

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 13189 of 2018

Anupam Das

Vs.

Allahabad Bank & Ors.

For the writ petitioner	:-	Mr. Samim Ahammed, Adv. Mr. Arka Maity, Adv. Mr. Utsav Dutta, Adv. Ms. Saloni Bhattacharya, Adv.
For the respondent Bank	:-	Mr. Om Narayan Rai, Adv.
Hearing concluded on	:-	22.01.2021
Judgment on	:-	26.02.2021

Amrita Sinha, J.:-

The petitioner is aggrieved by the order of removal from service passed against him by the disciplinary authority on 14th December, 2017 and the order dated 10th May, 2018, affirming the same, by the appellate authority.

The petitioner was an employee of the Allahabad Bank. While he was in service a charge sheet was issued against him on 15th September, 2016. There were five Articles of Charge. Article-I: He proceeded on leave on several occasions without submission of proper leave application and without obtaining permission of the Competent Authority. Article-II: He remained on unauthorized absence from duty

upto 15th February, 2016. Article-III: He remained continuously absent from duty, in unauthorized manner, since 23rd February, 2016 till date. Article-IV: The letter sent to his residential address on 17th March, 2016 was returned with the remark “unclaimed” and the letter sent by e-mail was also not responded by him, though his correspondences with office were made from the same residential address and same e-mail. Article-V: He did not join in his transferred place of posting in violation of the order of his superior authority and also in violation of the order passed by the Hon’ble High Court.

The disciplinary authority was of the opinion that the aforesaid acts of omission and commission committed by the petitioner were in violation of Regulations 3(i) and 3(iii) of the Allahabad Bank Officer Employees’ (Conduct) Regulations, 1976 (herein after referred to as “Conduct Regulations”), amounting to misconduct under Regulation 24 of the said Regulations.

The statement of imputation of charges mentioned in details the days on which the petitioner remained absent unauthorizedly. The list of documents and the list of witnesses were also forwarded to the petitioner along with the charge sheet.

The petitioner did not participate in the disciplinary proceeding and all the letters sent to him by the enquiry officer and the presenting officer returned undelivered. The enquiry conducted ex parte was completed on 24th March, 2017 and the enquiry officer submitted his report on 31st August, 2017. The disciplinary authority on perusal of the enquiry report and upon analysis of the witnesses put forth in the

enquiry, concluded, that all the charges levelled against the petitioner was proved. The disciplinary authority by order dated 14th December, 2017 imposed the penalty of removal from service which shall not be a disqualification for future employment under Regulation 4(i) of Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 herein after referred to as the "D & A Regulations".

Aggrieved by the order passed by the disciplinary authority the petitioner preferred an appeal before the appellate authority on 19th January, 2018. By an order dated 10th May, 2018 the appellate authority dismissed the appeal preferred by the petitioner and upheld the order of the disciplinary authority.

Being aggrieved the petitioner has filed the instant writ petition.

The primary contention of the petitioner is that the charge sheet, enquiry report, findings of the disciplinary authority and the appellate authority does not disclose any misconduct within the meaning of Regulations 3(i) and 3(iii) of the Conduct Regulations.

He contends that there is no allegation in the charge sheet that his absence was either wilful or deliberate. Mere unauthorized absence does not amount to misconduct under the aforesaid Regulations and hence the charge sheet is vague. In support of the aforesaid contention the petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Krushnakant B. Parmar -vs- Union of India & Anr.*** reported in **(2012) 3 SCC 178** paragraphs 2, 3, 4, 14, 15, 16, 17, 18 and 19 wherein it was held that unless the absence was

wilful or deliberate the question of the action being unbecoming of the officer or failure to perform duty does not arise at all.

The petitioner has relied upon medical documents in support of his absence. He was suffering from medical problems and accordingly he was not in a position to join his duties. The absence in such a situation cannot be treated as wilful or deliberate.

The petitioner has mentioned in details the reasons for his absence in the appeal preferred by him before the appellate authority. He argues that none of the averments made by the petitioner has been disputed by the appellate authority, and as such, his absence not being wilful or deliberate ought to be condoned and the charge of misconduct is liable to fail.

The petitioner alleges mala fide at the time of passing of the order of transfer on 1st July, 2016 whereby the petitioner was transferred to Siliguri.

