

Avinash Sadashiv Bhosale (D) Thr. Lrs vs U.O.I. & Ors on 25 September, 2012

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Bench: H.L.Gokhale

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7005 OF 2012
(Arising out of SLP (C) No. 20394 of 2005)

Avinash Sadashiv Bhosale (D) Thr. LRs.	...Appellant
VERSUS	
Union of India & Ors.	...Respondents

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 30th March, 2005 passed in the Writ Petition No. 8606 of 2004 by the High Court of Bombay, by which the writ petition against the order of dismissal of the petitioner from service dated 19th July, 2003 and the order passed by the Appellate Authority on 27th July, 2004 affirming the said order of the dismissal was dismissed in limine.

3. Before advertng to the facts leading to the filing of the present appeal, we must notice that the petitioner Mr. Avinash Sadashiv Bhosale died during the pendency of this appeal. His legal heirs have been brought on record, in his place. However, for the sake of convenience, he shall be referred to as Mr. Bhosale or as the appellant whichever is appropriate.

4. It appears that Mr. Bhosale joined the services of respondent No.2 Bank as a Probationary Officer on 31st July, 1975. He was confirmed as an Officer in Junior Management Grade Scale-I on 31st July, 1977. In course of time, he was promoted to Middle Management Scale-II (August, 1984). Thereafter, he was further promoted as Officer in Middle Management Scale-III in August, 1994. In course of time, he was posted as the Branch Manager at Washi Turbhe branch on 31st January, 1998 and was officiating in the Senior Management Scale-IV.

5. Whilst he was working at Washi Turbhe branch, it was discovered that the branch had indulged in fraudulent transactions to the tune of Rs. 12 crores. On 8th July, 1998, the appellant was relieved from the branch of the aforesaid bank, presumably due to his alleged involvement in the said transactions. On 16th July, 1998, he apparently reported the fraud to the Crime Branch, CBD, Belapur, Navi Mumbai. The A.G.M. in charge of the Region IV, State Bank of India, Zonal Office, Mumbai was also informed. In the complaint made to the police, he had requested that the culprits who are involved in the fraud be identified. He had also asked the police to initiate suitable action against the culprits in accordance with law.

6. It is claimed by Mr. Bhosale that instead of taking action on the complaint submitted by him, the A.G.M. on 22nd July, 1998 wrote to the police indicating that the appellant had no locus standi to file the complaint. It was stated that Mr. Bhosale "is not an authorised person to lodge a complaint on behalf of the Bank, since he himself is involved in the alleged offence in the above matter." As noticed earlier, the appellant was relieved from the Branch on 8th July, 1998. He had protested that he had an excellent and unblemished service record in the Bank for the past 23 years. He maintained that he was entirely innocent and did not commit any breach of the service regulations of the bank. He pointed out that he proceeded on leave on account of sickness on 26th March 1998 and also that he was mostly either on leave or on some outdoor assignment duties during the period immediately preceding the detection of the said fraudulent transactions. Further, it has been claimed that certain officials in the Bank in connivance with each other committed fraud by purchasing cheques without his knowledge.

7. The appellant was suspended from service on 23rd July, 1998 alongwith one Mr. Yadneshwar Choudhary. However, the latter was soon reinstated in service as he was not made a co-accused in the criminal proceedings initiated against Mr. Bhosale and three other co-accused.

8. It appears that after completion of investigation by the police, the appellant was prosecuted for having committed the offences punishable under Sections 120(B), 420, 467, 468, 471 and 201 of Indian Penal Code alongwith three others who were the account holders. By judgment dated 4th December, 2001, Mr. Bhosale and the other co-accused were acquitted of all the charges.

9. Simultaneously to the criminal proceedings, the respondent bank had initiated departmental proceedings against Mr. Bhosale. He was served a charge sheet dated 14th January, 2000 containing articles of charge and statement of imputation of misconduct in terms of Rule 68(2)(iii) of the State Bank of India Officers Service Rules, 1992 (hereinafter referred to as the “1992 Rules”). In the aforesaid charge sheet certain specific and serious allegations have been made against Mr. Bhosale. The statement of imputation alleges that after his transfer at Washi Turbhe Branch on 31st January, 1998 from Rabala Trans Thane Creek Branch, he permitted M/s Kalgindar Construction Company Pvt. Ltd. to open a current account at Washi Turbhe Branch without completing the required formalities. Further, the account was allegedly opened with a view to accommodate the said construction company at a later date by executing the fictitious Demand Draft (D.D.) purchase transactions. The statement of imputation thereafter tabulates the departure from established norms which are to be observed by the Bank for DD purchase. It is alleged that Mr. Bhosale indiscriminately and without any justification authorised D.D. purchase of 11 cheques aggregating to Rs.5,51,51,070/- drawn in favour of M/s Kalgindar Construction Company Pvt. Ltd. and presented by it for credit of proceeds thereof to its Current Account. All the cheques so discounted except one for Rs.5 lacs were beyond the discretionary powers vested in Mr. Bhosale. While allowing D.D. purchases, no D.D. purchase limit was fixed for the said construction company, nor was the genuineness of the transactions or credentials of the parties ascertained by Mr. Bhosale. All the D.D. purchase transactions in question were also not reported to the Controllers. The high value cheques were allowed to be handed over to the representative of the said construction Company, instead of dispatching them to the Bank’s branch located at the centre by Regd. A.D. Post. This deliberate action of Mr. Bhosale facilitated the said construction company to perpetrate a fraud on the Bank as the said cheques did not reach the drawee Banks.

