IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

Present :
THE HON'BLE JUSTICE ARINDAM MUKHERJEE

WPO 211 of 2021

SUVASISH DASGUPTA

Vs.

UCO BANK & ORS.

For the Petitioner	:	Mr. Soumya Majumder, Sr. Adv., Mr. Mainak Ganguly, Adv. Ms. Ledia Dasgupta, Adv. ..... Advocates
For the Respondents	:	Mr. Soumen Das Mr. Sourjya Roy, ... Advocates
Heard on	:	31st July, 2025
Judgment on	:	**13th August, 2025**

<u>Arindam Mukherjee, J:</u>

Facts of the Case:

1. The petitioner while working as Assistant General Manager, Compliance Department, Head Office, Kolkata of UCO Bank was served with a suspension order dated 15th December, 2017 said to be issued by the General Manager, HRM & OL being the competent authority under the provisions of Regulation 12 of UCO Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as the said Regulation). The suspension was with immediate effect. The petitioner thereafter was served with a memo dated 9th November, 2018 informing the petitioner that the respondent-bank proposed to hold an enquiry against the petitioner under the provisions of the said Regulation. The statement of allegations at page 31 of the writ petition on which enquiry was proposed to be held and the articles of charge were also served along with the said letter. The petitioner was asked to reply to the said letter to substantiate his defence.

2. In total four charges were framed against the petitioner which are as follows:

    1) "Shri Suvasish Dasgupta (EMP no. 38990) had failed to take all possible steps to ensure and protect the interest of the

Bank and acted in a manner unbecoming of a Bank Officer, which is violative of Regulations 3 (1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.

2) *Shri Suvasish Dasgupta (EMP no. 38990) had failed to discharge his duties with utmost devotion and diligence which is violative of Regulation 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.*

3) *Shri Suvasish Dasgupta (EMP no. 38990) had failed to discharge his duties with utmost integrity and honesty which is violative of Regulation 3 (1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.*

4) *Shri Suvasish Dasgupta (EMP no. 38990)while his official duties had acted otherwise than in his best judgment, which is violative of Regulation 3 (3) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended."*

3. The petitioner replied to the said charge-sheet by a letter dated 22nd November, 2018 (page 57 of the writ petition). The Disciplinary Authority (in short D.A.) being the General Manager Personal Service Department after considering the petitioner's reply found the same to be unsatisfactory and decided to conduct an enquiry into the matter in terms of sub-regulations 2 and 6 of regulation 6 of 1976 Regulation. Sri. R.C. Nayak , Deputy General Manager was appointed as the Enquiry Officer (in short E.O.) while Sri Aseem Kumar Mishra,

Assistant General Manager was appointed as Presenting Officer (in short P.O.) this decision was communicated to the petitioner by an order dated 5th January, 20198 which is at page 50 of the writ petition.

4. The E.O. held the proceedings and filed his report dated 21st September, 2019 which is at page 93 of the writ petition. The E.O. found that the charges against the petitioner were proved. The D.A. forwarded the Enquiry Report and obtained petitioner's views. The D.A. after considering the petitioner's reply by an order dated 26th December, 2019 imposed major penalty against the petitioner by removing him from service. The petitioner challenged the said order before the Appellate Authority which was dismissed by an order dated 8th September, 2020 upholding the order of the D.A.

Submission of Petitioner:

It is submitted by the petitioner that the following charges were levelled against the petitioner.

a. Allowing unauthorized debits in various General Ledger Heads and making fraudulent transactions, and finally crediting the same to personal accounts.

b. Allowing transaction of fraudulent debits of General Ledger Heads such as Law Charges and Professional Fees without supporting bills/vouchers.

c. The charges were stale, being more than 10 years old, without any loss to the Bank mentioned therein.

d. The petitioner further submits that no witness was examined by the bank, only the documents were marked as exhibits at the beginning without the same being tendered in evidence.

e. The proceeding would show that the P.O. merely proceeded with presentation of document. He was not placed as a witness, and consequently the E.O. had not allowed the P.O. to be cross examined.

f. Petitioner had objected to the manner of collecting such material, but the objection remain undecided.

g. The E.O. only restricted himself to allowing inspection of the management's listed documents

h. In an enquiry, the burden of proof is on the employer to "prove" the charges, Evidence is the missing link between the charges and the conclusion, or the bridge between the allegations and findings.

i. In the instant case no witness came to prove the documents on behalf of the management. Contents of documentary evidence are to be proved by examining witnesses.

j. EO records that he was pressurized by the personal service department to conclude the enquiry as expeditiously as possible.

k. This clearly shows the act of vindictiveness and biasness of EO in this case.

l. Therefore the instant case is no where the finding is based on “no evidence”, and hence perverse. The procedural unfairness leading to violation of the principles of natural justice also vitiates the punishment.