The petitioner submits that he could not take part in the disciplinary proceeding as the notices were not received by him. He submits that his employer was well aware of his e-mail number and the documents ought to have been sent to him through e-mail. Non-service of the documents relating to his disciplinary proceeding, including the enquiry report, has caused prejudice to him.

The petitioner contends that the respondents proceeded in a pre-determined manner. On the very day of issuing the charge sheet the employer had declared him to be on unauthorized leave.

According to the petitioner none of the documents relied upon by the employer were proved by the witnesses. Regulation 6(XIII) of the D & A Regulations mandates oral and documentary evidence to be proved by witnesses. That not being done, the entire disciplinary proceeding is liable to fail.

In support of the aforesaid contention the petitioner relies upon the judgment of the Hon'ble Supreme Court in the matter of **Ramji Dayawala & Sons (P) Ltd. -vs- Invest Import** reported in **(1981) 1 SCC 80** paragraph 16.

The petitioner submits that neither the report of the enquiry officer nor the disciplinary authority or the appellate authority contain any independent findings of facts. He submits that he raised as many as ten issues in his appeal before the appellate authority. The appellate authority chose to deal with only issue nos. 1, 3, 8, 9 and 10 and that too, while dealing with those issues the relevant evidences were not considered.

In this connection the petitioner relies upon the decision delivered by the Hon'ble Supreme Court in the matter of **Allahabad Bank & Ors. -vs- Krishna Narayan Tewari** reported in **(2017) 2 SCC 308** paragraph 7 wherein the Court held that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The Court observed that the writ court will certainly interfere with disciplinary enquiry or

the resultant orders, if the enquiry itself was vitiated on account of violation of principles of natural justice.

The petitioner argues that the appellate authority failed to appreciate that the order of transfer, despite being illegal, he intended to join his transferred place of posting, but because of health issues he was unable to join. The appellate authority did not deny the aforesaid averment made by the petitioner, thereby implying, that the reason for not joining the transferred place of posting has been accepted by the authority.

The last contention of the petitioner is that the punishment that has been imposed upon him is highly disproportionate. As the charges against him were vague and not even proved on evidence the punishment is shockingly disproportionate and is liable to be set aside by the Court.

Per contra, the learned advocate appearing on behalf of the bank submits that on 14th September, 2015 while the petitioner was in office, he complained of discomfort and uneasiness. The Branch Manager immediately arranged for medical help and the petitioner was sent to the Calcutta Medical Research Institute (CMRI). After administration of first aid the petitioner was released by the said hospital. The petitioner returned from CMRI and joined office on the self-same day without any further health problem. There was no indication in the medical documents of CMRI requiring the petitioner to take rest.

The petitioner, for no valid reason, remained absent on 15th September, 2015 without any prior notice or intimation. A letter was, however, sent by the petitioner on 16th September, 2015 to the effect that on consultation with a doctor, he was advised to take rest. The letter further indicated that he will resume his duties upon being declared fit by the doctor.

On 28th September, 2015, after a lapse of twelve days the petitioner returned to work and expressed his desire to join duties. As the petitioner was not carrying the fit certificate with him accordingly, he was advised to resume duties after he produces the fit certificate by the doctor.

The petitioner went away and did not make any communication with the branch till 4th October, 2015. On 5th October, 2015 the bank requested the petitioner to submit his leave application mentioning his probable date of joining.

On receipt of the aforesaid letter the petitioner returned to work on 13th October, 2015 and he was allowed to join duties. The petitioner again absented himself from work on 15th October, 2015 without any intimation, but reported to duty on 16th October, 2015. On and from 19th October, 2015, the petitioner remained absent continuously without any intimation. The petitioner, however, sent an email on regular basis in the morning, intimating that he was unable to attend office as he was unwell.

The bank by an e-mail dated 29th October, 2015 requested the petitioner to submit his application with detailed reasons for his absence and to intimate the expected date of his joining duty.

The petitioner by a letter dated 31st October, 2015 informed the bank that he was unable to attend office since October 19, 2015 as he was feeling uncomfortable, but assured that he would be joining very soon.