10. Charge No.2 narrates a similar incident where Mr. Bhosale allowed M/s. Kumar Constructions Company, a proprietary firm, to open a current account on 15th June, 1998 without making enquiries of antecedents of the proprietor and completing the other required formalities with a malafide intention to accommodate the aforesaid company at a later date by allowing fictitious D.D. purchase of cheques. Thereafter, the actual details of the D.D. purchase are tabulated.

11. The third Charge in the list of allegation relates to M/s. Kalani Builders and Developers Pvt. Ltd., dealing in construction business. The aforesaid company submitted a proposal prepared by a Chartered Accountant for being extended credit facilities. Based on the aforesaid proposal, Mr. Bhosale sanctioned cash credit limit of Rs.20 lacs (fund based) and Rs.20 lacs (non-fund based). All this was done by him without making independent enquiries, carrying out pre-sanction survey, arranging visits by the field officer or by himself, properly scrutinizing and appraising the proposal, compiling an opinion report on the borrowers and the guarantors and obtaining recommendations of the field officer. Mr. Bhosale, within a period of one month from the date of sanction of cash credit limit on 1st June, 1998 permitted D.D. purchase of a high value cheque for Rs.31,00,980/-, which was beyond his discretionary powers. He had not ascertained the genuineness of the large value D.D. purchase transaction nor made enquiries about the credentials of the drawer of the cheque. He also allowed cash withdrawals of Rs.30 lacs. Further, he directed the Dispatch Clerk to hand over the said purchased cheque to the representative of the said company for dispatching it to the drawee Bank instead of dispatching it by Regd. A.D. Post. Charge No. 3(iii) alleges that on 9th

May, 1998, Mr. Bhosale issued a Letter of Credit for Rs.19,87,000/- on behalf of M/s. Kalani Builders Pvt. Ltd., without proper scrutiny/assessment of the required particulars. Even the counter guarantee was not obtained, nor was it ensured that obligations of the said company would be met on due date. Due to his reckless financing and allowing D.D. purchase to M/s. Kalani Builders and Developers Pvt. Ltd., the Bank suffered a huge financial loss to the extent of Rs.70 lacs. He wanted to conceal the facts of his irregular financing and, therefore, he did not obtain prior sanction of the Controllers or reported for post facto confirmation of the Controllers.

12. Charge No.4 alleges that Mr. Bhosale indiscriminately sanctioned loan aggregating to Rs.56.43 lacs to 19 borrowers under “Big Buy Scheme for purchase of vehicles during 30th April, 1998 to 1st June, 1998.” In these transactions, quantum of loans was to be related to the income of the borrowers. However, this basic factor was totally neglected.

13. Charge No. 5 points to the expenditure of Rs. 4.35 lacs incurred by Mr. Bhosale during the period from March, 1998 to June, 1998 for carrying out repairs to Bank’s Property and providing furniture at the Branch. This was done without inviting any competitive quotations and without seeking approval from the Controlling Authority.

14. Charge No.6 relates to 86 bills of stationery items amounting to Rs.1.16 lacs. Here again, the expenditure was incurred without seeking sanction from the Controlling Authority. On the basis of the aforesaid allegations, it was held that Mr. Bhosale failed to discharge his duty with utmost integrity, honesty, devotion and diligence to ensure and protect the interest of the Bank and acted in a manner in violation of Rule 50(4) of the 1992 Rules.

15. Thereafter, the enquiry proceedings were initiated against Mr. Bhosale. Mr. P.P. Thomas, Officer, Senior Management Grade Scale-V was appointed as the Inquiry Officer on 30th June, 2000. The preliminary hearings of the inquiry were scheduled to be held on 7th September, 2001 and 25th September, 2001, none of which were attended by Mr. Bhosale, despite being reminded in advance by the Inquiry Officer. Consequently, the preliminary hearing proceedings were held ex-parte. The regular hearing of the inquiry was scheduled for 17th January, 2002. Again, Mr. Bhosale expressed his inability to attend the same on account of sickness. The hearing of the inquiry was, therefore, postponed to 18th March, 2002, whereupon the regular hearing was conducted by the Inquiry Officer, in the presence of the presenting officer Mr. D.R. Bapat and Mr. Bhosale. The entire evidence, including the statement of Mr. Suresh Mahadeva Mahale was recorded in the presence of Mr. Bhosale. Mr. Mahale was working as a dispatcher at Washi Turbhe Branch during the period when the irregularities were committed thereat. Further, both Mr. Bhosale and the presenting officer were directed to submit their respective written briefs. Consequently, the presenting officer submitted a brief on 8th April, 2002, whereas Mr. Bhosale submitted his brief on 6th June, 2002.

