GAHC010007712012

2024:GAU-AS:8837

# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : WP(C)/3949/2012**

NILA KANTA SAIKIA
SR NO.29207/PEON INDIAN BANK DISMISSED, S/O LATE CHENI RAM SAIKIA, R/O BIROH BEBEJIA, P.O. CHENCHOWA, PIN -782002, P.S. NAGAON SADAR, DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM, HOME DEPARTMENT, DISPUR, GHY-6, ASSAM

2:THE SUPERINTENDENT OF POLICE
NAGAON
NAGAON-782001
ASSAM

3:INDIAN BANK
REPRESENTED BY THE GENERAL MANAGER HRM/PandD
INDIAN BANK
CORPORATE OFFICE
254-260
AVVAL SHANMUGAM SALAI
ROYAPETTAH
CHENNAI-600014

4:THE DY. GENERAL MANAGER/APPELLATE AUTHORITY DP CELL
H.Q. HRM DEPARTMENT
INDIAN BANK 66
RAJAJI SALAI
PB NO.5029
CHENNAI-600001

5:THE CHIEF MANAGER/DISCIPLINARY AUTHORITY
INDIAN BANK
VIGILANCE CELL
CIRCLE OFFICE
SILPUKHURI
GHY-3
ASSAM

6:THE ASSTT. GENERAL MANAGER AND DISCIPLINARY AUTHORITY
INDIAN BANK VIGILANCE CELL CIRCLE OFFICE
SILPUKHURI
GHY-3
ASSAM

7:PRABIR RANJAN KARMAKAR
MANAGER AND ENQUIRY OFFICER SR NO.13869-06 INDIAN BANK
CIRCLE OFFICER
SILPUKHURI
GHY-3

8:THE BRANCH MANAGER
HATIPUKHURI BRANCH
INDIAN BANK
P.O. SAIDORIA VIA-RUPAHI
P.S. RUPAHIHAT
PIN-782125
DIST- NAGAON
ASSAM

9:ABUL KASEM
S/O LATE MOULABI EKIN ALI
R/O SAIDORIA KOCH GAON
P.O. GHEHUAN CHALCHALI
P.S. RUPAHIHAT
DIST- NAGAON
ASSAM
PIN-78212

**Advocate for the Petitioner** : MS.S DHADUMIA, MS.P DEVI,MR.D C K HAZARIKA

**Advocate for the Respondent** : GA, ASSAM, MR.N BORUAH(R- 3 to 8),MR.P SEN,MR.T ROY,MR.S DEY,MR.A J DAS(R- 3 to 8)

**BEFORE**
**HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**Date of hearing : 24.01.2024**

**Date of Judgment: 06.09.2024**

## Judgment & order(CAV)

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Heard Mr. D. C. K. Hazarika, learned counsel, appearing on behalf of the petitioner. Also heard Mr. B. Deuri, learned Government Advocate, appearing on behalf of respondents No. 1 & 2. However, none has appeared on behalf of respondents No. 3 to 9/Indian Bank authorities.

**2.** The challenge in the present proceeding is to an order, dated 10.03.2010, issued by the Assistant General Manager and disciplinary authority, Indian Bank, imposing the penalty of dismissal from service upon the petitioner.

**3.** The facts, in brief, requisite for adjudication of the issue arising in the present proceeding, is noticed, as under:

The petitioner, herein, was appointed as a Peon in Hatipukhuri Branch, Indian Bank, Nagaon, on 28.06.1985. The respondent No. 9, herein, had lodged a written complaint on 29.04.2008 with the respondent No. 8 i.e. Branch Manager of Hatipukhuri Branch, Indian Bank, Nagaon, alleging that Rs. 1,50,000/-(Rupees One Lakh Fifty Thousand) was withdrawn from his Bank Account without his knowledge. On the following day i.e. 30.04.2008, an amended compliant was also lodged, pertaining to the same issue.

As revealed from the materials brought on record, the said respondent No. 9 had also lodged an FIR on 02.05.2008 before the Rupahihat Police Station on the same issue. The police, on receipt of the said information; registered a case being Rupahihat P.S. Case No. 77/2008 u/ss. 468/420/406 of the IPC, against the petitioner, herein, and 2(two) other staff of Hatipukhuri Branch, Indian Bank, Nagaon.