By a letter dated 5th November, 2015, the petitioner informed the bank that he would join on 10th November, 2015 but surprisingly the petitioner did not turn up on the said date. The petitioner ultimately joined duties on 12th November, 2015. In the meantime, the petitioner remained absent for about twenty four days from October 19, 2015 to November 11, 2015. He continued duty for five days and again absented himself on 18th November, 2015. He rejoined on 19th November, 2015 and again absented himself on 24th November, 2015. On 25th November 2015 he joined duty but absented himself from 27th November, 2015 without any intimation.

On 1st December, 2015 he communicated a message over the mobile phone and intimated the Assistant General Manager of the bank that he will join his duty on 3rd December, 2015. The petitioner, however, did not join on 3rd December, 2015. The bank, accordingly, by a letter dated 3rd December, 2015, requested the petitioner to explain his present position of health and to intimate his expected date of joining on becoming medically fit. The petitioner failed to reply to the said letter. A further e-mail was sent to the petitioner requesting him to

intimate his probable date of joining. The petitioner thereafter informed the bank that he was unable to join his duties due to the illness of his wife.

The petitioner thereafter visited the branch on 16th December, 2015 and expressed his desire to join. The Assistant General Manager of the bank requested him to provide the reasons for not replying to the bank's earlier letter dated 3rd December, 2015 as the same was required for onward transmission to the higher authorities. On being asked to submit the explanation, the petitioner got highly infuriated and left the branch after heated arguments with the Assistant General Manager. The matter was reported by the branch office to the branch head and the petitioner was called upon to submit his explanation for such untoward act. The petitioner submitted his explanation by a letter dated 29th December, 2015 but he did not turn up for resuming his duties.

On 12th January, 2016 the petitioner wrote a letter to the zonal office complaining, that though he was fit to resume duties since December 16, 2015, he has not been able to join his duties as he did not receive any communication or confirmation for resuming his duty. In reply, the petitioner was intimated that he was free to report for duty along with the medical certificate certifying his fitness. It was further clarified that the period of his absence was being treated as 'unauthorised'.

The petitioner visited the SME Finance Branch on 16th February, 2016 along with a medical certificate dated 15th December, 2015 certifying that the petitioner was fit to resume his duties on and from

16th December, 2015. The petitioner was directed to submit his explanation for not joining duty for such a long period of time. This infuriated the petitioner and he started an altercation with the Assistant General Manager of the Bank and thereafter left. The petitioner was asked to explain his conduct by a letter dated 16th December, 2015. The petitioner replied to the same by his letter dated 29th December, 2015.

The petitioner reported to work on 16th February, 2016 but again failed to attend office on 20th February, 2016, but thereafter joined on 22nd February, 2016 and then remained absent on 23rd February, 2016. On 24th February, 2016, he sent an e-mail that he was feeling uncomfortable and needed rest for a couple of days.

By a letter dated 22nd February, 2016, the petitioner was asked to explain the reason for not joining duties for the period 16th December, 2015 to 15th February, 2016. The petitioner was informed once again that his absence from duties was treated as unauthorized by the higher authorities.

By a letter dated 24th February, 2016 the petitioner intimated the bank that he was physically prevented from joining his duties.

In the month of March 2016, being the closing of the financial year, additional manpower was required in the Asset Recovery Management Branch (ARMB) of the Bank to deal with the sudden work load. The petitioner was temporarily posted at the ARMB of the Bank situated in the first floor of the same building where the petitioner was serving. The petitioner was sought to be served with the letter dated March 11, 2016 intimating him about his temporary transfer, but such

attempt failed as the postal envelope addressed to the petitioner returned unserved with the endorsement “unclaimed”. The order of temporary posting was thereafter communicated to the petitioner via e-mail. The petitioner did not reply and/or respond to the said order of posting.

By an order dated 1st July, 2016 the petitioner was advised to report at the zonal office, Siliguri for receiving posting orders on 4th July, 2016 as the Competent Authority of the bank decided to transfer him from the place where he was then posted.

The bank viewed the action of the petitioner as misconduct and initiated formal disciplinary proceeding against him. The petitioner did not participate in the disciplinary proceeding and ex parte order was passed removing him from service. The petitioner preferred an appeal against the said order but was unsuccessful.