16. Finally, the Inquiry Officer submitted his report on 19th August, 2002, whereby it was held that all the charges have been proved against Mr. Bhosale. A copy of the Inquiry Officer’s report was made available to Mr. Bhosale for his submissions. It appears from the record that Mr. Bhosale had submitted a detailed defence to the findings of the Inquiry Officer. Ultimately, the Disciplinary

Authority in its Order dated 19th July 2003 rejected all the pleas raised in defence by the appellant. Upon careful examination of the entire material on record, the disciplinary authority passed the following effective order:-

“The C.O. has also contended that the I.A. has not taken into consideration the acquittal of the C.O. in the criminal case as a sufficient and judicial proof of there being no misconduct on his part. He has further stated that the I.A. has not considered the fact finding reports compiled by the Bank officials S/S. Vasant Karve and Mukand Joshi, which have not implicated the C.O. for the lapses mentioned in the charge sheet served on him.

The Court has acquitted the C.O. of offences punishable under Indian Penal Code, whereas the departmental action is for his misconduct in terms of Rules 66 of the SBIOSR.

The above submissions have no relevance to the allegations inasmuch as the allegations levelled against the C.O. have been inquired by the I.A. in the departmental enquiry as per the procedures adopted / in-vogue in departmental enquiry. Reasonable opportunity was given to the C.O. to put up his defence before the I.A. After evaluating the evidence brought before the inquiry, the I.A. has held the allegations as proved.

On a careful examination and consideration, the submissions of the C.O. are found to be not convincing and hence not acceptable. I, therefore, considering the case in its entirety in my capacity as the Disciplinary and Appointing Authority, hold all the allegations and the charge as a whole as “Proved” on sufficient and acceptable evidence. The proven allegations are very serious in nature which have exposed the Bank to substantial financial loss. The proven misconduct evidently speaks of lack of honesty and integrity on the part of the Charged Officer. Considering all the facts and circumstances of the case, I am of the view that retaining the officer in the Bank’s Service is fraught with grave risks. I, therefore, consider that imposition of penalty of “Dismissal” under rule 67(j) of the State Bank of India Officers Service Rules on Shri A. S. Bhosale, Officer, MMGS III (under suspension), would meet the ends of justice, treating the period of suspension undergone by the official, as such. I order accordingly.

The C.O. may, if he so desires, prefer an appeal against this order to the Appellate Authority within 45 days from the date of receipt thereof in terms of Rule 69(1) and (2) *ibid.*”

17. Against the aforesaid order of dismissal, Mr. Bhosale preferred a statutory appeal on 19th August, 2003 under the 1992 Rules. Upon consideration of the submissions made by Mr. Bhosale in the appeal by Order dated 27th February, 2004, the Appellate Authority (Chief General Manager) dismissed the same. The relevant observations made by the Appellate Authority are as under:-

“I have examined the entire records of the case and on the basis thereof observe as under, seriatim:

i) The contentions of the appellant are without basis. The entire inquiry process has been correctly followed and fair opportunity has been provided to the appellant to defend himself.

ii) The Inquiry Authority in his report has unequivocally stated that the preliminary hearing, which was to be held on 17th August, 2001 was postponed to the 7th September, 2001, due to the charged official's absence. Later the hearing scheduled for 7th September, 2001 was also postponed to 25th September, 2001, for the same reasons.

The appellant's submission that the Inquiring Authority was biased therefore has no basis.

iii) The appellant's contention seems to be an after thought since in the Regular hearing on the 18th March, 2002, the appellant did not raise objections on this count. Moreover, during the hearing, the appellant confirmed having received these documents (presenting Officer's exhibits).

iv) It is apparent from the inquiry proceedings that the defence was provided a fair opportunity to defend itself. The appellant's attempt to cry foul at this juncture is therefore not valid.

v) This argument of the appellant does not have any basis. The charge sheet had clearly outlined these details.

vi) The process followed in a departmental inquiry is distinctly different from that followed in a proceedings before the court. The appellant's contention is therefore not acceptable.

vii) The appellant cannot disclaim responsibility on this count.

As the head of the Branch, he should have ensured that the Bank's instruction relating to dispatch of instruments (DD Purchased) should have been meticulously followed. Moreover, PW-1 (the dispatch clerk) has confirmed in the proceedings held on 18th March, 2002 that the covers containing the instruments were delivered at the behest of the appellant.

viii) The Inquiring Authority's conclusion that the initials on the Demand Liability Register were those of the appellant is supported by reasoned logic. The Inquiring Authority has lucidly portrayed as to how he reached such a conclusion.

ix) a) Allegation 1 (i) & (ii) :

The appellant cannot disown the fact that cheques were purchased for large amounts. He further cannot disassociate himself by stating that other officers permitted the withdrawals in the account. Moreover, the officials who permitted these withdrawals had done so, on the basis of the credit

balance available in the account(s).

b) Allegation 1(iii) :

In addition to stating that the cheques were delivered to the beneficiary at the instructions of Shri Balkawade, the witness had affirmed that these were also delivered at the behest of the appellant. His contention that the prosecution did not introduce key witness is irrelevant.

c) Allegation 1(iv) :

