

GAHC010026662015



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

Case No. : WP(C)/7349/2015

BANESWAR MIRDHA
S/O LT. NEPAL MIRDHA, PRESENTLY WORKING AS ASSTT. MANAGER,
ASSAM GRAMIN VIKASH BANK, SOOTEA BRANCH, P.O. SOOTEA, DIST-
SONITPUR, ASSAM, PIN-784159, R/O VILL. and P.O. BHANGA MANDIR, P.S.
DHEKIAJULI, DIST- SONITPUR, ASSAM, PIN-784110

VERSUS

ASSAM GRAMIN VIKASH BANK and 3 ORS.
REP. BY THE CHAIRMAN, AGVB, P.O. BHANGAGARH, GHY-5

2:THE GENERAL MANAGER and DISCIPLINARY AUTHORITY
AGVB
P.O. BHANGAGARH
GHY-5

3:THE CHIEF MANAGER PERSONNEL
AGVB
P.O. BHANGAGARH
GHY-5

4:THE REGIONAL MANAGER
AGVB
REGIONAL OFFICE- LAKHIMPUR
P.O. N. LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
PIN-78700

**Advocate for the Petitioner : MR.P SARMAH, MSR D KAKATI,MS.D SHARMA,MR.A
ADHIKARY,MR.B KUMAR,MR.S K SINGHA**

Advocate for the Respondent : MR.S DUTTAR-1,3 and 4, MS.N MODI(R-1, 3 & 4),MR.SIDHANT DUTTA(R-1, 3 & 4),,MR.C SHARMA(R-1, 3 & 4),

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

Judgment & Order (Oral)

Date : 17.09.2024

Heard Mr. B. Chakravarty, learned counsel for the petitioner. Also heard Mr. S. Dutta, learned counsel appearing for all the respondents.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order dated 30.09.2015, issued by the Disciplinary Authority, imposing upon the petitioner a penalty of "Reduction of basic pay by 4(four) stages with cumulative effect" on conclusion of a departmental proceeding instituted against the petitioner.

3. The petitioner was initially appointed as an Officer in the Pragjyotish Gaonlia Bank on 04.06.1984. The said bank, on amalgamation with Lakhimi Gaonlia Bank, Cachar Gramin Bank and Subansiri Gaonlia Bank came to be re-named as "Assam Gramin Vikash Bank" w.e.f., 12.01.2006. The Assam Gramin Vikash Bank was sponsored by United Bank of India and is a joint venture between the Government of India, the Government of Assam and the United Bank of India. The petitioner, accordingly, became an employee of Assam Gramin Vikash Bank on its establishment. While the petitioner was so discharging his duties, the Chairman and Disciplinary Authority of the respondent no. 1 bank, issued a show-cause notice to the petitioner on 11.06.2014, leveling allegations against him therein, of having committed misconduct during his tenure as Branch Manager of Assam Gramin Vikash Bank, Doomdooma Branch during the period

02.08.2004 to 29.07.2008. In the said show-cause notice, 4(four) charges came to be so leveled against the petitioner. The petitioner on the basis of the misconduct alleged against him, was charged of having exposed the bank to suffer a total financial loss of Rs. 5, 96,352/- (Rupees Five Lakhs Ninety Six Thousand Three Hundred and Fifty two only) as on 31.03.2014 plus interest.

4. The petitioner, on receipt of the said show-cause notice submitted his reply thereto. However, on not being satisfied with the reply so submitted by the petitioner, an enquiry was directed to be so conducted into the allegations so leveled against the petitioner vide the show-cause notice dated 11.06.2014. The petitioner had participated in the departmental enquiry so held in the matter. On conclusion of the departmental enquiry, the enquiry officer submitted his report on 16.05.2015. A copy of the said enquiry report was forwarded by the Disciplinary Authority to the petitioner, requiring him to submit his representation thereon. The petitioner contends that a representation against the said enquiry report was also submitted by him.

5. The Disciplinary Authority, thereafter, on consideration of the enquiry report and the representation as submitted thereon, by the petitioner and also on perusal of the materials coming on record in the enquiry, proceeded vide the order dated 30.09.2015, to hold that the allegations leveled against the petitioner stood established and accordingly, imposed a penalty of "Reduction of basic pay by 4(four) stages with cumulative effect" on the petitioner.

6. In view of the imposition of the said penalty upon the petitioner, vide the order dated 30.09.2015, his basic pay of Rs. 45950/- plus 3 stagnation increments of Rs. 4080/- stood reduced to Rs. 40710/- plus 3 stagnation increments of Rs. 4080/- w.e.f., 01.10.2015. The next date of increment of the petitioner was so prescribed to fall on 01.10.2016. The petitioner, thereafter, submitted an appeal in the matter, however, the same was not disposed of. Being

aggrieved, the petitioner has instituted the present proceeding.

7. Mr. B. Chakravarty, learned counsel for the petitioner by referring to the allegations so leveled against the petitioner, vide the show-cause notice dated 11.06.2014, has submitted that the steps as taken by the petitioner for sanctioning the loans involved, were so done keeping in view the interest of the bank. Mr. Chakravarty, submits that the loans having been issued by the petitioner, the bank authorities, after his transfer from the said Branch, had not taken the requisite steps for recovery of the loan amounts. It was further submitted that the customers involved were ready to pay the loan amounts, however, the bank authorities having not informed the borrowers of the loan amount required to be paid, the amount involved could not be cleared by the borrowers.