According to the respondents, the disciplinary authority acted strictly in accordance with the provisions mentioned in the D & A Regulations. It has been submitted that due opportunity was given to the petitioner to defend himself. Principle of natural justice was duly complied with by the disciplinary authority. The petitioner, for the reasons best known to him, did not participate in the disciplinary proceeding. Notices were sent to the petitioner at the address registered in the official record of the bank. The un-served letters were returned with the endorsement ‘unclaimed’. The bank made a public advertisement in the newspapers and sought to draw the attention of the petitioner. There was no response from his side. The bank was left

with no other alternative but to proceed and conclude the disciplinary proceeding ex parte.

It has been argued that the scope of review in matters dealing with the disciplinary proceedings of employees under Article 226 of the Constitution of India is extremely limited. The Courts ought not to interfere with the order passed by the disciplinary authority if the same has been passed upon compliance of the provisions of law and principles of natural justice.

The respondents rely upon the decision delivered by the Hon'ble Supreme Court in the matter of **Ram Kumar -vs- State of Haryana** reported in **(1987) SUPPL SCC 582** paragraphs 7 and 8 and in the matter of **National Fertilizers Limited and Another Vs. P.K.Khanna** reported in **(2005) 7 SCC 597** paragraph 9 in reply to the argument of the petitioner that the appellate authority did not record any independent reasons at the time of affirming the order passed by the disciplinary authority.

The respondents also rely on the decision delivered by the Hon'ble Supreme Court in **Gujarat Electricity Board & Anr. -vs- Atmaram Sungomal Poshani** reported in **(1989) 2 SCC 602** paragraph 4 and in the matter of **Tushar D. Bhatt -vs- State of Gujarat & Anr.** reported in **(2009) 11 SCC 678** paragraph 18 on the issue that an order of dismissal was permissible on the ground of not joining the transferred place of posting.

Reliance has also been placed on the decision of the Supreme Court in the matter of ***Maharashtra State Mining Corporation -vs- Sunil*** reported in **(2006) 5 SCC 96** paragraphs 2, 3, 7, 8, 9 and 10.

On the issue raised by the petitioner that the documents placed before the disciplinary authority was not proved in the manner required to be done, the respondents relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Union of India -vs- H. C. Goel*** reported in ***AIR 1964 SC 364*** paragraph 23, ***G.M. (Operations) S.B.I. -vs- R. Periyasamy*** reported in **(2015) 3 SCC 101** paragraph 10, ***Union of India -vs- P. Gunasekaran*** reported in **(2015) 2 SCC 610** and ***State of Tamil Nadu & Ors. -vs- S. Subramaniam*** reported in **(1996) 7 SCC 509**.

In reply to the contention of the petitioner that the charges mentioned in the charge sheet did not include the charge of absence, it has been submitted that there are sufficient charges in the charge sheet clearly indicating unauthorised absence from work. The petitioner was all along aware of all the charges levelled against him. His devotion and sincerity towards his duty were lacking. In such a situation the non-recording of the appropriate Regulation dealing with absence will not make the charge sheet bad. In support of the aforesaid contention the petitioner has relied upon the decision of the Hon'ble Supreme Court in the matter of ***Union Bank of India -vs- Vishwa Mohan*** reported in **(1998) 4 SCC 310**.

The respondents pray for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties.

The petitioner was an officer employee of the Allahabad Bank. The service of the petitioner was a transferable one. The petitioner on 14th September, 2015, fell sick and had to be administered medical treatment. The petitioner reported to work on 13th October, 2015 but absented himself on the 15th October, 2015 without giving any prior intimation. Since thereafter the petitioner intermittently remained absent from duty, without any prior intimation, citing health reasons, either of himself or his wife. The petitioner did not submit any formal application for obtaining leave. In spite of giving assurance of reporting to duty on a particular day the petitioner did not turn up for work on more than one occasion.

It appears from records that the petitioner remained absent for eighty one days between 27th November, 2015 to 15th February, 2016 without submitting any proper application for leave.

According to Regulation 13 (1) of the Conduct Regulations no officer employee shall absent himself from his duty or be late in attending office or leave the station without having first obtained the permission of the Competent Authority. In case of unavoidable circumstances, where availing of prior permission is not possible or is difficult, such permission may be obtained later, subject to the satisfaction of the Competent Authority.

It appears in the instant case, that the petitioner absented himself from work without obtaining prior permission of the competent

authority for days together. The petitioner forwarded a message via email in the morning intimating that he would not be able to report to duty as he was not feeling comfortable. The discomfort of the petitioner was not backed up by medical reports. An officer of the bank ought not to absent himself from duty without any cogent reason. As the petitioner claimed that he was unwell, he ought to have submitted proper application(s) for leave along with supporting documents.

