus a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

***9.** Having explained the legal position, let us first discuss the rules relating to release of pension.*

14. *The right to receive pension was recognised as a right to property by the Constitution Bench judgment of this Court in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] , as is apparent from the following discussion: (SCC pp. 342-43, paras 27-33)*

"27. The last question to be considered, is, whether the right to receive pension by a government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the petitioner the right to receive pension is property and the respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on 5-8-1996. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the *grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.*

30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India [AIR 1962 Punj 503] . It was held that such a right constitutes 'property' and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR (1965) 2 Punj 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is 'property' within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as 'property' cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. State of Punjab [AIR 1967 Punj 279 : ILR (1967) 1 Punj 278] . The High Court had to consider the *nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its* *earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.*

32. This Court in State of M.P. v. Ranojirao Shinde [AIR 1968 SC 1053 : (1968) 3 SCR 489] had to consider the question whether a 'cash grant' is 'property' within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing 'it is obvious that a right to sum of money is property'.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

***15.** In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule*

10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.

***16.** The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:*

*"**300-A.Persons not to be deprived of property save by authority of law**.—No person shall be deprived of his property save by authority of law."*

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

30. The learned advocate for the respondents submitted that the disciplinary proceedings had been conducted in accordance with law and the writ petition was not maintainable under Article 226 of the Constitution of India as the scope of interference in disciplinary matters was limited. It was submitted that it was a settled proposition of law that the Hon'ble High Court ought not to enter into a re-appreciation of evidence while exercising jurisdiction under Article 226. Reliance was placed upon the judgment reported in (2015) 2 SCC 610, at paragraphs 13, 14 and 15, in ***Union of India vs. P. Gunasekhran***, in support of the contention that the findings of fact recorded by the disciplinary authority could not be interfered with unless they were perverse or in breach of

natural justice. The relevant paragraphs of the aforementioned case are reproduced below:-

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.

14. *In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] , many of the above principles have been discussed and it has been concluded thus : (AIR pp. 1726-27, para 7)*

"7. … The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry

has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly 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, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be 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 of the Constitution."

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."*

31. The learned advocate for the respondents submitted that the plea regarding the absence of loss was without substance. In this regard, reliance was placed on the judgment reported in 2005 (7) SCC 435, ***State Bank of India vs. Bela Bagchi***, particularly paragraphs 15 and 11. The relevant paragraphs of the aforementioned case are reproduced below:-

> ***11.*** *Section 43 empowered State Bank to determine the terms and conditions of the appointment and service of its officers and employees. These officers and employees exercise such powers and perform such duties as may be entrusted or delegated to them by the Central Board or State Bank. Section 50 of the State Bank of India Act empowers the Central Board to make regulations but Section 43 is independent of Section 50. Rules 20-A and 20-B make material difference and ratio and A.N. Gupta case [(1997) 8 SCC 60 : 1998 SCC (L&S) 14] is clearly inapplicable to the facts of the present case.*
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> *xxx*

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

32. It was further argued that upon consideration of the enquiry report and the reply thereto furnished by the delinquent officer, both the Appointing Authority and the Appellate Authority had passed reasoned orders of dismissal, and as such, there was no occasion for the Hon'ble Court to interfere with such findings. The learned advocate for the respondents relied upon an unreported judgment of the Division Bench of this Hon'ble Court passed in APO 485 of

2014 arising out of WP 1801 of 2008 (***Subhas Chandra Bar vs. State Bank of India***), at paragraphs 25 to 43, in support of the proposition that unless the disciplinary proceeding was patently perverse or shockingly illegal, interference was not warranted.

33. The learned advocate for the respondents submitted that it was not necessary to ascertain whether the acts or omissions by the petitioner were deliberate or inadvertent, and that unless the proceeding was patently illegal, the Court should refrain from intervention. In support of this proposition, reference was made to the unreported judgment of this Hon'ble Court in WP No. 33329 (W) of 2014, ***Shivpujan Gwalia vs. State Bank of India***. It was argued that the State Bank of India Officers Service Rules had been framed under the enabling provision contained in Section 43 of the State Bank of India Act, 1955, and carried statutory force.