The learned Advocate for the petitioner in his submission cited few judgments in support of his contention.

1. ***AIR 1969 SC 983 (Central Bank of India Ltd. Vs.PrakashChand Jain***)
2. ***(2010) 2 SCC 582 [Roop Singh Negi Vs. Punjab National Bank & Ors.]***
3. ***(2010) 2 SCC 772 [State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha]***
4. ***AIR 1994 SC 1074 [Managing Director, ECIL Vs. B. Karunakar]***
5. ***(2006) 4 SCC 713 [Narinder Mohan Arya Vs. United India Insurance Co. Ltd.]***
6. ***AIR 1985 SC 1121 [Anil Kumar Vs. Presiding Officer]***
7. ***(2014)10 SCC 473 [Avnar P.V. Vs. P. K. Basheer]***
8. ***(2017) 8 SCC 570 Sonu Alia Amar Vs. State of Haryana]***

Submission of the Respondents.

1. The respondents say that the enquiry has been conducted in accordance with law and there has been no violation of the principles of natural justice.

2. The respondents also say that the documents exhibited are mostly print out of documents maintained in electronic form and has been certified under The Bankers' Books Evidence Act, 1891 and as such does not require to be proved otherwise. These documents are admitted documents and have not been disputed by the petitioner. The Court can neither re-evaluate evidence nor interfere with the conclusions in the enquiry since the same has been conducted in accordance with law.

3. The Court cannot go into the adequacy or reliability of the evidence. There is legal evidence against the petitioner which has been proved before the Enquiry Authority and accepted by the D.A. as also the Appellate Authority, and as such the findings based therein cannot be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The contention of the petitioner that the documents have not been formally proved and tendered in evidence before the E.O. by the P.O. is in correct. All documents were produced before the E.O by the P.O. in the presence of the writ petitioner and tendered in evidence of which they were marked as Exhibit. The petitioner had raised no objection to the documents being marked as Exhibit. The petitioner also did not seek any cross-examination. In the process changes have been proved against the petitioner by adhering to the principles of natural justice. The respondent bank also says that the petitioner had admitted the entries to have been made by him and as such no further proof is required. Assuming without admitting that the documents have not been proved then also the petitioner had to be hold guilty which has been rightly done. The challenge should fail on that ground alone. That apart and in any event the bank has at least proved some of the petitioner's illegal acts which amounts to misconduct and as such in exercise of jurisdiction under Article 226 of the Constitution the orders cannot be interfered with by re-evaluating the evidence.

The respondent-bank cited the following judgments in support of their contention.

1. ***(2021) 3 SCC 806 [Boloram Bordoloi vs. Lakhimi Gaolia Bank & Ors.]***
2. ***(1969) 3 SCC 372 [Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another.]***
3. ***(1969) 3 SCC 384 [Somnath Sahu vs. State of Orissa and Others]***
4. ***(2013) 6 SCC 313 [Manoj H. Mishra vs. Union of India & Ors.]***
5. ***(2006) 3 SCC 276 [State of U.P. vs. Sheo Shanker Lal Srivastava & Ors.]***

6. ***(1982) 2 SCC 143 [Nivritti Dada Patil vs. Vasant Talkies & Ors.]***
7. ***(1982) 2 SCC 144 [C.T. CHEDAMRAM VS. GENERAL MANAGER, INDIAN OVERSEAS BANK AND ANOTHER]***
8. ***(2003) 3 SCC 583 [LALIT POPLI VS. CANARA BANK AND OTHERS]***
9. ***(2019) 7 SCC 797 [SHASHI BHUSAN PRASAD VS. INSPECTOR GENERAL, CENTRAL INDUSTRIAL SECURITY FORCE AND OTHERS]***
10. ***(1984) 1 SCC 43 [K.L. TRIPATHI VS. STATE BANK OF INDIA AND OTHERS]***
11. ***(2006) 10 SCC 572 [SURESH PATHRELLA VS. ORIENTAL BANK OF COMMERCE]***
12. ***(2006) 10 SCC 581 [SABITHA RAMAMURTHY AND ANOTHER VS. R.B.S. CHANNABASAVARADHYA]***
13. ***(2021) 2 SCC 612 [DEPUTY GENERAL MANAGER (APPELLATE AUTHORITY) AND OTHERS VS. AJAI KUMAR STIVASTAVA]***
14. ***(2014) 10 SCC 473 [ANVAR P.V. VS. P.K. BASHEER AND OTHERS]***

