IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE.

W.P.A. 21237 OF 2010

SRI MURARI SARKAR

VS.

UNION OF INDIA & ORS.

For the petitioner	:	Mr. Durgadas Purokayastha, Mr. Jiban Hari Mallick, Mr. Sagar Chowdhury .... Advocates
For the Respondents	:	Mr. M. V. Viswanathan, Mr. S.N. Bera, Ms. Tanwi De ..... Advocates
Heard on	:	05.09.2018, 18.09.2018, 28.09.2018, 18.11.2019 and 24.02.2021.
Judgment on	**:**	**16th April, 2021**

Arindam Mukherjee, J.:

1) The writ petitioner, Murari Sarkar has in this writ petition challenged the final order dated 27th June, 2009 passed by the Executive Director & the Appellate Authority in an appeal preferred by the writ petitioner under the provisions of the Bank of Baroda Officer

Employees' (Discipline & Appeal) Regulations 1976 (hereinafter referred to as the said regulation). The appeal was filed challenging the order of the Disciplinary Authority dated 31st March, 2009. In appeal the order of the Disciplinary Authority was partially modified.

2) The facts leading to the passing of the Appellate order as against the writ petitioner are as follows:-

(a) Murari Sarkar, the writ petitioner while working as Junior Manager GR-I at Bank of Baroda (hereinafter referred to as the said bank) and posted at its Burrabazar Branch was served with a suspension order on 27th March, 2008 in contemplation of a disciplinary proceeding under the provisions of the said regulation. The suspension was with immediate effect.

(b) Thereafter on 5th May, 2008 the Deputy General Manager-in-Charge of the Zone of the Bank of Baroda issued a show cause letter containing four (4) allegations to be replied within seven days from date of receipt thereof. This letter was replied by the writ petitioner denying all four allegations. The Disciplinary Authority, however, was not satisfied with the reply of the writ petitioner and as such a disciplinary proceeding was initiated against Mr. Sarkar by issuance of Memorandum on 25th August, 2008 accompanied by a Statement of Allegations and Articles of Charge. Four allegations and five articles of charges were framed against the writ petitioner in the letter dated 25th August, 2008. The writ petitioner replied to the same by his letter dated 17th September, 2008.

(c) Mr. Prabhat Kumar Chatterjee, Senior Manager, ARM Branch of the said bank was appointed as the Inquiry Officer. The Inquiry Officer had set up a preliminary enquiry at 11 a.m. on 27th September, 2008 for appearance and hearing of the petitioner. At the preliminary hearing the writ petitioner denied all the allegations levelled against him and rejected the articles of charges framed which resulted in a full-fledged departmental enquiry proceedings.

(d) On behalf of the bank, Sri T.K. Biswas was appointed as the Presenting Officer (in short P.O.). The said P.O. in the departmental enquiry submitted the documents on which the bank relied upon along with the list of witnesses. The writ petitioner appointed Tridibesh Prasad Nanda, a manager in the said bank as the Defence Representative (in short D.R.) to represent the petitioner at the departmental enquiry.

(e) In course of the inquiry six witnesses – Surajit Roy, Somnath Sen, Narendra Nath Dave, Subrata Chatterjee, Amit Das and Rabindra Nath Chatterjee were examined on behalf of the bank and cross-examined by DR on behalf of the writ petitioner. The witnesses were all employees of the bank who had worked or were working with the writ petitioner till his suspension in different branches of the said bank. The writ petitioner also got himself examined and filed his written submission.

(f) The Inquiry Officer submitted his report on 29th January, 2009 holding that the four allegations of the charges have been proved against the writ petitioner.

(g) On 31st March, 2009 the Disciplinary Authority issued an order of dismissal from service against the petitioner, the operative part whereof is as under;

ORDER

In exercise of powers conferred upon me by sub-Regulation 5(3) read with Regulations 4 and 7 of Bank of Baroda Officer Employees' (Discipline and appeal) Regulations 1976, hereby order as follows:

"MR. MURARI SARKAR IS HEREBY DISMISSED FROM SERVICE OF THE BANK, WHICH SHALL ORDINARILY BE A DISQUALIFICATION FOR FUTURE EMPLOYMENT WITH EFFECT FROM THE DATE OF RECEIPT OF THIS ORDER."