34. The learned advocate for the respondents submitted that in the present case, a detailed charge-sheet had been issued. The petitioner had responded to the said charge-sheet. A full enquiry was conducted by the Enquiry Officer, in which prosecution witnesses and defence witnesses were examined and cross-examined. The Enquiry Officer submitted a report thereafter, to which the petitioner gave a reply. The Appointing Authority then passed the penalty order after a reasoned consideration. The petitioner preferred an appeal which was heard by the Appellate Authority and dismissed on merits. In the absence of any shocking illegality or procedural lapse brought on record, it was submitted that the matter did not warrant judicial review.

35. The learned advocate for the respondents further submitted that the petitioner had previously been punished in a separate disciplinary proceeding. The said proceeding had been challenged before the Appellate Authority as well as before the Hon'ble High Court by way of a writ petition. The Division Bench had upheld the punishment while modifying the quantum. Thereafter, the Hon'ble Supreme Court had confirmed the decision of the High Court. The order passed by the Division Bench in APO 2467 of 2014, the order of the Hon'ble Supreme Court in Civil Appeal No. 5263 of 2017, ***Dipankar Mukherjee vs. SBI and others*** had also been placed before this Court.

36. Without prejudice to the question of maintainability, the learned advocate for the respondents advanced submissions on the merits. It was submitted that the petitioner was a technical officer having engineering qualifications and was posted as such in the Zonal Office of State Bank of India at Howrah. In his capacity as a bank engineer, the petitioner had submitted the final layout plans for construction of the branch premises with attached RBI Currency Chests at Chinsurah and Tamluk Railway Station Branches. As regards the Chinsurah branch, it was submitted that the petitioner had not only prepared the final plan but also issued the completion certificate during his tenure. It was submitted that for the Tamluk Railway Station branch, the layout plan had been submitted by the petitioner before he was transferred from Howrah Zonal Office.

37. The learned advocate for the respondents submitted that although the Reserve Bank of India had prescribed detailed specifications for construction of currency chests, the petitioner had made several unauthorised modifications

and introduced new elements into the specifications without approval. These deviations were reflected in the charges and proved through the testimony of the bank's engineers and the administrative manager. It was submitted that the petitioner had falsely attempted to suggest that these changes were approved by higher authorities, whereas the higher authorities were administrative personnel who had relied on the technical inputs and plans of the petitioner. It was submitted that the petitioner never informed the higher authorities that his drawings deviated from RBI guidelines. It was further submitted that he never disclosed, either at the planning or construction stage, that the site was unsuitable for implementing RBI specifications. The learned advocate for the respondents relied on the orders of the Appointing Authority and Appellate Authority in this regard.

38. The learned advocate for the respondents further submitted that the petitioner's failure to comply with RBI specifications in the preparation of layout plans had been established by the evidence of prosecution witnesses examined during the enquiry. Reference was made to the day-to-day proceedings enclosed with the writ petition. It was submitted that the deficiencies had been noted in the materials placed on record, including documents referred to in the writ petition. It was submitted that anticipatory loss caused by the deficiencies had been recorded at the relevant pages in the petition and in the Appellate Authority's order.

39. It was submitted that although the petitioner contended he was not responsible for site selection, he nevertheless failed to ensure that the layout plans were drawn in compliance with RBI guidelines, despite being fully aware of the

same. It was argued that the note of the Chief General Manager referred to by the petitioner, which raised issues with the site, was prepared much later in 2013 and did not relate to the drawings or layout plans. It was further submitted that the note merely apprised the CGM of RBI's subsequent unwillingness to approve the Chinsurah currency chest, and had no bearing on the petitioner's obligations at the planning and construction stage. It was submitted that the petitioner had never stated that the site was unsuitable or that construction of the currency chest would be insecure. His omissions and irregularities, according to The learned advocate for the respondents, were evident from the record of the disciplinary proceedings. It was submitted that any belated modification or reconstruction would not meet RBI's satisfaction.

40. The learned advocate for the respondents submitted that there was no provision under the State Bank of India Officers Service Rules that required the recommendation of the Disciplinary Authority to be disclosed to the delinquent officer. The recommendation of the Disciplinary Authority was duly recorded by the Appointing Authority and no prejudice was thereby caused to the petitioner.

41. It was submitted that the conduct of the petitioner, in committing 15 violations of the RBI guidelines, amounted to gross negligence and deliberate breach of prescribed norms. The consequences of such negligence, it was submitted, included substantial monetary losses and reputational damage to the bank. The learned advocate for the respondents asserted that the charges had been proved through evidence presented in the enquiry proceedings, followed by the report of the Enquiry Officer and the orders of the Appointing Authority and

the Appellate Authority, which had rebutted the submissions of the petitioner in detail. It was submitted that all relevant materials had been annexed to the writ petition.