An employee ought to appreciate that he has been appointed/employed for a particular purpose, for performing certain assigned jobs. Not reporting to duty means that the work which is assigned to the employee has to be performed by some other person, as the work of a public authority ought not to be kept pending on account of absence of an employee. The bank in such a case would have been answerable, if the work is not performed or completed within the specified time limit. If an employee remains absent from office without giving any prior intimation then it becomes difficult for the employer in the matter of proper administration of the institution. The requirement of prior intimation is for the sole purpose of putting the employer on notice of the absence, so that the work may be assigned to some other employee and is not kept pending. In the absence of proper prior notice, the employer will not be in a position to assign the work to any other person.

The petitioner was handling the foreign exchange services of the bank. Non-reporting to work in such an important department certainly caused inconvenience to the bank. The petitioner by a letter dated 29th December, 2015 addressed to the Assistant General Manager of the

bank intimated him that there was huge work load and he had verbally requested to reduce his work load. Being aware of the fact that he was holding a responsible post, the petitioner ought not to have taken his duty in such a casual and cavalier manner.

The bank initiated a disciplinary proceeding against the petitioner on account of certain irregularities committed by him. There were as many as five charges mentioned in the statement and articles of charge framed against him. Three out of the five charges relates to his absence from work without obtaining prior permission and without submission of proper leave application. A further charge of not joining his transferred place of posting in violation of the order passed by the High Court, Calcutta has also been levelled against him. According to the bank, the same amounts to misconduct.

The petitioner has challenged the same, as according to him, the Regulation dealing with absence was not specifically mentioned in the articles of charge issued to him. The charge sheet mentioned violation of Regulations 3(1) and 3(3) of the Conduct Regulations. However, Regulation 24 relating to misconduct has also been mentioned in the articles of charge.

Regulation 24 of the aforesaid regulations mentions that a breach of any of the provisions of the Regulations shall be deemed to constitute misconduct punishable under the Regulations. The charges levelled against the petitioner clearly mention the fact of his remaining absent from office, without any valid permission and without submitting any documents. The same is in violation of Regulation 13, which certainly

amounts to misconduct punishable under the Regulations. 3(1) of the Conduct Regulations is a general provision which mentions that every officer employee shall, at all times take all possible steps to ensure and protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

Regulation 3(3) of the Conduct Regulations mentions that no officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior.

The aforesaid provision lays down the general principles that are required to be followed by all officer employees of the bank. The act of the petitioner in absenting himself from work without any prior intimation is in direct conflict with the provision of Regulation 3(1). Being absent from work without prior intimation cause serious prejudice to the bank and poses problems in the general administration and day to day functioning of the bank. The same is not in the interest of the bank, but is against the bank's interest. Not reporting to work on frequent basis reflects the employee's lack of devotion and diligence which is unbecoming of the bank officer.

The expression 'prior permission' as appearing in the Conduct Regulations has to be given due importance. The service condition of the employee requires a permission to be obtained from the competent authority before he remains absent from work. Remaining absent from

work without taking an expressed permission from the competent authority, in advance, amounts to misconduct as per the said Regulations.

The petitioner has also not acted in accordance with the order passed by his superior authority. He did not join his transferred place of posting in compliance with the order of his superior authority. The petitioner unsuccessfully challenged the order of transfer before this Court. In the order dated 23rd August, 2016 passed in W.P. No. 16506 (W) of 2016 filed by the petitioner, the Court specifically records that there is no question of staying the impugned order of transfer and the petitioner must report to Siliguri within ten days, failing which, the bank shall be at liberty to pass proper order including initiation of disciplinary proceeding against him. The disciplinary proceeding against the petitioner was initiated only after he did not comply with the direction passed by the High Court.