FURTHER, THE SUSPENSION PERIOD OF MR. MURARI SARKAR TO BE TREATED AS PERIOD NOT SPENT ON DUTY AND HE WILL NOT BE ELIGIBLE FOR ANY BENEFITS DUE DURING THE SUSPENSION PERIOD.

The said order was partially modified by the Appellate Authority on 27th June, 2009, the operative part whereof is as follows:-

DECISION ON APPEAL

Accordingly, in exercise of powers conferred upon me under Regulation 17 (ii) of Bank of Baroda Officer Employees' (Discipline & Appeal) Regulation 1976, the penalty of "Dismissal from Bank's service which shall ordinarily be a disqualification for future employment" imposed by Disciplinary Authority on Mr. Murari Sarkar is hereby modified to. "Removal from Bank's service which shall not ordinarily be disqualification for future employment".

Further, there is no change in the treatment of period of suspension and it shall be treated as period not spent on duty.

The order will be effective from the date of order of the Disciplinary Authority i.e. 31.03.2009.

3) **Submission of the Writ Petitioner**

(i) The petitioner has alleged that neither the statement of allegations nor the articles of charges clearly specify as to the amount allegedly misappropriated by the petitioner. No complaint is there from any account holder about defalcation. In such circumstances the very basis of the formation of charges are vague. The petitioner alleges to have been victimized. The preliminary enquiry, according to the writ petitioner was conducted in a routine manner with the only intent to show compliance of natural justice. The letter proposing to hold disciplinary proceedings and the articles of charge, according to

the petitioner has been framed mechanically, arbitrarily, illegally and without authority.

(ii) The petitioner has also contended that as per rule 5(1) the Managing Director of the Bank is the sole authority to decide to institute any disciplinary proceedings and imposition of penalty against an officer-employee of the Bank. In absence of any such authority/direction, passed by the Managing Director of the Bank empowering the General Manager or Deputy General Manager by general or special order to institute a disciplinary proceedings in accordance with the rule 5 of the said regulation, the actions of the Deputy General Manager in respect of issuing show cause to initiate disciplinary action by the letter dated 5th May, 2008 and actions of the General Manager in issuing the memorandum of charge sheet vide order dated 25th August, 2008 are illegal, arbitrary, without jurisdiction and authority under law.

(iii) The petitioner further says that the allegations as against the petitioner are that of irregularities and not of illegality. The transactions complained of were not mala fide or done with mal-intention. The transactions were done with the approval of the account holder who had become friendly with the petitioner. The petitioner also alleges that the letter of admission relied upon by the bank as against the petitioner is tainted with fraud committed by the Branch Manager who induced the petitioner to sign such letter. The petitioner says to be not bound by such

admission. To support his contention, the petitioner refers to a Single Bench judgement and order of this Court dated 27th July, 2005 passed in **W.P. No. 15110 (W) of 2004, Samarendra Nath Roy v. Chairman, Eastern & N.P. Railway Cooperative Bank Ltd. & Ors**.

(iv) The disciplinary proceedings according to the petitioner began with the issuance of charge-sheet and ended with the imposition of penalty by the Disciplinary Authority. At every stage the Disciplinary Authority was to ensure compliance of natural justice which was violated in the petitioner's case right from the beginning when the petitioner was denied the opportunity to appoint D.R. at the preliminary enquiry which was fixed hurriedly to cause in convenience to the petitioner. The departmental enquiry was also conducted in a hurried manner denying the petitioner proper opportunity to represent his case. The preliminary enquiry according to the petitioner should not have been proceeded with before finalisation of the list of prosecution witnesses. The list of witnesses from the bank's side ought to have been forwarded with the memo of charges. No report as to the findings of the preliminary enquiry was provided to the petitioner.