The submission of the appellant has no basis.

d) Allegation 2(i) and (ii) :

It has been proved in the inquiry that DD Purchases were authorised by the appellant. His attempt to pass the responsibility to officials who passed the withdrawals in the account is not appreciated. Further, it is a fact that the account was not properly introduced.

e) Allegation 2(iii), (iv) and (v) :

The appellant is merely trying to raise vague issues. As already stated earlier, the Inquiry Authority has very aptly concluded that the initials in the Demand Liability Register were that of the appellant.

f) Allegation 3 :

By merely stating that the documents were in the custody of the Field Officer, the appellant cannot disclaim responsibility. It was also open to the appellant to produce the field Officer as a defence witness.

g) Allegation 4:

The allegation has been proved based on the documentary evidence produced by the Presenting Officer in the course of the inquiry proceeding. The appellant has during the regular hearing held on 18th March, 2002 confirmed having verified the documents. His contention that no document was produced in the inquiry is therefore incorrect.

h) Allegation 5 :

The allegation has been proved based on documentary evidence. Splitting of Bills has been proved from the fact that 111 bills were paid in respect of 7 items of expenditure.

i) Allegation 6 :

The allegation was proved based on documentary evidence. From the evidence brought out in the inquiry it is apparent that the appellant split bills pertaining to stationery items, in order to ensure that the amount of the split bills falls within his discretionary powers.

x) Although there has been some delay in the issuance of the charge sheet, the appellant's claim that it had amounted to denial of opportunity to establish his innocence is not maintainable.

xi) The Honourable Court had acquitted the appellant on the subject matter of criminal conspiracy. The appellant cannot draw a parallel between the findings of the departmental proceedings and the Court's verdict.

Having so considered the various points brought out in the appeal, I am of the view that the appellant has not been able to put forth any convincing point of merit. The appellant has committed serious and grave irregularities. There is therefore no scope for modification of the penalty imposed on him. I therefore reject the appeal and order accordingly."

18. Mr. Bhosale challenged the orders passed by the Disciplinary Authority as well as the Appellate Authority by filing Writ Petition No. 8606 of 2004 in the High Court of Judicature at Bombay by Order dated 30th March, 2005. The writ petition was dismissed by a Division Bench of the Bombay High Court in limine. The aforesaid Order of the High Court is challenged by Mr. Bhosale in this appeal.

19. We have heard the learned counsel for the parties at length.

20. Mr. Sushil Kumar Jain, learned counsel appearing for the appellant submits that the disciplinary proceedings conducted against Mr. Bhosale are vitiated as he was acquitted by the Criminal Court. All the offences for which Mr. Bhosale was tried, and then acquitted by the criminal court, were founded on the facts which form the basis of the departmental enquiry. It has been emphasized that the departmental proceedings ought to have been stayed during the pendency of the criminal trial. Once the appellant had been acquitted by the trial court in its judgment dated 4th December, 2001, the appellant ought to have been reinstated forthwith.

21. Mr. Jain submits that continuation of departmental proceedings after the appellant was acquitted in the criminal trial is in violation of the principle underlying Article 20(2) of the Constitution of India. He argues that the statement of imputations of misconduct clearly show that the foundational facts on which the criminal charges were based are also the facts forming the basis of the charges levelled against the appellant. The learned counsel made a detailed and elaborate reference to the findings recorded by the learned Magistrate, in support of the submissions that there was clearly no evidence against the appellant on the basis of which the charges could be said to have been proved.

22. He pointed out that the learned trial court after considering the entire evidence on record has held and observed as under :-

“18.....If at all any foul play was played at the time of purchasing the cheques, persons like witness no.12 Yadneshwar Choudhary and others were responsible for it who were passing the cheques and putting their signatures. Instead of prosecuting such persons, prosecution has made them witnesses. In this way, when these persons are themselves at fault in the episode, naturally they will try to save their own skin when entered in the witness box therefore their evidence carries least evidentiary value.

23.....Sufficient evidence has come on record that during the period of transactions effected in between accused Nos.1, 3 and 4 with the aggrieved bank, all these bank officers were working in the bank and were taking active participation. If really any guilt is committed why all these persons are left at liberty by the prosecution and how they can be believed in the court. It has come on record that P.W. No.12 Yadneshwar Choudhary is suspended from his service only because of this case. Neither the Bank Officers nor the police is coming forward to make such a person accused in the case.

28.....Mr. Bhawe is very specific in stating that if the despatch clerk fails to follow this practice, he is personally liable for the breach. Admittedly, the accused No.2 never issued any direction in writing to the despatch clerk to give the cheques by hand delivery.

30.....Witness No.7 Suresh Mahadik who is despatch clerk himself is responsible and faulty in discharging his duty.

Witness No.10 Vinayak Kadam, witness No.11 Arun Balakawade, witness No.12 Yadneshwar Choudhary are all employees of the same bank where the incident has taken place. Not only this, but they actively participated in the transaction in question. Therefore to save their own skin, they may blame the Branch Manager. As such their evidence cannot be believed.”