The petitioner was taken into custody in connection with the said criminal case instituted against him. The petitioner having been detained in custody for more than 48 hours, the disciplinary authority of the petitioner proceeded vide communication, dated 08.05.2008, to place the petitioner under suspension. Thereafter, vide communication, dated 11.07.2008, the petitioner was required to submit his explanation on allegations so levelled against him by the respondent No. 9. The petitioner, accordingly, submitted his explanation in the matter vide communication, dated 27.07.2008, and therein, had denied the allegations so levelled against him.

Thereafter, being not satisfied with the explanation so submitted by the petitioner; vide the memorandum of charges, dated 31.12.2008, a departmental proceeding was so initiated against the petitioner and therein, 3(three) charges were so framed against him. The petitioner, on 23.02.2009, submitted his written statement in the matter and therein, denied the allegations levelled against him. The disciplinary authority of the petitioner not being satisfied with the written statement submitted by the petitioner in the matter, proceeded vide communication, dated 06.04.2009, to order a departmental inquiry into the charges levelled against the petitioner vide the article of charges, noted hereinabove and accordingly, appointed an Inquiry Officer in the matter. The Inquiry Officer, on being appointed, conducted the

inquiry and the petitioner, herein, participated in the inquiry. On conclusion of the inquiry, the Inquiry Officer submitted his inquiry report and therein, the article of charge No. 1 was held to be partially proved, while the article of charges No. 2 & 3 were held to be proved. The disciplinary authority on receipt of the said inquiry report, dated 30.09.2009, proceeded to forward the same to the petitioner along with a disagreement note, pertaining to the article of charge No. 1. It is to be noted that the disciplinary authority agreed with the findings of the Inquiry Officer pertaining to the article of charges No. 2 & 3. The petitioner, thereafter, submitted his representation against the said inquiry report including the disagreement note.

Thereafter, on a consideration of the materials coming on record including the inquiry report as well as the representation submitted by the petitioner against the same; the disciplinary authority vide order, dated 10.03.2010, proceeded to impose upon the petitioner, the penalty of dismissal from service. The petitioner, thereafter, preferred an appeal in the matter on 22.03.2010. The appellate authority, thereafter, had granted a personal hearing to the petitioner in the matter.

Subsequently, on conclusion of the trial, in the criminal case, so instituted against the petitioner; the learned trial Court, vide judgment & order, dated 01.09.2011, proceeded to acquit the petitioner and other accused by holding that the prosecution had failed to prove the charge against them. The petitioner had brought the decision so rendered in the criminal proceeding instituted against him to the notice of the disciplinary authority. However, the same was not considered and resultantly, being aggrieved with the penalty of dismissal from service so imposed upon him; the petitioner has approached this Court by way of instituting the present proceeding, praying for an

interference with the said penalty so imposed upon him.

**4.** Mr. Hazarika, learned counsel for the petitioner, at the outset, has submitted that the charges so framed against the petitioner in the departmental proceeding as well as those levelled in the criminal proceeding, so instituted against him being the same and also the materials for consideration in both the proceedings being the same; the petitioner having been acquitted in the criminal proceeding; the penalty of dismissal from service as imposed upon him, would require an interference by this Court.

**5.** Mr. Hazarika, learned counsel for the petitioner, in this connection, has relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***GM Tank v. State of Gujarat & ors.***, reported in ***(2006) 4 SCC 446***. The learned counsel has further submitted that given the nature of allegations levelled against the petitioner, herein, and the materials brought on record in support of the same; the penalty of dismissal from service as imposed upon the petitioner, is grossly disproportionate and the same requires to be interfered with by this Court.

**6.** Mr. Hazarika, learned counsel for the petitioner, by taking this Court through the allegations so levelled against the petitioner, and the conclusions reached therein by the disciplinary authority, has contended that the conclusions as recorded in the order, dated 10.03.2010, are all forced conclusions and the same is not supported by any evidence coming on record in the inquiry. In the above premises; Mr. Hazarika, learned counsel for the petitioner, has submitted that the impugned order of penalty so imposed upon the petitioner, requires to be interfered with by this Court.