(v) The Inquiry Officer by allowing the P.O. to examine witness and getting documents marked as Exhibit through them without there being a list of witnesses had exceeded his jurisdiction as also violated the principles of natural justice.

(vi) The Disciplinary Authority according to the petitioner mechanically accepted the finding of the Inquiry Officer which was based on wrong premise without independent application of mind. The Disciplinary Authority, therefor, has acted wrongfully, arbitrarily and illegally. The order of the Disciplinary Authority was liable to be and should have been set aside. The Appellate Authority according to the petitioner committed the same error by simply concurring with the findings of the Disciplinary Authority without himself applying his independent judicial mind. The order of the Appellate Authority is, therefor, also liable to be and should be quashed and/or set aside. In this context, the petitioner has relied upon two judgements reported respectively in **A. L. Kalra v. Project and Equipment Corporation of India Ltd.,** (**AIR 1984 SC 1361**)(**Para 13, 22, 26) and Ranjit Thakur v. Union of India and Others** (**1987 4 SCC 611**)

4) **Submission of the Respondents**

a) The respondents refute the petitioner's allegation that the particulars of transactions and amount were not mentioned in the statement and charge-sheet dated 25th August, 2008. The respondents say that the petitioner in his reply to the aforesaid memo dated 17th September, 2008 did not deny any of the allegations or charge but on the contrary admitted to have not followed the bank's rules in operating the CBS transactions. This in effect according to the respondents amount to admission of the

allegations. The respondents, therefore, say that it is too late in the day for the petitioner to allege that the statement of allegation and the articles of charges are devoid of particular. According to the respondents in actuality the memo dated 25th August, 2008 clearly and specifically delineated the allegation.

b) The respondents also denied the petitioner's allegation that neither the Deputy General Manager nor the General Manager was authorised to institute the disciplinary proceedings and impose penalty as against the petitioner being an officer-employee of the said Bank without prior approval of the Managing Director of the Bank under the provisions of Rule 5(1) of the said regulations. The respondents say that issuance of the memo dated 25th August, 2008 by the Deputy General Manager in charge of the zone is permissible as under the scope of regulations 5(1) and 5(3) of the said regulations and thus the penalty imposed is not void and/or nullity or mala fide which is liable to be set aside.

c) The respondents contend that the petitioner's allegations with regard to the show cause notice dated 5th May, 2008 gets completely wiped off from the petitioner's reply thereto dated 7th July, 2008. The admission in writing made by the petitioner on 29th March, 2008 despite being alleged to be obtained by fraud at a subsequent stage remains firmly anchored in view of the reply dated 7th July, 2008 wherein the petitioner says "That at the instance of the account holders respectively related with the said

accounts the transaction/banking transaction made and done with the consent approval and desire of the account holder not for my personal benefit…"

That the transactions were made by the petitioner instead of being denied is rather admitted. The petitioner only intends to justify his conduct with regard to such transactions admitted done by a petitioner.

d) The respondents further submit that the petitioner even in his appeal admitted his fault and merely prayed for changing the punishment of dismissal to any other sort of demotion but did not challenge the enquiry proceedings or the findings of the Disciplinary Authority as sought to be done in the writ petition. The respondent contends that such deliberate omissions on multiple opportunities available to the petitioner to refute the allegations as to the mala fide intentions on the part of the respondents and/or violation of principles of natural justice as sought to be done only in the writ petition disentitles the petitioner to challenge the order passed in the disciplinary proceedings on such ground. There was no mala fide intention on the part of the respondents or violation of principles of natural justice.

e) The respondents further contend that the allegation of violation of principles of natural justice that the petitioner was denied an opportunity of representation at the hearing are not only baseless

and incorrect but also without any iota of truth. A proper inquiry was conducted following the procedure as laid down in the said regulations. It is also an admitted position that the disciplinary authority had appointed the Inquiry Officer who allowed the petitioner to finalise the selection of his Defence Representative (D.R.) in terms of Regulation 8(2) of the said regulations. Even when the petitioner did not select his D.R. nor communicated his name to the Inquiry Officer before the commencement of the preliminary hearing a further opportunity was given when the petitioner appointed a D.R. These facts are also apparent from the writ petition, according to the respondents.