The notice of show cause and the subsequent letters and notices were communicated to the petitioner at the address which was mentioned in his official records. The same returned unserved with the endorsement "unclaimed". The bank has relied upon Regulation 20 of the D & A Regulations which mention that every order, notice and other process made or issued under the Regulations shall be served in person on the officer employee concerned or communicated to him by registered post at his last known address. Admittedly, the notices and the processes of the disciplinary proceeding were communicated to the petitioner at his last known recorded address. The same returned unserved. The bank thereafter made a public announcement in the

newspaper. The petitioner did not respond to the same. The petitioner tried to make out a case that the bank ought to have communicated the notices and the processes via e-mail as the petitioner regularly communicated with his superior officers via e-mail. The said contention of the petitioner cannot be accepted, as the mode of service of notice has been clearly mentioned in the D & A Regulations of the bank. Serving a copy via e-mail may be as a supplementary communication, in addition to the prescribed mode of communication, but the same cannot be treated as the primary and the only mode of communication. If the mode of communication as prescribed in the Regulations has been followed by the employer, then the same has to be accepted as a valid communication, irrespective of the fact whether a supplementary, additional communication over e-mail was made or not. It was the bounden duty of the petitioner to intimate the bank about his proper address and his change of address. The petitioner never recorded his present address in the official records maintained by the bank. It has been submitted by the bank that as many as twenty letters sent to the recorded address of the petitioner returned unserved.

The petitioner contends that as there is a separate Regulation dealing with absence from duty (Regulation 13 of the Conduct Regulations), the bank ought to have invoked the same and thereafter proceeded accordingly. As the bank did not invoke Regulation 13 accordingly, the charge of absence from duty cannot be attributed to the petitioner. It has further been submitted that the petitioner all along provided the reason for not reporting to duty to his superior officer. The absence was not wilful, and in the absence of a finding that the

petitioner remained wilfully absent from duty, the period during which he did not report for duty ought not to have been treated as unauthorized. The petitioner has relied upon the judgment delivered in the case of Krushnakant B. Parmar (supra) in support of his submission.

The Supreme Court in the matter of **Chennai Metropolitan Water Supply and Sewerage Board & Ors. -vs- T. T. Murali Babu** reported in **(2014) 4 SCC 108** paragraph 23 has laid down that the views expressed in the case of Krushnakant B. Parmar (supra) has to be restricted to the facts of the said case, regard being had to the real position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorized absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful, even if the employee fails to show the compelling circumstances to remain absent. The said decision has practically denuded the precedential value of the decision in Krushnakant B. Parmar (supra).

The petitioner has relied upon the decision delivered by the Hon'ble Supreme Court in the matter of **Roop Singh Negi -vs- Punjab National Bank & Ors.** reported in **(2009) 2 SCC 570** para 14 on the issue of proof of documents. The Supreme Court in the said matter held that the departmental proceeding, being a quasi-judicial proceeding, the charges levelled against the delinquent officer must be found to have been proved. It is the duty of the enquiry officer to arrive at a finding upon taking into consideration the materials brought on record by the

parties. Merely tendering the documents without proving the contents, thereof will not amount to the documents being proved. The petitioner submits that as the disciplinary proceeding was held ex-parte the documents relied upon by the management witness were merely tendered and not proved. Accordingly, no reliance can be placed on the said documents.

In reply to the aforesaid contention the respondents submit that the fact of the case of Roop Singh Negi (supra) is different from the facts of the case at hand. It has been submitted that the documents relied upon by the bank were the records of the bank comprising of the attendance register, the official communications and the letters and certificates produced by the petitioner. The said documents are of great evidentiary value and there is no requirement for proving the aforesaid documents separately at the time of proceeding with the departmental proceeding. The said documents were enough proof to pass order against the petitioner.

In this connection the respondent has relied upon the Constitution bench judgment delivered by the Supreme Court in the matter of H.C. Goel (supra), R. Periyasamy (supra), P. Gunasekaran (supra), S. Subramaniam (supra) on the issue that under Article 226 of the Constitution the High Court cannot consider the question of adequacy or sufficiency of evidence in support of a particular conclusion. If there is some evidence to arrive at the finding the Court will not question the same. Here, there are evidences galore against the petitioner.