**7.** Although there was no representation at the time of the hearing of the writ petition on behalf of the Indian Bank authorities; the said authorities had filed an affidavit in the matter and the same is taken note of. In the said affidavit, it was contended by the respondent Bank that the petitioner in the inquiry, was given all requisite opportunities to defend his case and accordingly, in the writ petition, the petitioner had not raised any allegations with regard to denial of a fair opportunity for defending his case. The Indian Bank authorities have also contended in the affidavit that an acquittal in a criminal proceeding, that too, on the ground of evidence not being brought on record by the prosecution, would not *per se*, lead to the inference that the penalty as imposed in the departmental proceeding so initiated against the same person basing on the same charges, would also call for an interference, in asmuch as, the burden of proof in both the proceedings are different. It is contended that in the present proceeding, by applying the principle of preponderance of probability; the charges levelled against the petitioner, was held to be so proved.

**8.** It was further contended in the said affidavit by the Bank authorities that the acquittal of the petitioner, herein, in the criminal proceeding had occasioned after the order of penalty was passed by the disciplinary authority in the matter and the present proceeding was so initiated after a lapse of about 2 years from the date of imposition of the penalty upon the petitioner. It was also contended that the petitioner was imposed with the penalty of dismissal from service vide order, dated 10.03.2010, on the ground of the proved irregularities/lapses committed by him in the discharge of his duties in Hatipukhuri Branch, Indian Bank, Nagaon.

**9.** I have heard the learned counsels appearing for the parties and also

perused the materials available on record.

**10.** Vide the article of charge, dated 31.12.2008; 3(three) article of charges came to be so framed against the petitioner, herein. The article of charges so framed, being relevant, is quoted hereinbelow:

> "***1. On 28.04.08 you had received cash payment of Rs. 1, 50,000/- which being the withdrawal amount drawn from SB a/c No.595450938 through withdrawal slip No 386005 signed by Mr. Abul Kashem, Father & Guardian of Miss. Ayesha Siddique, account holder wherein the withdrawal slip was dated as 28.04.08 for Rs.1, 50,000/- and one Md. Nizamuddin was purportedly shown as authorized agent.***
>
> ***2. You took initiative in processing of the transactions and took the money from Sri Gajen Saikia, the cashier on the day. You did not hand over the money to the authorized agent / the account holder.***
>
> ***3 Mr. Abul Kashem, Father & Guardian of Ayesha Siddique (minor), holder of SB a/c No.595450938, submitted a complaint to the Branch Manager of Hatipukhuri branch on 29.04.08 regarding unauthorised withdrawal of Rs.1.50 lacs from his SB account No.595450938 and lodged complaint against you at Rupahihat Police station on 02.05.08 alleging that on 28.04.08 you had withdrawn Rs. 1.50 lacs from his SB account No. 595450938 using the signed withdrawal slip given by him to you one month back. The matters were published in local Assamese newspaper causing damage to the image of the Branch/Bank."***

**11.** A perusal of the said article of charge No. 1 would go to reveal that the petitioner on 28.04.2008, had received a cash amount of Rs. 1,50,000/- which was withdrawn from a Savings Bank Account through a withdrawal slip bearing No. 386005 signed by the respondent No. 9 who was the father and guardian of his daughter, who is a minor account holder. The article of charge No. 2 alleges that the petitioner had taken initiative in processing the transaction and had also received the money involved from the cashier. However, the same was not handed over to the authorized agent/account holder. The article

of charge No. 3 proceeds to allege that the complaint as lodged by the respondent No. 9 regarding unauthorized withdrawal of money from his daughter's account and also the institution of criminal case in the matter against the petitioner; the issue being published in the media, had caused damage to the image of the Bank.