f) The respondents further contend that there is no substance in the petitioner's allegations as to non-examination of witnesses and improper procedure of enquiry proceedings. The said regulations were followed and principle of natural justice was complied with. The petitioner was furnished with a list of witnesses the documents intended to be relied upon by the said bank. The petitioner was allowed to cross-examine each of the bank's witness. Neither was the petitioner deprived of an opportunity to cross-examine the witnesses, nor did the Inquiry Officer examine and record anything outside the documents or beyond what was deposed. Moreover both the DR and the petitioner were present at all stages of the said proceedings but did not raise any objection to the procedure being followed at the enquiry stage. The Inquiry Officer as also the D.R. were allowed

to submit their respective written arguments at the end of the hearing. Equal opportunity was therefor, given to the petitioner of being heard adhering to the principles of natural justice.

g) The respondents also contend that the petitioner has not been able to show as to how the Disciplinary Authority and/or the Appellate Authority did not apply their mind independently and/or had any mala fide intentions to impose penalty upon the petitioner at any stage of the proceedings. The penalty imposed was based on multiple unexplained admissions of the petitioner at various stages of disciplinary proceedings. The petitioner had in fact admitted misappropriation of funds which amounts to breach of trust as against the petitioner and loss of faith on an officer in public employment. The petitioner according to the respondents though has made hue and cry as to fraud but have miserably failed to either make out a case of fraud based on particulars or otherwise. The conduct of the petitioner, according to the respondents on the other had buried the allegation of fraud. Thus, the penalty imposed is not void and/or nullity or mala fide or liable to be set aside.

5) Before adverting to the case at hand, I think it will be beneficial to consider the scope of judicial review in matters of Departmental Enquiry. A plethora of judgments have now settled the ambit and scope of Judicial Review in departmental enquiry proceedings taking into account the Forty-Second Amendment of the Constitution.

(i) In **Khem Chand vs. Union of India reported in AIR 1958 SC 300** being one of the earliest decisions wherein judicial review in respect of a departmental enquiry fell for scrutiny of the Hon'ble supreme Court two questions squarely fell for consideration *viz., what is meant by the expression "reasonable opportunity of showing cause against the action proposed" and at what stage the notice against the proposed punishment was to be served on the delinquent employee.*

The Hon'ble Supreme Court answered as -

"(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the inquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant ….".

(ii) In **A. N. D'Silva Vs. Union of India reported in AIR 1962 SC 1130** it was *".....held that the question of imposing punishment can only arise after inquiry is made and the report of the enquiry officer is received. It is for the punishing authority to propose the punishment and not for the inquiring authority to do so. The latter*

has, when so required, to appraise the evidence, to record its conclusion and if it thinks proper to suggest the appropriate punishment. But neither the conclusion on the evidence nor the punishment which the inquiring authority may regard as appropriate, is binding upon the punishing authority..." .

(iii) In **Union of India Vs. H.C. Goel reported in AIR 1964 SC 364** it was held that the employee *"....must have a clear notice of the charge which he is called upon to meet before the departmental inquiry commences and after he gets a notice and is given the opportunity to offer his explanation, the inquiry must be conducted according to the rules and consistently with the requirements of natural justice. At the end of the inquiry, the enquiry officer appreciates the evidence, records his conclusions and submits his report to the Government concerned. That is the first stage of the inquiry. After the report is received by the Government, the Government is entitled to consider the report and the evidence laid against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes a finding in favour of the public servant and the Government agrees with the said finding, nothing more remains to be done and the public servant who may have been suspended is entitled to be reinstated with consequential reliefs. If the report makes findings in favour of the public servant and the Government disagrees with the said*

findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the enquiry officer makes findings, some of which are in favour of the public servant and some against him, the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in its opinion, prima facie established against him, then also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly....." .