<u>Analysis and Conclusion</u>

A. Before analysing the submission of the parties in the light of the documents disclosed, it is to be noted that the law as it stands in respect of the scope of intervention by the High Court under Article 226 of the Constitution of India to an order passed in a Disciplinary Proceeding has been laid down by the Hon'ble Supreme Court of India in the judgment reported in 2021(14) SCC 735 ***[Director General of Police, Railway Protection Force & Ors. vs. Rajendra Kumar Dubey].*** In the said judgement the Hon'ble Supreme Court while discussing the findings of several earlier judgments and approving some of the ratio has laid down the following:-

> ***21.6.*** *In Union of India vs. P. Gunasekaran, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether :*
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> *"(a) the enquiry is held by the competent authority;*
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> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
>
> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
>
> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case;*
>
> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

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

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

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

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

21.7. *In para 13 of the judgement, the Court held that : (P. Gunasekaran case, SCC p. 617)*

"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."

In the light of the ratio laid down in Rajendra Kumar Dubey (supra), the facts of the instant case are analysed hereinbelow:-

The main thrust of the petitioner's objection are as follows:

B. The Presenting Officer (in short P.O.) in the instant did not examine any witness to prove the documents which have been marked as exhibit before the Enquiry Officer (in short E.O.). This is contrary to the ratio laid down in (***2009) 2SCC 580 [Roop Singh Negi vs. Punjab National Bank & Ors.]*** after detailed discussion of law in this regard. In Amar P.V. (supra) the

Hon'ble Supreme Court has laid down the provisions as to how a document is to be proved even though the provisions of Indian Evidence Act, 1872 are not applicable to a disciplinary proceedings yet the principles analogous thereto are to be followed as held in Roop Singh Negi (supra).

C. The respondent-bank did not give inspection of several documents sought for by the petitioner. Despite specific request, the P.O. failed to give inspection of all the documents tendered in evidence prior to such documents being exhibited before the E.O. Despite direction from E.O., the P.O. did not give inspection of most of the documents tendered in evidence. This act on the part of the respondent-bank, the P.O. and the E.O. amounted to violation of the principles of natural justice as held in B. Karunakar (supra) and Saroj Kumar Sinha (supra).

D. Although, no monetary loss has been sustained by the bank, yet the Disciplinary Authority (in short D.A.) had held the petitioner guilty of the charges levelled against him. The petitioner appears to have been held guilty principally on the ground of having failed to observe the guidelines of the respondent-bank, which is at the highest an irregularity. Even though the petitioner as a senior officer had to observe the guidelines of the bank but non-observance whereof which is, however doubtful in the instant case without having caused financial loss to the bank cannot amount to grave misconduct inviting major penalty like removal from service. The alleged transactions which the respondent-bank and the P.O. have alleged to be irregular, had been audited by statutory auditors after the entries were approved at a higher level where no failure on the part of the petitioner in observing the banking guidelines or perpetration of fraud has been deduced. After expiry of six/seven years, the petitioner has been hauled up for alleged irregularities and purported fraud. The E.O. has mechanically held the petitioner guilty of the charges, the D.A. had at random held that the allegations made against the petitioner are partly proved and some are proved without any explanation or justification as to why an allegation is partly proved or has been proved as a whole. The Appellate Authority has also mechanically passed an order approving the decision of the D.A. The entire exercise is contrary to the ratio laid down in Narinder Mohan Arya (supra), Anil Kumar (supra).

E. Mere acceptance by the petitioner that the entries to have been made by him cannot foster liability on the petitioner. It was the bounden duty of the bank to prove the charges with cogent evidence which the bank has miserably failed to do and have adopted a mechanism which is contrary to the legal provisions settled by the Hon'ble Supreme Court through various judgments which are discussed in the above as also in the foregoing paragraph.