23. Relying on the aforesaid observations, Mr. Jain submitted that the entire departmental proceedings are vitiated as the appellant has been made scapegoat for the misconduct committed by other employees of the bank who were acting in connivance with each other. According to Mr. Jain, the fraud could not have been committed unless there was connivance at every level from the Clerk to the Deputy Manager. It is for this reason that Yadneshwar Chaudhary was reinstated in service and then used as a witness against the appellant. Mr. Jain emphasised that inspite of efforts made by the respondent-Bank the learned Judicial Magistrate had clearly held that there is no evidence of criminal conspiracy against the appellant. Hence, he was acquitted of the offences punishable under Section 120-B IPC with the following observations :-

“In the result, I come to a firm conclusion that the accused are entitled to get clean chit in the matter”.

24. Mr. Jain also pointed out to certain other observations made by the learned Magistrate to demonstrate that the enquiry proceedings are vitiated by legal mala-fides as the same were initiated and conducted against the appellant with the oblique purpose of shielding the real culprits. He points out to the observations made by the trial court to demonstrate that there was no breach of the service regulations. It is pointed out by the learned trial court that the bank had failed to place on record any rule which would show that the appellant was empowered to purchase a cheque only to the extent of Rs.6 lacs. The trial court further pointed out that the bank had also not placed on record any document or resolution to prove that there was a limit of Rs.6 lacs for purchase of cheques by the appellant. The trial court further observed that:-

“If there was really any such rule then how all the bank officers actively participated in the process of purchasing cheques against or contrary to such so-called rule. Even the bank officers who have stepped in the witness Box did not feel shy to state that they are not fully conversant with banking rules.”

25. The learned trial court also adverted to the evidence of Witness No.16 as follows :-

“20. Witness No.16 Vinay Bhave who is Senior Officer of the bank working as a Regional Manager. He also in his examination-in- chief itself stated that he used to receive weekly reports of all the branches on every Friday including the branch in question, and he used to scrutinize the reports. If this gentleman was scrutinizing the reports on every Friday, how and why he kept mum when the cheques of more than Rupees 6,00,000/- were purchased in the concerned bank. This witness has tried to shift responsibility upon another bank officer named Shri Karve.”

26. The learned trial court further pointed out that the Bank rules were not known even to the other Senior Officers. Mr. Jain has made a reference to the observations made by the learned trial court whilst considering the evidence of PW-11, Arun Balkawade, who was a Senior Officer of the bank. In fact, he was next in the designation to the Chief Manager of Washi Turbhe branch at the material time. Even this witness admitted that he does not know fully all the rules and regulations regarding D.D. purchase of cheques. Learned trial court also concluded that since the other bank employee had actively participated in the fraudulent transactions, their statements could not be relied upon. Summing up the entire evidence, learned trial court had come to a firm conclusion that the accused are entitled to get “clean chit” in the matter. Relying on the aforesaid observations, Mr. Jain submitted that the acquittal of the appellant is proof of the total inability of the bank to produce any evidence in the trial. The appellant was acquitted as there was no evidence of culpability against him.

27. Relying on a number of judgments of this Court, Mr. Jain has submitted that the submissions made by the appellant before the Disciplinary Authority have been totally ignored without any basis. According to Mr. Jain, the Departmental Enquiry conducted against the appellant was an eye wash. In the Departmental Enquiry, the bank examined only one witness PW-7, Suresh Mahadik, who has been disbelieved by the criminal court. Such a witness who has been proved to be not truthful could not have been relied upon, in the departmental enquiry. He points out that the criminal court

recorded a categorical finding that there is no evidence to connect any particular officer with the non-completion of the proper documentation. In the face of such a finding, the Inquiry Officer, without any basis recorded the finding that the charge was proved against the appellant. Similarly, the evidence of Suresh Mahadik having been ignored by the learned trial court, no reliance could have been placed on the same by the Inquiry officer. Mr. Jain further pointed out that in the departmental enquiry, the bank had failed to produce any document or evidence by leading oral evidence. All the documents were merely placed on record by an employee of the bank. Mr. Jain further pointed out that the bias of the inquiry officer as well as the bank is obvious from the fact that all the employees involved in the completion of the transactions were neither prosecuted nor proceeded against departmentally. On the other hand, these individuals have been examined as prosecution witnesses. Having been acquitted, there was no justification for the bank to hold a departmental enquiry on the same facts and on the basis of same evidence.

28. Mr. Jain then submitted that the order passed by the appellate authority is vitiated as it has been passed with a closed mind. None of the submissions made by the appellant in the written submissions have been considered by the appellate authority. Further more, the submissions which have been considered have not been considered on the basis of the relevant material which was placed before the appellate authority.

29. In support of these submissions, Mr. Jain relied on some judgments of this Court which are as follows:-

Roop Singh Negi Vs. Punjab National Bank & Ors.[1], Calcutta Dock Labour Board & Ors. Vs. Jaffar Imam[2], Subhash Chand Vs. State of Rajasthan[3], Omar Salay Mohd Sait Vs. Commissioner of Income Tax, Madras[4], Union of India Vs. H.C. Goel[5], Narinder Mohan Arya Vs. United India Insurance Co. Ltd. & Ors.[6], G.M. Tank Vs. State of Gujarat & Ors.[7], Union of India & Ors. Vs. Naman Singh Shekhawat[8], Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.[9], Sawai Singh Vs. State of Rajasthan[10], and Pritam Singh & Anr. Vs. State of Punjab[11].