The Hon'ble Supreme Court thereafter discussed the object of the inquiry and role of the Inquiry Officer in greater details to find out whether the Government is acting mala fide. It was also held that in exercising jurisdiction under Article 226, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion but can and must enquire whether there is any evidence at all in support of the impugned conclusion.

(iv) In **Central Bank of India Vs. Om Prakash Gupta reported in 1969 (3) SCC 775** it was held that on the basis of the delinquents' own admissions, the only reasonable conclusion any responsible person would have come to is that the delinquent is unworthy of holding any responsible post – any minor irregularities in the

matter of conducting the enquiry cannot vitiate a finding which is so obviously correct. It was further held reasonable opportunity means *".....(i) opportunity to the concerned officer to deny his guilt and establish his innocence which means he must be told what the charges against him are and the allegations on which such charges are based; (ii) he must be given reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and (iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him".*

(v) In the judgment reported in, **2006 (4) SCC 713) Narinder Mohan Arya vs. United Insurance Co. Ltd & Ors.**, also in **2009 (2) SCC 570 Roop Singh Negi vs. PNB,** it was well settled that in a suit filed by a delinquent employee in a Civil Court as also a Writ Court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: *(1)* the Inquiry Officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See ***State of Assam* v. *Mahendra Kumar Das*** **[(1970) 1 SCC 709 : AIR 1970 SC 1255]**) (*2*) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See ***Khem Chand*** **(Supra)** and ***Om Prakash Gupta*** (**Supra**)

(*3*) Exercise of discretionary power involves two elements—(*i*) objective, and (*ii*) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See ***K.L. Tripathi* v. *State Bank of India*** **[(1984) 1 SCC 43 : 1984 SCC (L&S) 62 : AIR 1984 SC 273]**) (*4*) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See ***Sawai Singh* v. *State of Rajasthan*** **[(1986) 3 SCC 454 : 1986 SCC (L&S) 662 : AIR 1986 SC 995]**) (*5*) The Inquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. **(**See ***Director (Inspection & Quality Control) Export Inspection Council of India* v. *Kalyan Kumar Mitra*** **[(1987) 2 Cal LJ 344])** (*6*) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. **(See *Central Bank of India Ltd.* v. *Prakash Chand Jain*** **[(1969) 1 SCR 735: AIR 1969 SC 983] , *Kuldeep Singh* v. *Commr. of Police*** **[(1999) 2 SCC 10 : 1999 SCC (L&S) 429])**

(vi) ***Union of India v. P. Gunasekaran*, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554 : 2014 SCC OnLine SC 917 at page 617**

"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:

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."

Also in Para 13 as reported in **Union of India v. P. Gunasekaran** (Supra) this Court held that while re-appreciating evidence the High Court cannot act as an Appellate Authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings: "13. Under Article 226/227 of the Constitution of India, the High Court shall not: (i) re-appreciate 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."

(vii) In one of the recent judgment reported in the case of **The State of Bihar & Ors. vs. Phulpari Kumari 2020 2 SCC 130** the aforesaid principle of judicial review has been summarized. The Supreme Court has observed that sufficiency of evidence is not within the realm of judicial review and interference of court should be limited

only to no evidence cases as the departmental inquiry does not follow strict rules of evidence as that in criminal trials. The other judgement of recent times reported in **2020 SCC Online SC 954 [Director General of Police, Railway Protection Force & Ors. vs. Rajendra Kumar Dubey**, the scope of judicial review has also been summarized.

viii) In the light of the above judgement it can be concluded that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. The disciplinary authority is the sole judge of facts where appeal is presented. The appellate authority has co- extensive power to re-appreciate the evidence or the nature of punishment. These principles have been also summoned in the Five Bench judgement of the Hon'ble Supreme Court reported in **1993(4)SCC 727 [Managing Director**

ECIL, Hyderabad & Ors vs. B. Karunakar & Ors.] which has been consistently followed in the subsequent judgements.