F. On a bare reading of the enquiry proceedings, it is apparent that several allegations have been made by the bank through the P.O. against the writ petitioner to substantiate the charges levelled against but the same has not been tendered through a witness as required in law. Even though, the application of the provisions of the Indian Evidence Act, 1872 is not applicable in respect of disciplinary proceedings but as held in ***Roop Singh Negi (supra)*** by the petitioner, the principles analogous thereto applied. Any document required to be proved in a disciplinary proceedings has to be in accordance to under the principles analogous to that of the Indian Evidence Act, 1872. A document can be proved either as primary evidence or as secondary evidence. The proof of a document being primary evidence has to be through its author or the same can be proved as a secondary evidence through those who were associated with the preparation of the said document or knows the signature of the author of such document. In the instant case, the P.O. has not taken any initiative to prove a document in such manner.

G. On a bare perusal of the enquiry proceedings, it appears that the P.O. has narrated the facts of the case as made out against the petitioner and have produced documents which have been marked as exhibit. Even bank statement maintained in electronic form are required to be proved in a particular mode as laid down under the Indian Evidence Act, 1872. Even if the account statement is authenticated under the Banker's Book of Evidence Act, 1891 the same speaks about its genuineness only. The account statement has to be proved through corroborative evidence. The materials on record reveal that the petitioner had objected to the mode of proof of the documents, the manner it has been tendered and have also alleged violation of the principles of natural justice in writing which are admittedly on record. The judgements cited by the respondent-bank are mostly on the principle that the Court should not go into the reliability or adequacy of the evidence or re-appreciate the same while exercising jurisdiction under Article 226 of the Constitution of India. There is no dispute as to such legal proposition but the fact remains as in the instant case, that the enquiry proceeding have not been concluded in accordance with applicable law. The documents were not tendered by following the principles analogous that of to the Indian Evidence Act, 1872 and as such the reliability of the evidence or its adequacy will come into operation only when the same is laid down and the proceedings is conducted in accordance with law this has not happened in the instant case and as such the ratio laid down in ***Lolit Popli*** (supra) and relied upon by the respondent bank is not attracted in the facts of the instant case.

H. The D.A has discussed the documents filed before the E.O. in details but did not advert to such issue as to whether the documents have been proved or not. Merely because a document has been marked as an exhibit, it is well-settled in law that the same does not prove the document. The list of witness was supplied but none of the witnesses were called in the enquiry proceedings to depose and prove the documents for being tendered in evidence. Since, the witnesses were not called for, the question of cross-examining them also did not arise. Although, the petitioner had raised objection as to the mode of proving the document the EO did not take note of the same or considered the same and cross-examining the witnesses. The law in this regard is well-settled. A document can be objected to at the time of tendering the same, as the party attempting to tender the same is put on notice as to the shortfall thereof so that the party tendering the same after considering the objection can adopt a different mode in proving the said document. The P.O. despite there being written protest from the side of the writ petitioner, did not avail such opportunity to bring the witness/witnesses to prove the documents and tender the same in evidence. In this regard, one can rely upon the judgment reported in 2003 (8) SCC 752 ***[R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple]*** and 2006 (11) SCC 331 ***[Shyamal Kumar Roy v. Sushil Kumar Agarwal]***. It is also true that the party who allows a document to be exhibited without objection cannot at the argument object to such document as held in AIR 1972 SC 608 ***[P.C. Purushothama Reddiar v. S. Perumal]*** but in the instant case, the petitioner has raised objection as to the documents as to be marked as exhibit time and again and in writing. Thus, the petitioner cannot be precluded from objecting to the document at the argument stage. It is also held in 2007 (4) SCC 306 ***[Amar Nath Agarwalla v. Dhillon Transport Agency]*** that documents filed but not exhibited cannot be looked into. As discussed hereinabove, Roop Singh Negi(supra) clearly holds that though the rigours of Indian Evidence Act, 1872 is not applicable to a disciplinary proceedings but principles analogous thereto are applicable.