42. The learned advocate for the respondents also submitted that in view of his dismissal under the State Bank of India Officers Service Rules, the petitioner was not entitled to pension, employer's contribution to the provident fund, or leave encashment. It was submitted that dismissal disentitled the petitioner from such service benefits under the relevant Pension Rules and PF Rules applicable to State Bank of India officers.

43. On a circumspection of the facts and arguments of both the parties, it succinctly comes to light, that the petitioner, who had joined the service of the respondent bank on 8th September, 1984 as a Civil Engineer and retired as Deputy Manager in MMGS-II on 30th November, 2013, challenged the disciplinary proceedings initiated against him which culminated in an order of dismissal from service with retrospective effect dated 26th April, 2014. The charge-sheet dated 21st October, 2013, the findings of the Enquiry Officer dated 27th December, 2013, the penalty order dated 1st March, 2014 and the appellate order dated 25th October, 2014 were vitiated by procedural irregularities, lack of application of mind, and disproportionate punishment.

44. The disciplinary proceeding stemmed from alleged deviations from the Reserve Bank of India's specifications in the construction of currency chests at the Chinsurah and Tamluk Railway Station Branches while the petitioner was posted at the Howrah Regional Office between 28th February, 2009 and 2nd December, 2011. The petitioner submitted that the construction was carried

out by the landlord at Tamluk and that he had submitted layout plans as per instructions and based on site conditions. On 30th May, 2013, the petitioner, on re-inspection, submitted a report highlighting the deviations in red ink. A show cause notice was issued on 13th August, 2013, and a charge-sheet followed on 21st October, 2013. An enquiry was conducted, in which five prosecution witnesses were examined. The petitioner submitted his defence along with documentary materials and a representation dated 20th January, 2014.

45. The learned advocate for the petitioner submitted that the petitioner's role was limited to prepare technical drawings based on instructions and approved sites. It was urged that the petitioner had no authority to select sites, approve construction, or communicate with the Reserve Bank of India. It was further contended that the deviations were either site-driven or approved by superior officers, and that the petitioner had reported irregularities which were disregarded by the administration. The learned advocate submitted that neither the Enquiry Officer nor the Appointing Authority gave adequate consideration to the defence or provided reasoning for concurrence with the disciplinary recommendation. It was also submitted that the findings disregarded evidence favourable to the petitioner and failed to address the complicity of higher officials noted by the Chief General Manager. The learned advocate contended that dismissal with retrospective effect was without authority, and the penalty imposed was disproportionate to the charges.

46. The learned advocate for the respondents submitted that the disciplinary proceedings were conducted in accordance with the State Bank of India

Officers Service Rules framed under Section 43 of the State Bank of India Act, 1955. It was submitted that all procedural steps, including issuance of charge-sheet, enquiry, submission of enquiry report, reply by the delinquent, and appellate consideration were duly undertaken. The learned advocate placed reliance on judgments including Union of India vs. P. Gunasekhran, State Bank of India vs. Bela Bagchi, and the unreported decision in Subhas Chandra Bar vs. State Bank of India to submit that the Court's power of judicial review was limited. It was further submitted that the petitioner had earlier faced punishment in another proceeding, which had been affirmed by the Hon'ble Division Bench and the Hon'ble Supreme Court in Dipankar Mukherjee vs. SBI and Others.

47. On merits, it was submitted that the petitioner, being a technical officer, had submitted final layout plans for both branches, and the plans contained several unauthorised deviations from the RBI guidelines. It was contended that the petitioner had never indicated any unsuitability of the site nor disclosed the deviations to superior officers who relied on his statements preceding their decision since was technically sound and equipped for assessment of the site and planning whereas his senior accordingly sanction and/or approval were pursuing administrative functions. The learned advocate submitted that such deviations led to anticipatory losses and reputational damage. It was also submitted that no prejudice was caused to the petitioner by non-disclosure of the recommendation of the Disciplinary Authority, as there was no such requirement under the service rules. The learned advocate stated that the

petitioner, having been dismissed, was not entitled to pension, provident fund contributions by the employer, or leave encashment.

48. The charges indicted against the petitioner referred to “serious irregularities” committed constituting acts of “omissions and commission”, violation of Rule 50(6) and Rule 50(4) of the State of Bank of India Officers Service Rules which resulted in and anticipated for tentative loss of more than Rs.1 crore comprising of rent paid for the premises by the bank in respect of construction of currency chest at Chinsurah Branch and Tamluk Railway Station Branch which could not be operational for infrastructural deficiencies and inefficacious logistics occasioned due to violations of and deviations from the RBI guidelines exclusively ascribed to the petitioner.