Findings: -

After going through the materials on record and considering the respective contention in the touchstone of the various judgements laying down the ratio and tests of judicial review in departmental proceedings, I notice the following:-

(i) On 27th March, 2008, the General Manager being a Competent Authority under regulation 3(f) of the said regulation issued a suspension order (in contemplation of a disciplinary proceeding) and communicated the same to the petitioner. The petitioner admittedly received the same.

(ii) By a letter dated 5th May, 2008, the Deputy General Manager, In-charge of the Zone being the authorized officer under the said regulations issued a show cause notice to the petitioner clearly indicating therein the facts leading to the charges of wilful violation of the extant guidelines of the said bank, that the acts of the petitioner were with mala fide intention, the petitioner had committed fraud as well as breach of trust. On a plain reading of the said letter the allegations against the petitioner can be clearly understood and the points on which the petitioner was to show cause can also be specifically deciphered. The petitioner admittedly received this letter and has replied to the same by his letter dated 7th July, 2008. It

also appears from the reply that there was no difficulty in the petitioner in appreciating the charges levelled against him. In is only in the writ petition; the petitioner has taken the point. This contention of the petitioner raised at the belated stage even if, considered is unacceptable in view of the petitioner's conduct as apparent from his reply.

(iii) The General Manager as the Disciplinary Authority issued a memo dated 25th August, 2008 informing the petitioner that a Disciplinary Proceedings (DP) under regulation 6 of the said regulation will be held against the petitioner. The Articles of Charges and the Statement of Allegation were annexed to the said memo. The petitioner's statement of defence was also invited. The Articles of Charges and the Statement of Allegations on a plain reading clearly demonstrate the charges levelled against the petitioner and the supporting statement for such charges was also provided. I find that the said officer in terms of the schedule of the said regulation is competent to issue such notice. The petitioner's objection about the competence of the said officer is ruled out.

(iv) The petitioner admittedly received the memorandum dated 25th August, 2008 with its annexures being the Articles of Charges and Statement of Allegations. The petitioner understood the charges and replied to the same on 17th September, 2008. It is only at a belated stage i.e., before this Court the petitioner has alleged about the vagueness of

charges. On a close scrutiny of the documents up to the petitioner's reply dated 17th September, 2008 the petitioner's allegation as to the vagueness of charges cannot be accepted.

(v) Although the memorandum dated 25th August, 2008 does not say that the petitioner's reply dated 7th July, 2008 has been considered while issuing such memorandum but the fact of issuance of such memorandum clearly demonstrate that the disciplinary authority was not satisfied with the reply of the petitioner. Non-mentioning of the petitioner's reply in the said memo at the highest can be an irregularity and not an illegality to invalidate the disciplinary proceedings. The petitioner is also not deprived of a reasonable opportunity of hearing for such omission which can be urged or construed as violation of principles of natural justice. This is more so in view of the subsequent steps taken in the departmental proceedings. In the said memorandum, the Disciplinary Authority has also appointed an Inquiry Officer and a Presenting officer in terms of the said regulation. The Disciplinary Authority, therefore, did not retain with itself the enquiry required for going into the articles of charges and statement of allegations and had informed the petitioner about the Inquiry Officer and the Presenting Officer. The Disciplinary Authority was well within its power and authority conferred under the regulation to appoint such Inquiry Officer and the Presenting Officer.

(vi) The Inquiry Officer fixed a date of preliminary hearing of the case on 27th September, 2008 which was duly communicated to the petitioner. The petitioner accepted the same and attended the preliminary hearing on 27th September, 2008.

(vii) The minutes of preliminary enquiry as appears from the record was duly signed by the petitioner and was also received by him. The petitioner thereafter by a letter dated 30th September, 2008 appointed Tridibesh Prasad Nanda as the Defence Representative to defend the petitioner. In the enquiry proceedings, 7 witnesses were examined by the Presenting Officer who were duly cross-examined. The petitioner was given ample opportunity to look into the documents sought to be relied upon by the bank in the enquiry proceedings. The minutes of the enquiry proceedings clearly show that the same is signed by the Inquiry Authority, Presenting Officer, Defence Representative and the petitioner. The petitioner was, therefore, given reasonable opportunity of hearing as also every opportunity to represent his case before the Inquiry Officer which is in compliance with the principles of natural justice.