I. Considering the ratio laid down in the judgments referred to hereinabove, it can be safely concluded that the documents which were marked as exhibit before the enquiry officer were only filed and not proved and as such could not have been looked into unless the same were proved. Moreover, legality of a document can also be questioned at any stage even if it is tendered in evidence without any objection as held in 2003 (8) SCC 752 ***[R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple].***

J. The accounts statements which are certified under The Bankers' Books Evidence Act, 1891 bears a mark of authenticity but the same has to be tendered through a witness and has to be also corroborated to prove the same. Mere filing of such a document even if it has the mark of authenticity can be questioned even at the argument stage. The petitioner appears to have questioned the same even prior to the documents being marked as exhibit. The petitioner has also contended that the documents which are in electronic mode are required to be proved as provided under the Indian Evidence Act, 1872 but the P.O. has not done so. Assuming without admitting that the strict mode of proving the documents in electronic mode as required under the Indian Evidence Act, 1872 is not required to be followed in a disciplinary proceedings even then the documents have not been proved while being tendered as exhibit as they were merely filed.

K. The order is based on no evidence. The E.O. has erroneously failed to admit admissible and material evidence as discussed hereinabove. The D.A. has ignored the objections raised by the petitioner in respect of the proof of documents and violation of natural justice before the E.O. as also before itself. The conclusion arrived at by the D.A. which has been proved by the Appellate Authority is arbitrary and capricious. No reasonable person could have had arrived at such a conclusion based on the materials before them.

L. The petitioner's contention is that he was not given inspection of the documents is also substantially correct as it appears from the minutes of the enquiry proceedings, the orders passed by the enquiry officer, the letters written by the petitioner and the subsequent minutes of the enquiry proceedings that several documents were no either gives inspection or photocopies were provided.

M. The argument of the respondent-bank that substantive compliance of the Indian Evidence Act, 1872 has been made before the enquiry officer is also not acceptable as the minutes of the meeting held by the E.O. does not substantiate the same. The E.O. has also not put any question to the petitioner with regard to the documents filed by the P.O., many of which may have the signature or contained the handwriting of the writ petitioner. Although, it is the consistent view that a delinquent employee should not be permitted to be exonerated on technical grounds as to the conduct of the enquiry proceedings but, the fact in the instant case is that the enquiry proceedings were not conducted in accordance with law. Even if the bank documents were not produced before the enquiry officer to substantiate the charges levelled against the petitioner but the same were merely filed and not tendered as exhibit by following the due process of law required to be observed for such purpose and were also not proved as held hereinabove.

N. On a conjoint reading of the documents it will be seen that he P.O. did not produce the documents for inspection of the writ petition despite there being specific direction. The respondent-bank tried to justify the grounds for not giving the documents but the same not only amounts to violation of the principles of natural justice but also raises a doubt in view of the applicability of the principle of adverse presumption against the bank.

O. Major penalty imposed against the petitioner is without any basis or justification in the facts of the case, evidence purportedly laid and other parameters as discussed above. It appears that the same has been imposed just to satisfy the ego of the superior officers.

P. At the same time although there has been specific allegation from the bank side that the petitioner's account has been credited by amounts from various accounts including those of constituents but the petitioner has failed to give any explanation for the same. The money from the account of the constituents is not credited to the account of the bank officer or his wife or his relative in normal course. There has to be a specific reason for the same. It was open to the petitioner to explain the reason or the case behind the same. In absence of any explanation from the side of the petitioner, it has to be accepted that such transactions are correct. The petitioner therefore becomes liable of being unbecoming of a bank officer even if the bank has not suffered any loss or there is no complaint from the side of the concerned constituents. The bank is therefore entitled to recover such amounts from the petitioner under Regulation 4D of the UCO Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 and return the same back to the concerned constituent or to the account which has been debited with such sum after complying with the requisite formalities.

Q. I have also gone through the UCO Bank Officer Employees' (Conduct) Regulations, 1976 and in particular, the procedure for imposing major penalty like removal of an employee from his services has been done in the the instant case. Looking into the proceedings, in the light of the judgment in Rajendra Kr. Dubey (supra), I find that the proportionality of punishment is such that it shocks the conscience of the Court. That the enquiry proceedings is faulty has been discussed in details in the foregoing paragraph. The D.A. and the Appellate Authority has spent pages after pages in delineating the allegations made against the petitioner but have only proceeded on the basis of the documents marked as exhibit by, the Enquiry Officer without following the due process. Since the entire process of tendering the document as followed before the EO the said documents the same could not have been looked into for less with such credence by the D.A. or the Appellate Authority. Moreover, the D.A. has in a stereotype manner set out the allegations levelled against the petitioner by the P.O. before the E.O. and has given mechanical finding on the same. In respect of a majority of the charges, the D.A. has held that the allegations are partly proved in respect of some of the allegations, it has been held that the same are proved. On a reading of the order o the D.A. it cannot be deciphered as to why some of the allegations were partly proved and not fully proved. Similarly the allegations which have been held to be proved also does not throw any light as to the reasons for which allegations have been held to have been proved.