49. The petitioner had on an earlier occasion been punished for a misconduct. The subsequent charges against the petitioner had been proved by the disciplinary authority and his punishment from dismissal from service was affirmed by the appellate authority.

50. The petitioner joined the service on 08th of September, 1984 as Civil Engineer and superannuated on 13th November, 2013 as Deputy Manager in MMGS/2. The petitioner was dismissed from service. The petitioner’s plea of approval to his note-sheets granted by the superior authorities endorsing his acts were negated by the disciplinary authority since the report of the petitioner in terms of technical specifications were considered to be legally sacrosanct and imprimatur and approved of on the basis of professional integrity and faith. Moreover, the senior officers acted as administrative functionaries not adequately conversant with mechanical construction parameters.

51. The Hon'ble Supreme Court held the following in ***Ranjit Thakur v. Union of India***[6]**:-**

> *Re contention (d):*
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> ***25.*** *Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:*
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> *"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'*

[6] **(1987) 4 SCC 611**

which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . .”

26. *In Bhagat Ram v. State of Himachal Pradesh [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] this Court held: [SCC p. 453, SCC (L&S) p. 353, para 15]*

“It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.”

The point to note, and emphasise is that all powers have legal limits.

27. *In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.*

51. The Hon’ble Supreme Court held the following in ***Sheel Kr. Roy v. Ministry of Defence[7]:***

17. *Fairness and reasonableness in the action of the State whether in a criminal proceeding or otherwise are the hallmark of Article 14 of the Constitution of India. The doctrine of proportionality is one of the grounds on the basis whereof the power of judicial review could be exercised. It was so held in Ex-Naik Sardar Singh v. Union of India [(1991) 3 SCC 213] .*

52. The following was held by the Hon’ble Supreme Court in ***Dev Singh v. Punjab Tourism Development Corpn. Ltd***

6. *A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on*

[7] ***(2007) 12 SCC 462***

penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.

53. The Hon'ble Supreme Court held the following in ***Jai Bhagwan v. Commr. of Police***[8]***:-***

10. *What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even*

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[8] ***(2013) 11 SCC 187***

when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court. We remain content with reference to only some of them.

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13. *Reference may also be made to the decisions of this Court in Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Sardar Singh v. Union of India [(1991) 3 SCC 213 : 1991 SCC (Cri) 503 : 1991 SCC (L&S) 975 : (1992) 19 ATC 325] and Om Kumar v. Union of India [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , which reiterate the same proposition.*

54. Rule 50(6) of the State of Bank of India Officers Service Rules stated as follows:-

"Every officer shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority."

55. In a hierarchical system, a mechanism of check and balance is expected to be instituted at every level so that an institution can function without unnecessary impediments to the prejudice of the concerned people more so in a Government institution where public money is involved. The senior officers approving the acts of omissions and violations as described in the charges should also have been vigilant and could not have escaped the liability to detect the technical irregularities at relevant point of time. Nonetheless this Court does not intend to interfere, intrude, comment, instruct or advise the respondent-bank with regard to its administrative operations. The charges proved against the petitioner are not interfered with. However, the petitioner has served 29 years in the bank. Apart from his acts of omission, commission

and violation which constituted acts of misconduct had not been termed to be frauduplent, the bank had mentioned about an anticipated loss or a tentative loss of a considerable sum of money however the respondent-bank did not indict the petitioner of any wrongful gain to his credit for such acts of misconduct. The strict stipulation of the State Bank of India Officers Service Rules, 1992 as well as the State Bank of India Employees Provident Fund Rules disqualified and disentitled the petitioner from the retirement benefits due to the punishment of dismissal from the service which according to this Court is harsh and disproportionate.

56. Accordingly the appeal is allowed in part. The orders of the disciplinary authority as well as the appellate authority are sustained. However, the extent of punishment imposed is set aside.

57. The instant matter is remanded to the appellate authority to review the punishment imposed reconsidering the facts and circumstances of the case and is at liberty to impose any kind of punishment except a punishment resulting in dismissal or removal from service.

58. In view of the above discussions, the instant writ petition being WPA 13842 of 2015 is disposed of.

59. There is no order as to costs.

60. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)