30. Mr. Rakesh Dwivedi, learned senior counsel appearing for respondent Nos. 2 to 5 has submitted that acquittal in a criminal case is not a bar for holding departmental proceedings against the bank official. Learned counsel pointed out that the proceedings before the criminal trial are different in nature to the proceedings in a Departmental Enquiry. Whereas prosecution had to prove the guilt of the accused in the criminal trial beyond reasonable doubt, in the departmental enquiry, the standard of proof is only preponderance of probabilities. Mr. Dwivedi further submitted that the appellant cannot take any advantage of non-production of the relevant evidence by the prosecution in the trial. The lapse committed by the prosecuting agency cannot be attributed to the bank. Further more, in the prosecution, the emphasis was on the involvement of individuals in a criminal conspiracy to defraud the bank. In the departmental proceedings, charges levelled against the appellant are that he has failed to maintain absolute devotion to duty. The charges were that he had disregarded the provisions of the bank regulations. Therefore, two proceedings cannot be placed in the same category. Mr. Dwivedi pointed out that, at the relevant time, the hierarchy in the Branch put the Branch Manager at the top. Below him were the Field Officer, Accountant, Cashier, Dispatch

Clerk and a Peon. As a Branch Manager, the appellant was the controller of all the affairs of the branch. He had to ensure that all necessary precautions had been taken to prevent any loss being caused to the bank. The learned senior counsel pointed out that the appellant was in-charge of a small branch. Therefore, had he exercised due care and caution, such a massive fraud could not have taken place. Therefore, there was no overlap between the criminal proceedings and the departmental proceedings. In the criminal trial, the prosecution had to prove that the appellant was guilty beyond reasonable doubt that he had conspired with the other officials of the Bank to commit the offences with which he had been charged. In the departmental proceedings, the enquiry was to investigate as to whether the appellant had performed his duties as a Branch Manager in strict adherence to the procedural rules/regulations of the Bank. He, therefore, refutes the submission of Mr. Jain that there is any infringement of any principle underlying Article 20(2) of the Constitution of India. In support of his submissions, Mr. Rakesh Dwivedi relied on the judgment of this Court in Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao.[12]

31. Answering the objections raised by Mr. Jain with regard to the conduct of the departmental enquiry, Mr. Dwivedi pointed out that all documents were duly produced and proved during the enquiry proceedings. The prosecution had failed to produce the relevant documents during the criminal trial. During the Departmental Enquiry, the appellant was asked to verify about the authenticity of the documents. At no stage, the appellant complained about their lack of authenticity. The appellant only made one statement during the departmental enquiry that his initials for purchase of the demand drafts had not been proved. Mr. Dwivedi pointed out to the procedural lapses committed by the appellant. The authenticity of the documents produced in the enquiry not having been doubted by the appellant, the findings of the Inquiry Officer can not be said to be based on no evidence. The appellant was aware that his limit for purchase of a cheque was Rs.6 lacs. Any purchase above Rs.6 lacs could only be done with the prior approval of the higher authorities. The appellant failed to take any prior approval from the higher authorities. In fact, the appellant never informed the higher authorities even after the transactions had been completed. Mr. Dwivedi pointed out that the transactions involved were so heavy, the appellant could not have failed to notice the irregularities. This would lead to a clear inference that either the appellant was acting in connivance with the account holders who were benefitted or he was grossly negligent in performance of his duties. Mr. Dwivedi then pointed out that once the appellant knew that the whole fraud has been exposed, he rushed to make a complaint to the police. Since by that time the higher officials had suspicion with regard to the conduct of the appellant, the police was informed not to act upon the complaint made by him. The actions of the appellant were in violation of Rules 48(4), 48(9), 66 and 67.

32. We have considered the submissions made by the learned counsel for the parties. We are not at all impressed by the submissions made by Mr. Jain.

33. We may, however, briefly notice the ratio of the judgments relied upon by the learned counsel.

34. In Roop Singh Negi's case (supra), this Court has reiterated the well known principle of law that findings of the Enquiry Officer have to be based on some relevant evidence. It is further re-stated that the orders passed by the disciplinary authority and the appellate authority, must also be

supported by relevant reasons. The principles are stated thus :

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

35. Similarly in Calcutta Dock Labour Board (supra) this Court has emphasised the principle that suspicion, however strong, cannot take the place of proof. The observations are as under:-

“We are, therefore, satisfied that the Court of Appeal was right in taking the view that in a departmental enquiry which the appellant held against the respondents it was not open to the appellant to act on suspicion, inasmuch as the appellant’s decision is clearly based upon the detention orders and nothing else, there can be little doubt that, in substance, the said conclusion is based on suspicion and nothing more”.

36. In the case of Subhash Chand (supra), it is emphasised that in order to avoid any innocent individual being picked up and branded as a culprit, the conclusions ought not to be based on doubtful or dubious circumstances treating them as of “beyond doubt” evidentiary value.