(viii) The statement of the Presenting Officer submitted on 16th December, 2008 was duly made over to the petitioner. The petitioner had filed his written argument through the Defence Representative which is also on record. After considering such written submission, the Inquiry Officer prepared and

submitted his report before the Disciplinary Authority on 29th January, 2009. The enquiry report was admittedly made over to the petitioner inviting his response thereto. There is as such compliance of the principles of natural justice even at this stage. The enquiry report does not provide for any specific punishment for which it can be said that the Inquiry Officer exceeded his jurisdiction.

(ix) The petitioner by a letter dated 12th February, 2009 which is also on record, requested the Disciplinary Authority for sympathetic treatment and benevolent consideration. In the said letter, the petitioner has virtually admitted the allegations levelled against him and has expressed his repentance for the same. The petitioner also promised to rectify himself and prayed for a lenient view being taken against him.

(x) The Disciplinary Authority after considering the enquiry report and the materials on record agreed with the observations of the Inquiry Officer contained in the enquiry report and found that 3 out of the 4 allegations contending the statement of allegations were conclusively proved against the petitioner. The Disciplinary Authority also held that though the fourth allegation has not been proved yet on the basis of proven allegations all the 5 articles of charges were established as against the petitioner. The Disciplinary Authority, therefore, concluded that the charges being serious

in nature and that the petitioner's actions being derogatory, prejudicial and detrimental to the interest of the said Bank. The Disciplinary Authority in terms of regulation 5 (3) read with regulations 4 and 7 of the said regulations, therefore, imposed a major penalty as against the petitioner. Since the Disciplinary Authority has accepted the report of the Inquiry Officer, the question of the Disciplinary Authority inviting petitioner's views prior to declaring the punishment also does not arise in view of the ratio laid down by the Hon'ble Supreme Court in Narinder Mohan Arya (Supra) and Roop Singh Negi (Supra).

(xi) The petitioner preferred an appeal on 6th May, 2009. The Appellate Authority as will appear from the order dated 27th June, 2009 considered the allegations, the charges, the findings of the Disciplinary Authority, the grounds of the appeal and after discussing the matter passed his judgment. In fact, the Appellate Authority modified the order of the Disciplinary Authority by holding "removal from bank's service which shall not ordinarily be the disqualification for future employment". The Appellate Authority also held that the period of suspension shall be treated as a period not spent on duty. The Appellate Authority, therefore, cannot be said to have not applied his independent mind while performing quasi judicial function. The proof in a disciplinary proceedings has the trappings of proof in a civil matter and is

not required to be proved beyond reasonable doubt like in a Criminal Case as held in Phulkumari (Supra) and Rajendra Kumar Dubey (Supra)

(xii) It is evident from the enquiry proceedings that the Inquiry Officer did not collect any evidence from outside of the materials submitted in the enquiry proceedings. The enquiry report on this ground cannot be said to be perverse. The petitioner was rendered an opportunity to cross-examine which the petitioner has availed through the Defence Representative. There is as such compliance of the principles of natural justice in this context. The Disciplinary Authority by applying his independent mind has concurred with the findings of the enquiry authority. The Appellate Authority has also independently scrutinised the materials taken into consideration by the Disciplinary Authority and thereafter has passed his order. After there being a concurrent finding by the Disciplinary Authority as also the Appellate Authority as to the charges as against the petitioner being proved, there is also no scope for interference by this Court in exercise of its authority under the Article 226 of the Constitution of India to re-appreciate the evidence and come to a finding which may be different from that of the Disciplinary Authority of the Appellate Authority. The High Court in exercise of its jurisdiction under Article 226 of the Constitution cannot consider the question of sufficiency or adequacy of evidence in