**12.** The petitioner, in his written statement, had denied the allegations levelled against him. Thereafter, the matter was inquired into and the Inquiry Officer, basing on the materials coming on record, submitted his inquiry report and therein, had held the article of charge No. 1 to be partially proved while the article of charges No. 2 & 3, were held to be proved. The disciplinary authority, on perusal of the inquiry report, had disagreed with the findings recorded by the Inquiry Officer in his inquiry report, dated 30.09.2009, to the extent of the article of charge No. 1. Accordingly, the disciplinary authority, vide his communication, dated 15.02.2010, recorded his disagreement note. A perusal of the disagreement note would go to reveal that the same was so based on the evidences coming on record in the inquiry. In the inquiry, it was brought on record by the witnesses so deposing on behalf of the respondent Bank that the money was so received by the petitioner after he had appended his signature on the withdrawal slip of the Bank although therein, the name of the authorized representative was mentioned. It was also recorded, basing on such statements of the witnesses deposing in the inquiry that although the petitioner had informed the cashier that the authorized representative of the respondent No. 9 was available and waiting outside and received the payment from him and that the withdrawal slip was not signed by the petitioner before the cashier but rather signed on the instructions of the Branch Manager to whom the money reportedly was handed over; was held to be not convincing, inasmuch as, the deposition of the Assistant Branch Manager of Hatipukhuri Branch, Indian Bank, Nagaon, in the inquiry, had brought on record that the

signature on the withdrawal slip was so made by the petitioner voluntarily even before it was passed and the cashier had made the payment to the petitioner, herein.

**13.** Basing on the said disagreement note as well as by agreeing with the findings of the inquiry report pertaining to the article of charges No. 2 & 3 as levelled against the petitioner; the disciplinary authority had forwarded the inquiry report to the petitioner and required him to submit his representation against the same. The petitioner was also offered a personal hearing in the matter on the date so fixed and reflected in the said communication, dated 15.02.2010. The petitioner, thereafter, submitted his representation against the said communication, dated 15.02.2010, and also to the findings of the Inquiry Officer vide his representation, dated 26.02.2010. The petitioner had denied the findings so recorded by the disciplinary authority with regard to article of charge No. 1 and the findings of the Inquiry Officer pertaining to article of charges No. 2 & 3 and had prayed for his exoneration in the matter. Thereafter, the disciplinary authority, on a consideration of the materials coming on record in the inquiry as well as the findings of the Inquiry Officer along with the disagreement note of the disciplinary authority, dated 15.02.2010, pertaining to the article of charge No. 1 and the representation as submitted in the matter by the petitioner in pursuance to the said communication, dated 15.02.2010, proceeded to examine the matter for the purpose of imposition of a penalty upon the petitioner.

**14.** The disciplinary authority, on perusal of the matter, drew his conclusions thereon and on a perusal of the same, it is seen that conclusions so drawn are based on the materials coming on record in the inquiry. Pertaining to the article of charge No. 2, it is requisite to note that the disciplinary authority had

recorded a categorical finding to the effect that the withdrawal slip bearing No. 386005 which was used to withdraw cash on 28.04.2008, belonged to the serial no. of withdrawal slip used in the branch on 26.03.2008, which was held to indicate that it was the withdrawal slip said to have been given by the respondent No. 9 signed in blank to the petitioner, herein, which was reportedly informed to the respondent No. 9 by the petitioner, to have been lost. Accordingly, it was held that all the statements made contrary to the conclusions reached; by the petitioner, herein, did not merit a consideration.

**15.** With regard to the article of charge No. 3, the Inquiry Officer agreed with the findings of the Inquiry Officer that there was tremendous repercussion in the locality where the Branch was so located after the complaints and the FIRs were lodged in the matter by the respondent No. 9. It was further contended that the said incident also got published in the media which had dented the image of the Hatipukhuri Branch, Indian Bank, Nagaon. Taking into consideration, the entire factual matrix involved as well as the fact that the charges levelled against the petitioner, were held to be proved in the inquiry; the disciplinary authority proceeded to impose upon the petitioner, the penalty of dismissal from service without notice in terms of Clause 6(a) of the settlement as entered into by the respondent Bank and the Workmen Association.

**16.** As has been noted hereinabove; the disciplinary authority having drawn conclusions in the matter which conclusions is also supported from the materials coming on record in the inquiry; this Court would not re-evaluate the same by assuming the role of an appellate authority, moreso, in absence of any material brought on record by the petitioner to demonstrate that such conclusions were perverse.

**17.** The learned counsel for the petitioner during the course of hearing of the present proceeding, had not highlighted any inconsistency in the conclusions so drawn by the disciplinary authority in the order, dated 10.03.2010. Having examined the order, dated 10.03.2010, and this Court having concluded that the conclusions reached therein, pertaining to the article of charges so levelled against the petitioner, was so arrived at basing on the evidences available on record, the same would not call for any interference.