37. Similarly in Omar Salay Mohd Sait’s case (supra), this Court again emphasised that the conclusions ought to be recorded by the disciplinary authority on the basis of cogent evidence.

38. Mr. Jain then cited Union of India Vs. H.C. Goel (supra). Here again, the Constitution Bench of this Court emphasised that the suspicion, however, strong cannot be treated as proof against the accused in a criminal trial or a delinquent officer in domestic enquiry. Mr. Jain also relied upon the judgment in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. & Ors.[13] In paragraph 44 of this judgment, it is observed by this Court as under :-

“The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.”

39. In G.M. Tank's case (supra), this Court was considering the case of an appellant, who had been acquitted by the Criminal Court. He had been prosecuted for having committed the offence under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947. Upon examination of the facts and the evidence, it was observed by this Court that there is not an iota of evidence against the appellant to hold that he is guilty of having committed the offences under the Prevention of Corruption Act. It was further observed that the departmental proceedings in the criminal case are based on identical and similar (verbatim), set of facts and evidence. It is further observed that in fact, respondents did not produce any evidence in support of and/or about the alleged charges involved against the appellant. The criminal proceedings were initiated against the appellant for the offences under the Prevention of Corruption Act on the same set of facts and evidence, which was the basis of the departmental proceedings. The Court noticed the observations made in the case of *Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.*[14], which were as follows:-

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.” The Court further noticed the observations of this Court in *Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya & Ors.*[15], wherein this Court observed as follows:-

“8.The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has

provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings.” Having noticed the aforesaid observations, the Court proceeded to distinguish the same with the following observations:-

“The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the

appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same.” These observations are of no assistance to the appellant as the charges against him in the criminal trial were with regard to the commission of offences under Section 120(B), 420, 467, 468, 471 and 201 of IPC. In the departmental proceedings, the appellant has been punished on the basis of the findings that he failed to discharge his duties with utmost integrity, honesty, devotion and diligence. It was found that he had violated Rule 50(4) of the 1992 Rules. In our opinion, it would be the ratio of law laid down in the cases of Ajit Kumar Nag (*supra*) and Depot Manager, A.P. State Road Transport Corporation (*supra*) that would be applicable in the facts and circumstances of this case.

40. In the case of Union of India & Ors. Vs. Naman Singh Shekhawat (*supra*), on facts, the whole departmental proceedings were held to be vitiated by bias. It was a case where the offences of the disciplinary authority were held to be based on no evidence. It was also a case where no witness was examined to prove the allegations against the respondent Shekhawat. It was a case in which the only witness examined on behalf of the disciplinary authority was the jeep driver, MS who at the material time was accompanying the respondent. Even this witness did not support the Department’s case yet the departmental authorities held the charges against the respondent as proved. Besides, it was also found that the respondent had not been allowed services of a defence assistant of his choice. He was also not allowed to produce defence witness J. In paragraph 27 of the judgment, this Court observed that “the bias on the part of the inquiry officer is explicit from the record. Why the inquiry officer cross-examined the respondent is beyond anybody’s comprehension. He was not the prosecutor. A presenting officer had been appointed. The inquiry officer could not have taken over the job of the presenting officer, particularly when he was a superior officer.” In our opinion, there is no parallel in the facts and circumstances of the aforesaid case and the present case.

41. In Capt M.Paul Anthony’s case (*supra*), this Court reiterated the well established principle of law that proceedings in a criminal case and the departmental proceedings can proceed simultaneously. It was emphasised that the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. The observations made in paragraph 13 which are relevant in the facts of this case are as under:-

“As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff,

the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.” In our opinion, the facts of this case do not fall within the little exception culled out by this Court. The departmental proceedings herein and the criminal case are not grounded upon the same set of facts and the evidence. As noticed by the disciplinary authority as well as the appellate authority, the departmental proceedings related to honesty, integrity and devotion of the appellant as a very high ranking bank officer. On the basis of the evidence led before the enquiry officer, it was held that the appellant had failed to maintain the utmost integrity which is required for a bank officer.

42. The judgment in Sawai Singh’s case (supra) examined three main submissions made by the counsel for the appellant, namely (i) the charges were not clear (ii) there was no evidence to support the charges and on the contrary (iii) the evidence on record was contrary to the charges made. Upon examination of the evidence, it was held that there was a total absence of any cogent and reliable evidence against the appellant. It was, therefore, held that the findings of the enquiry officer are based on no evidence. It was also found that the charges levelled against the appellant were vague making it impossible for him to answer the same. In Paragraph 14, this Court observed as follows :

“14. Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused.” In paragraph 16, this court further emphasised that the charges must be proved against the charge-sheeted employee in accordance with rules of natural justice. The report of the inquiry officer must demonstrate that there had been fair play in action. This is a settled principle of law which has been duly respected by the inquiry officer, the disciplinary authority as well as the appellate authority in this case.

43. The judgment in Pritam Singh’s case (supra), in our opinion, has absolutely no relevance to the issues raised by the learned counsel for the appellant.