support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question as held in Roop Singh Negi (supra) cited by the petitioner. The High Court has to ask in terms of the said judgment whether there is any evidence at all in support of the impugned conclusion, which on being asked is found to be present. The charges are found to be proved as against the petitioner without even relying upon the petitioner's admission in the letter dated 29th March, 2008. Although the scope of going into the allegation of fraud as made out against the said letter of admission in writ jurisdiction is very limited, yet the petitioner has not been able to aver and even prima facie satisfy as to fraudulent nature of the said letter dated 29th March, 2008. That apart and in any event on going through the minutes of the enquiry proceedings, I do not find to come to a different conclusion from that what has been held by the Appellate Authority. The acts of the petitioner which has been admitted by the petitioner before the Disciplinary as also the Appellate Authority are sufficient enough for the said two authorities to hold that the petitioner is guilty of misconduct yet the bank has independently without relying upon the admission has proved the case. It is also clear from the order of the Appellate Authority that the said authority does not repose any confidence in the petition in allowing the petitioner to continue with the bank as an

officer of the said Bank. I also find no material or provision of law to differ from such findings.

(xiii) The judgements in A.L. Kalra (Supra) cited by the petitioner has been diluted in **1995 (6) SCC 749 [B.C. Chaturvedi vs. Union of India]; 1997 (3) SCC 387 [Secretary To Government & Ors vs. A.C.J. Britto and 2012 (5) SCC 242 [Vijay Singh vs. State of Uttar Pradesh & Ors]** and as such the same cannot be applied to the facts of this case. The findings of the Appellate Authority as a consequence thereof cannot also be interfered in judicial review. Similarly, the Single Bench Judgement in Samarendra Nath Roy (Supra) also has no application in the facts of this case.

(xiv) I have also considered the issue of disproportionate punishment though not specifically raised by the petitioner in view of one of the judgements cited by the petitioner being Ranjit Thakur (supra). I have considered some of the judgments delivered by the Hon'ble Supreme Court in this regard which are as follows : **i) 1995 (6) SCC 749 [B. C. Chaturvedi Vs. Union of India and Others] ii) 1998 (7) SCC 84 [Punjab National Bank vs. Kuj Behari Misra] iii) 2013 (10) SCC 106 [Deputy commissioner, Kendriya Vidyalaya Sangthan and Others Vs. J. Hussain] iv) 2014 (9) SCC 315 [Life Insurance Corporation of India and Others vs. S. Vasanthi] v) 2015 (8) SCC 272 [Nicholas Piramal India Ltd. Vs. Harisingh] vi) 2017 (2) SCC 528 [Chief Executive**

Officer, Krishan District Co-operative Central Bank Ltd. and Another vs. K. Hanumantha Rao and Another] vii) 2019(15) SCC 786 [Naresh Chandra Bhardwaj vs. Bank of India & Others] viii) 2019(16) SCC 69 [State Bank of India & Others vs. Mohammad Badruddin] ix) 2020 SCC Online SC 954 [Director General of Police, Railway Protection Force and Others Vs. Rajendra Kumar Dubey].

(xv) Keeping in mind the ratio laid down in the aforesaid judgements, I find no reasons to interfere with the order of the Appellate Authority being the order impugned in this writ petition. The Appellate Authority has considered the scope of reduction of punishment and has thereafter modified the order of the Disciplinary Authority. The offence committed by the writ petitioner attracts major penalty in terms of the said regulation and is not shocking to the conscience. Keeping in mind the petitioner was a bank officer dealing with public money and that he has compromised his integrity.

Conclusion

In the light of the discussion, analysis and findings made hereinabove, the writ petition is dismissed, however, without any order as to costs. The respondent bank shall within three weeks from date disburse all the benefits available to the petitioner in terms of the order of the Appellate Authority dated 27th June, 2009 as upheld by this order, if not already paid. The petitioner shall be

entitled to accept such benefits if offered by the bank without prejudice to his rights and contention.

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.)