**18.** The above conclusion having been so drawn; this Court would now examine the contention of the petitioner that he having been acquitted from the criminal proceeding so instituted against him and the criminal proceeding as well as the departmental proceeding so instituted against him, being based on the same materials and the witnesses were also being common; the order of penalty of dismissal from service so passed in the departmental proceeding, would require an interference from this Court and the reliance placed by the petitioner in support of his such conclusion on the decision of the Hon'ble Supreme Court in the case of ***GM Tank***(supra), is being examined.

**19.** The Hon'ble Supreme Court in the case of ***GM Tank*** (supra), in the facts of the said case, had held that the departmental case and the criminal case involved therein, were based on identical and similar set of facts and the charges in the departmental case against the appellant and the charge before the criminal court, were one and the same and the case being one of no evidence and the witnesses being the same in both the proceedings and the appellant involved therein, having been acquitted in the criminal case; the Hon'ble Supreme Court had held that under such circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceeding against the appellant, therein, to stand.

**20.** The Hon'ble Supreme Court while recording the said conclusion in the case of ***GM Tank***(supra), had also noted that the petitioner was acquitted in the criminal proceeding after a regular trial and/or on hot contest. The relevant conclusions of the Hon'ble Supreme Court in the matter, as available in paragraph No. 31, is extracted hereinbelow:

> "***31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."***

**21.** The decision of the Hon'ble Supreme Court in the case of ***GM Tank***(supra) was considered by the Hon'ble Supreme Court in one of its recent decision in the case of ***Ram Lal v. State of Rajasthan & ors.***, reported in ***(2024) 1 SCC 175***. The Hon'ble Supreme Court, in this connection, had proceeded to draw the following conclusions:

> "***Effect of acquittal in the criminal proceeding - Question 2***
>
> ***25. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW 2, PW 3, PW 6, PW 9 and PW 13 respectively at the criminal trial. Apart fromthem, eight other witnesses were also exam ed. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24-4-1972 in place of 21-4-1974, and obtained recruitment to the post of Constable.***
>
> ***26. Though the trial court convicted the appellant under Section 420 IPC, the appellate court recorded the following crucial findings while acquitting the appellant:***

***"...Mainly the present case was based on the documents so this effect whether the date of birth of accused is 21-4-1972 or 21-4- 1974. Ext. P-3 is original marksheet, in which, the date of birth of accused has been shown as 21-4-1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the court regarding the date of birth of 21-4-1974 are either the letters of Principal or are duplicate TC or marksheets. Neither the prosecution has produced any such original documents in the subordinate court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the examination form of Secondary, and nor after bringing the original records from the witnesses concerned, same were got proved in the evidence. In these circumstances, this fact becomes doubtful that date of birth of the accused was 21-4-1974, and the accused is entitled to receive its benefit. In the considered opinion of this Court, the conviction made by the learned subordinate court merely on the basis of oral evidence and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused.***

***Resultantly, on the basis of aforesaid consideration, the present appeal filed by the appellant-accused is liable to be allowed."***

***(emphasis supplied)***

***27. What is important to notice is that the Appellate Judge has clearly recorded that in the document Ext. P-3 original marksheet of the 8th standard, the date of birth was clearly shown as 21-4-1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21-4-1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge (see S. Samuthiram).***

***28. Expressions like "benefit of doubt" and "honourably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.***

***29. We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" (see Vijayee Singh v. State of U.P.).***

***30. We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tanks."***

**22.** Applying the decisions of the Hon'ble Supreme Court in the cases of ***GM Tank***(supra) and ***Ram Lal***(supra) to the facts of the present case; it is seen that during the trial of the criminal proceeding so instituted against the petitioner, herein, no witnesses except the respondent No. 9, herein, were produced by the prosecution and after examination of the respondent No. 9; the prosecution had closed its case. The deposition of the respondent No. 9, during the trial in the said criminal proceeding, goes to reveal that the petitioner, herein, had subsequently returned the money so stated to be illegally drawn from the account of the minor daughter of the respondent No. 9. The respondent No. 9, had, thereafter, not pressed the complaint so made against the petitioner, herein. It is seen that in the criminal proceeding; the prosecution had not even examined the I.O. of the case. Accordingly, the learned trial Court under the said circumstances, had arrived at a conclusion that the prosecution had failed to prove its case against the petitioner and accordingly, proceeded to acquit the petitioner as well as the other accused in the said criminal proceeding.