The respondents rely upon the judgment delivered by a three judge Bench of the Hon'ble Supreme Court in the matter of ***Bhavnagar University -vs- Palitana Sugar Mills (P) Ltd. & Ors.*** reported in ***(2003) 2 SCC 111*** paragraph 59 on the issue that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

The respondents rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Ram Kumar -vs- State of Haryana*** reported in ***1987(Supp) SCC 582*** para 7 and 8 and the judgment of the Supreme Court in the matter of ***National Fertilisers Ltd. & Anr. -vs- P.K. Khanna*** reported in ***(2005) 7 SCC 597*** para 9 wherein the Court held that when the punishing authority agrees with the findings of the enquiry officer and accepts the reasons in support of such finding, it is not necessary for the punishing authority to again discuss the evidence and come to the same finding as that of the enquiry officer and give the same reasons for the findings. The Court held that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with the finding of the enquiry officer.

The respondents rely upon Regulation 7(2) of the D & A Regulations wherein it is mentioned that the disciplinary authority shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge. In the instant case, as the disciplinary authority accepted and agreed with the findings of the inquiring

authority accordingly, there is no requirement for recording further reasons for agreeing with the findings of the inquiry officer.

The Supreme Court in ***Gujarat Electricity Board & Anr. -vs- Atmaram Sungomal Poshani*** (supra) held that whenever a public servant is transferred he must comply with the order and failure to act in compliance with the transfer order would expose him to disciplinary action under the relevant rules. In the said case the respondent lost his service as he refused to comply with the order of transfer from one place to another. The Court was of the opinion that the respondent acted in an irresponsible manner in not complying with the order of transfer which led to his discharge from service.

In ***Tushar D. Bhatt*** (supra) the Court reiterated the aforesaid contention. The Court also reiterated the settled legal position that absence from duty without proper intimation is a grave offence warranting removal from service.

The primary charge against the petitioner in the case at hand is that he remained absent from service without any prior intimation, for days together and further failed to act in accordance with the direction given by the superior authority. By order dated 23rd August, 2016 passed in W.P. No. 16506 (W) of 2016 filed by the petitioner, the prayer of the petitioner for staying the impugned order of transfer was categorically refused by the Court with direction to the petitioner to report to Siliguri within ten days, failing which, the bank shall be at liberty to pass proper order including initiation of disciplinary proceeding against him.

While deciding the case of T.T. Murali Babu (supra) the Court relied upon the views expressed by the Court in the case of ***State of Punjab -vs- P.L. Singla*** reported in **(2008) 8 SCC 469** and was of the opinion that the unauthorized absence of an employee as a misconduct, cannot be put into a straight jacket formula for imposition of punishment and the extent of the punishment will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.

The petitioner has submitted that the punishment imposed upon him is highly disproportionate.

It is settled law that the Court, in review of the punishment imposed upon an employee, is not entitled to interfere with the same unless the punishment imposed shocks the conscience of the Court. In the instant case, the petitioner being an officer employee of the bank held a responsible post. He ought not to have absented himself for days together citing trivial reasons without any supporting documents. Forwarding a communication in the morning intimating the superior officer that he will not attend the office as he was not feeling well cannot be accepted to be a valid application for leave. Absenting from work for days together without any prior intimation and without any supporting document is certainly misconduct on the part of the petitioner.

A three judge bench of the Supreme Court in ***SBI -vs- Ramlal Bhaskar*** reported in **(2011) 10 SCC 249** made it succinctly clear that in a proceeding under Article 226 of the Constitution the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary

authority are supported by some evidence, the High Court does not re-appreciate the evidence and come to a different and independent finding of the evidence.

In the instant case, it is clearly evident that the petitioner remained absent without any prior intimation and without supporting documents. The explanation given by the petitioner for his absence not being found satisfactory, disciplinary proceeding was initiated against him. The petitioner was given several opportunities to defend himself in the said disciplinary proceeding, which the petitioner failed to avail as he did not receive the letters and the notices which were sent to him. The petitioner moved out from his residential address as recorded in the official records of the respondent authority and did not care to incorporate his present address in the official records. The public notices published by the bank in the newspapers were also not responded to by the petitioner and thereby he lost the chance of defending himself before the disciplinary authority.

The Supreme Court in the matter of Vishwa Mohan (supra) emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If it is not observed, the confidence of the public/depositors would be impaired.

The petitioner being an officer employee of the bank ought to have been more diligent, and should have acted in a responsible manner with absolute devotion. The action of the petitioner does not reflect the above qualities. The Court does not find any reason to interfere with the order

passed by the disciplinary authority duly affirmed by the appellate authority.

The writ petition accordingly fails and is hereby dismissed.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)