R. In the majority of the findings arrived at by the D.A. it has been held that he petitioner has accepted the management exhibit (M.E.) and did not ask for mandatory examination of witness and cross-examination. The documents which are computer generated documents according to the D.A. has to be accepted beyond doubt. The loss to the respondent-bank according to the disciplinary authority may be financial or reputational. Even if there is no financial loss, violation of system procedure is always treated as misconduct under service regulations without even referring to the relevant provisions of the service rules or the applicable law. By giving this sort of finding, the D.A. has held the allegations against the writ petitioner is either proved or partly proved. A computer generated document cannot be sacrosanct as discussed hereinabove and should be treated to have been proved on the same being merely filed. P.O. did not examine any witness through whom the documents were sought to be proved and tendered for being marked as exhibit. In such a situation, the question of mandatory examination of the witness is not dependent upon the asking or not asking by the writ petitioner since the same is inconsequential as the bank was mandatorily required to prove it in accordance with law. The P.O.

has to follow the procedure to comply with the provisions analogous to that of the Evidence Act as laid down by the Hon'ble Supreme Court in Roop Singh Negi (supra).

S. The findings of the D.A. particularly, when it leads to a major penalty wherein the service of the employee here, the writ petitioner has been terminated. The Appellate Authority as appears from its order has also not delved into this aspect as to whether the documents have been proved but has only tried to justify that the P.O. by adopting the procedure as in the instant case has not caused any detriment to the petitioner. This view is also unsustainable as the procedure adopted by the P.O. which has been accepted by the E.O. and by the D.A. amounts to an enquiry held not in accordance with the procedure prescribed in law on that behalf. The conclusion on the very face of it is also wholly arbitrary as a person is being imposed major penalty without the documents being actually proved or tendered as required in law.

In the aforesaid facts and circumstances, the charge-sheet dated 9th November, 2018, the report of the Enquiry Officer dated 26th December, 2019, the order of the Disciplinary Authority dated 8th September, 2020 and the order of the Appellate Authority dated 8th September, 2020 are set aside and/or quashed subject to the bank being entitled to recover the entire amount which has been credited to the account of the petitioner and his wife at different times from the accounts of the constituents of the bank irrespective of these being any compliant or financial loss for the same. This direction is given as the petitioner has not been able to explain these transactions though obliged to do so and at the same time the bank has failed to prove its case and in the meantime the petitioner has super-annuated for which remanding the matter is also not considered to be an appropriate mechanism. A major penalty thus is modified to a minor penalty as per applicable service rules in the facts of instant case. The petitioner will, therefore, entitled to only the salary with dearness allowance and other emoluments which were recovered by him on the date of his suspension till the date of his superannuation without any increment or enhancement of salary that may have occurred in the petitioner's case during this time period.

T. Since, the petitioner has already retired, the petitioner shall get the difference between his unpaid salary and the subsistence allowance already recovered by him from the date of his suspension i.e., 13th December, 2017 till his superannuation. The petitioner shall not get any increment or promotion from the date of his suspension till his superannuation. The petitioner shall be entitled to receive all his retiral benefits computed on the basis of his last drawn pay as on 13th December, 2017 being the date of his suspension. The retiral benefits and other emoluments receivable by the petitioner shall be paid to him within four months from the date of this order. Retiral benefits and the difference between his minimum pay and the subsistence allowance will carry an interest at the rate of 6 per cent from the date of his superannuation till the same is actually paid in default of paying the principle sum within two months as directed, the interest rate will increase to 9 per cent. The bank shall be entitled to recover the aggregate of all amounts that has been transferred from the account of any constituent to his account or in the joint account with his wife with interest at the rate of 8 % from the date of each transaction on the money transacted from the amounts payable to the petitioner.

The writ petition being WPO no. 211 of 2021 is accordingly disposed of.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

Arindam Mukherjee, J.

Later:

Prayer for stay made on behalf of the respondent-bank is considered and rejected.

Arindam Mukherjee, J.