**23.** A perusal of the judgment of the learned trial Court does not reveal that the acquittal of the petitioner, herein, was after the matter was contested in the manner required by the prosecution and the same was also not passed on consideration of all required evidences required to be so placed on record during the trial by the prosecution.

**24.** In view of the above position; the acquittal of the petitioner in the criminal proceeding, in the considered view of this Court, would have no bearing on the findings recorded by the Inquiry Officer as well as by the disciplinary authority in the departmental proceeding so initiated against the petitioner, herein. Accordingly, the said contention of the learned counsel for the petitioner, requiring the interference by this Court with the penalty imposed upon the petitioner basing on his acquittal in the criminal proceeding, cannot be acceded to.

**25.** It is also to be noticed and emphasized that in banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every Bank employee and if this is not observed; the confidence of the public/depositors would be impaired.

**26.** In this connection, this Court would refer to the decision of the Hon'ble Supreme Court rendered in the case of ***Chairman-cum-Managing Director, United Commercial Bank & ors. v. P. C. Kakkar,*** reported in ***(2003) 4 SCC 364***, wherein, it was noted that a Bank Officer/employee is required to exercise higher standard of honesty and integrity. The Hon'ble Supreme Court in this connection had proceeded to draw the following conclusions:

"***14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik(1996 (9) SCC 69). It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."***

**27.** In the case on hand; it is seen that the manner in which the petitioner had discharged his duties as evident from the allegations so levelled against him in the charge-sheet, in question; it is seen that the Bank had lost confidence on him and the materials that had come on record in the inquiry as well as the findings of the Inquiry Officer and the disciplinary authority in the matter had affirmed such loss of confidence upon him. In this connection; a reference is made to the decision of the Hon'ble Supreme Court in the case of ***Divisional Controller, Karnataka State Road Transport Corporation v. M. G. Vittal Rao***, reported in ***(2012) 1 SCC 442***. The conclusions in this connection pertaining to loss of confidence by the employee and the employer, is extracted hereinbelow:

"***Loss of confidence.***

***25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.***

***26. In Kanhaiyalal Agrawal v. Gwalior Sugar Co. Ltd. 32 this Court laid down***

***the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (SCC p. 614, para 9)***

***(i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved.***

***27. In SBI v. Bela Bagchi this Court repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence. While deciding the said case, reliance has been placed upon its earlier judgment in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik.***

***28. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two.***

***29. In Indian Airlines Ltd. v. Prabha D. Kanan, while dealing with the similar issue this Court held that: (SCC p. 90, para 56)***

> ***"56. ...loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved."***

***30. In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee. (Vide A.P. SRTC v. Raghuda Siva Sankar Prasad 43.)***

***31. The instant case requires to be examined in the light of the aforesaid settled legal proposition and keeping in view that judicial review is concerned primarily with the decision-making process and not the decision itself. More so, it is a settled legal proposition that in a case of misconduct of grave nature like corruption or theft, no punishment other than the dismissal may be appropriate."***

**28.** It is also required to take notice of a decision of the Division Bench of

this Court in the case of ***Bijoy Rajkhowa v. State Bank of India & ors.***, reported in ***(2013) 2 GLR 6*** wherein, in a matter pertaining to a misconduct committed by a Bank employee, this Court had recorded the following conclusion:

> "***24. Conduct of a bank employee must be above board. He is required to maintain absolute integrity, which is of paramount consideration. On his conduct rests the confidence of the customers of the bank. Compromise with doubtful integrity will not only erode the faith of the people using the bank's facilities but also in the functioning of the bank itself. In such matters, quantum of misappropriation is immaterial the factum of misappropriation itself would justify the disciplinary action taken. Considering the above, in the present case, we do not find any good and sufficient ground to interfere with the punishment imposed."***

**29.** In view of the position of law as brought to light by the decisions of the Hon'ble Supreme Court and of this Court as noticed hereinabove; it has to be held that the petitioner had lost the confidence of his employer on account of the misconduct as committed by him in the matter and accordingly, the penalty of dismissal from service as imposed upon the petitioner, does not warrant any interference.