44. This Court recently reiterated the legal principle that departmental proceedings can be conducted simultaneously to the criminal trial in the case of Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao (supra). In this case, making reference to almost all the previous precedents, this Court has reiterated the legal position as follows:-

(a) There is no legal bar for both proceedings to go on simultaneously.

(b) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may

not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(c) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(d) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

In our opinion, the principles culled out by this Court would be a complete answer to all the submissions made by Mr. Jain.

45. In view of the aforesaid legal principles enunciated and reiterated by this Court, we cannot accept that because the appellant had been prosecuted, the departmental proceedings could not have been continued simultaneously. As pointed out by Mr. Dwivedi, the charges against the appellant in the criminal trial related to the commission of criminal offences under Sections 120(B), 420, 467, 468, 471 and 201 of Indian Penal Code. The proof of criminal charges was depended upon prosecution producing proof beyond reasonable doubt relating to the culpability of the appellant alongwith other persons. In the departmental proceedings, the basic charge was that appellant whilst posted as a Branch Manager of Washi Turbhe Branch, failed to discharge his duties with utmost integrity, honesty, devotion and diligence to ensure and protect the interest of the Bank and acted in a manner unbecoming of a Bank Officer. The aforesaid charge clearly related to the manner in which the appellant performed the duties as the Manager of the Branch of the Bank. It had nothing to do with any criminal liability attaching to such conduct. It must be emphasised that Bank officials act as trustees of funds deposited by the public with the Bank. They have an obligation to earn the trust and confidence of not only the account holders but also the general public. The standard of integrity required of the Bank officials, particularly the cashiers, accountants, auditors and the Management at all levels, is like the Caesar's wife, they must be above suspicion. Mr. Bhosale failed to maintain such high standards of integrity. He therefore, acted in violation of Rule 50(4) of the 1992 Rules. We, therefore, do not find any merit in the aforesaid submissions of Mr. Jain.

46. Mr. Dwivedi, in our opinion, has rightly pointed out that the conduct of the criminal trial was in the hands of the prosecuting agency. Having registered the First Information Report, the Bank had little or no role to play, apart from rendering assistance to the prosecuting agencies. In our opinion, the failure of the prosecution in producing the necessary evidence before the trial court can not have any adverse impact on the evidentiary value of the material produced by the Bank before the Inquiry Officer in the departmental proceedings. Before the Inquiry Officer, the Bank had placed on the record all the relevant documents which clearly establish that the appellant had exceeded his discretionary powers in purchasing the cheques and issuing demand drafts to show undue favour to the three construction companies named in the charge sheet. In view of the above, the findings recorded by the Inquiry Officer can not be said to be based on no evidence. It is a settled proposition of law that the findings of Inquiry Officer cannot be nullified so long as there is some relevant

evidence in support of the conclusions recorded by the Inquiry Officer. In the present case, all the relevant documents were produced in the Inquiry to establish the charges levelled against the appellant. It is a matter of record that the appellant did not doubt the authenticity of the documents produced by the Bank. He merely stated that the signature on the documents were not his. The aforesaid statement of the appellant was nullified by Mr. S.M. Mahadik, who appeared as a witness for the Bank. He clearly stated that he recognized the signature of the appellant as he had been working as his subordinate.

47. The findings recorded by the Enquiry Officer cannot be said to be based on no evidence. In such circumstances, the appellant cannot take any advantage of the findings of innocence recorded by the criminal court. The 'clean chit' given by the learned Magistrate was influenced by the failure of the prosecution to lead the necessary evidence. No advantage of the same can be taken by the appellant in the departmental proceedings.

48. We also do not find any merit in the submissions made by Mr. Jain that the order by the Disciplinary Authority is vitiated by non- application of mind. The extracts reproduced above would clearly indicate that the Disciplinary Authority was alive to all the submissions made by the appellant. The Disciplinary Authority had taken into consideration all the relevant material and only then concluded that the charges have been duly proved against the appellant. Furthermore, it is a matter of record that the appellant was duly supplied a copy of the Inquiry Report and he had submitted detailed objections to the same. These objections were placed before the Disciplinary Authority together with the Inquiry Report. Therefore, the appellant can not possibly claim that there has been a breach of rule of natural justice.

49. Similarly, the Appellate Authority has also given cogent reasons in support of its conclusion. This is also apparent from the extract of the order of the Appellate Authority reproduced above.

50. In view of the aforesaid, we find no merit in this appeal and the same is hereby dismissed.

.....J. [Surinder Singh Nijjar]J. [H.L.Gokhale] New Delhi;

September 25, 2012.

- [1] (2009) 2 SCC 570
- [2] 1965 3 SCR 453
- [3] (2002) 1 SCC 702
- [4] AIR 1959 SC 1238
- [5] AIR 1964 SC 364
- [6] (2006) 4 SCC 713
- [7] (2006) 5 SCC 446
- [8] (2008) 4 SCC 1
- [9] (1999) 3 SCC 679
- [10] (1986) 3 SCC 454
- [11] AIR 1956 SC 415

- [12] (2012) 1 SCC 442
- [13] (2006) 4 SCC 713
- [14] (2005) 7 SCC 764
- [15] (1997) 2 SCC 699