**30.** However, this Court would also like to deal the contention raised by the learned counsel for the petitioner that the penalty of dismissal from service as imposed upon the petitioner, is grossly disproportionate to the allegations as levelled against him and accordingly, the same requires to be interfered with.

**31.** This Court, in this context, would like to again refer to the decision of the Hon'ble Supreme Court in the case of ***P. C. Kakkar***(supra) wherein in this connection, the following conclusions were drawn by the Court:

"***15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union [1971 (1) All E.R. 1148] observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."***

**32.** The allegations as levelled against the petitioner on being established in the inquiry held and the same having demonstrated a misconduct being committed in the matter by the petitioner who admittedly was a responsible employee of the respondent Bank; it is to be noted that the petitioner cannot, in any manner, be extended with any sympathy. The allegations levelled against the petitioner having been held to have been established and the misconduct as committed by him, being apparent, the penalty as imposed upon him, cannot be stated to be disproportionate to the proved misconduct. It is a settled position of law that the penalty that is to be imposed upon the petitioner is the discretion of the disciplinary authority. Of course, this discretion has to be examined objectively keeping in mind the nature and

gravity of the charge. The disciplinary authority is to decide a particular penalty specified in the relevant Rules. A host of factors go into the decision making process while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the establishment where he so works, as well as extenuating circumstances, if any. Accordingly, the penalty as imposed upon the petitioner in the case in hand, in the considered view of this Court; is proportionate to the allegations levelled against him and established in the inquiry.

**33.** It is also a settled position of law that if the appellate authority is of the opinion that the case warrants a lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the departmental appellate authority, is ordinarily not available to the court or a tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of the facts. In exercise of power of judicial review, however, this Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of this Court, lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities. This Court, in the present proceeding, has not found any special circumstance warranting interference with the penalty as imposed upon the petitioner.

**34.** It is only when the punishment is found by this Court to be outrageously disproportionate to the nature of the allegations levelled against the delinquent that the principle of proportionality would come into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with the doctrine of Wednesbury rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the court and the court is forced to believe that it is totally unreasonable and arbitrary.

**35.** The principle of proportionality was first propounded by Lord Diplock in ***Council of Civil Service Unions v. Minister for the Civil Service*** in the following words:(AC p. 410 D-E)

> "***..... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'.***"

**36.** The Hon'ble Supreme Court had approved the aforesaid principle in the case of ***Ranjit Thakur v. Union of India***, reported in ***(1987) 4 SCC 611,*** wherein, the Hon'ble Supreme Court by emphasising that "all powers have legal limits" invoked the aforesaid doctrine in the following words in paragraph No. 25. Paragraph No. 25 of the said judgment being relevant, is extracted hereinbelow for ready reference: (SCC p. 620, para 25)

> ***"25. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It***

***should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."***

**37.** In view of the pronouncement, as noticed above in the matters of the Hon'ble Supreme Court as well as of this Court; it is clear that it is not for the writ Court to interfere with the punishment imposed by the disciplinary authority which is a matter within the domain and the jurisdiction of the said authority. If the Bank has lost its confidence on the petitioner, herein, it is within its competence and jurisdiction to impose the penalty as it may consider adequate commensurating to the misconduct attributed and proved. It is not for the writ Court to prescribe another penalty in lieu of the penalty imposed by the disciplinary authority. It will have to be borne in mind that the job entrusted to the petitioner, herein, being of a responsible employee, in a financial institution like a Bank is that of faith and confidence and once it is lost, it is for the bank to decide what penalty is to be imposed. The amount involved is immaterial, what matters much, is tarnishing the image of the Bank in the eyes of the valued customers and public. The petitioner being a Bank employee ought to have maintained utmost integrity, devotion, diligence and honesty, which, he admittedly, has failed to do so.

**38.** Accordingly, in view of the above discussions and conclusions, this Court is of the considered view that, given the facts and circumstances as existing in the matter; it has to be held that the penalty as imposed upon the petitioner commensurates to the misconduct as established against him in the matter and the same does not call for any interference from this Court.

**39.** The writ petition accordingly stands dismissed. However, there shall be no order as to costs.

**JUDGE**

**Comparing Assistant**