8. Mr. Chakravarty, learned counsel for the petitioner, by taking this Court through the pleadings available in the matter on behalf of the petitioner, has contended that the loans were so issued, strictly, following the procedure so involved. Mr. Chakravarty, has also submitted that the loans shown to have been so issued by the petitioner also includes loans issued by other authorities and accordingly, he could not have been made responsible for the same. Mr. Chakravarty by referring to the allegation leveled against the petitioner that the steps taken by him in the matter had exposed the bank to suffer a total financial loss of Rs. 5, 96,352/- has contended that the petitioner, in the enquiry had proved the fact that he would be only liable to an amount of Rs. 1, 81, 220/- towards the loss so sustained by the bank. However, Mr. Chakravarty has submitted that if steps were promptly taken by the authorities, after the transfer of the petitioner from the bank, the said amount would also have been so recovered.

9. In the above premises, Mr. Chakravarty has submitted that the penalty so

imposed upon the petitioner is disproportionate to the allegations so leveled against him and accordingly, submits that the petitioner having already superannuated from his services during the pendency of the present proceeding, this Court is now required to interfere with the penalty so imposed upon the petitioner so as to enable the petitioner to enjoy the consequential monetary benefits flowing there from.

10. Per contra, Mr. S. Dutta, learned Counsel appearing for the respondent bank has submitted that the petitioner had sanctioned and disbursed loans to already defaulting borrowers and the said exercise as carried out by the petitioner was in clear violation of the norms existing in the bank in this connection.

11. Mr. Dutta has by referring to the representation as submitted by the Defense representative of the petitioner before the enquiry officer had contended that the petitioner had admitted that he would be liable for the loss so occasioning in the matter to the bank, only to the extent of Rs. 1, 81, 220/-. Mr. Dutta has submitted that the petitioner was given all due opportunity to defend the allegations leveled against him in the enquiry so held and the enquiry officer thereafter, basing on the evidences coming on record, had proceeded to record findings with regard to the allegations so leveled against the petitioner and had drawn a conclusion that the charges so framed against the petitioner has been so established against him. It is the submission of Mr. Dutta, that on account of the steps taken in the matter by the petitioner to sanction the loans in question, it is seen that most of the accounts have resulted in being declared as Non Performing Asset (NPA).

12. In view of the above position, Mr. Dutta has submitted that the mis-conduct committed by the petitioner, herein, had resulted in a loss of confidence upon him by the management of the bank and accordingly, the penalty so imposed upon him would not call for any interference. Mr. Dutta, also submits that given the

nature of the charges framed against the petitioner, herein and his admission, to the extent of his liability towards the loss caused to the bank in question, the penalty so imposed upon the petitioner also cannot be denoted to be disproportionate to the charges so framed against the petitioner, herein.

13. I have heard the learned counsel for the parties and also perused the materials available on record.

14. Four article of charges came to be so framed against the petitioner, herein, vide the show-cause notice dated 11.06.2014. The article of charges so framed being relevant, is quoted herein below:-

Article of charges:-

During the tenure of your service as Branch Manager of Assam Gramin Vikash Bank, Doomdooma branch for the period from 02.08 2004 to 29.07.2008, you have failed to take all possible steps to protect the interest of the Bank and discharge your duties with utmost integrity, honesty, devotion and diligence in as much as:

(1) You sanctioned 6 (six) loans to one Sri Sarbananda Nath S/O late Dharmakanta Nath of village Niz Borsola, PO- Borsola of Sonitpur district within a short span of time from 07.03.2005 to 16.09.2006 and one on 30.01.2008. Sri Sarbananda Nath is a Govt. employee and as such he was not eligible to get loans under RCC, SBL and KCC scheme which you sanctioned to him one after another. The details of these loans are as follows:-

Sl.No.	A/C No.	Sanction date	Scheme	Sanct. Amt/Disb. amt	Remarks
1	7034300000424	28.07.2005	RCC	Rs. 50000.00	A/C closed on 21.05.2013
2	7034300000176	23.12.2005	CDL	Rs. 30000.00	A/C closed on 17.05.2013
3	7034300000328	26.08.2006	PLS	Rs. 50000.00	A/C closed on 23.05.2013
4	7034300000342	07.03.2005	HBL	Rs. 200000.00	
5	7034300000229	16.09.2006	SBL	Rs. 50000.00	A/C closed on 23.05.2013
6	7034300000146	30.01.2008	KCC	Rs. 30000.00	

However, the loan accounts under serial Nos. 1, 2, 3 and 5 above have been closed by now. But the loan accounts bearing Nos. 7034300000342 and 7034250000146 as referred to above are still existing with outstanding balance of Rs.88550/- and 33984/- respectively as on 31.03.2014.

(2) In the similar manner as stated above, you have sanctioned 3 (three) loans to one Sri Ninao Boro of village Singimari, PO-Kacharison of Sonitpur district. These loan accounts bearing Nos. RCC/7034300000416, HBL/7034300000377 and CDL/7034300000170 were sanctioned on 10.01.2005, 02.03.2008 and 07.12.2005 for Rs.50000/-, Rs. 100000/- and Rs.30000/- respectively. Sri Ninao Boro is a Govt. employee and as such not eligible to get RCC loan. The balance outstanding as on 31.03.2014 against these loans are Rs.61622/, Rs.122580/ and Rs.36681/- respectively and the accounts are NPA, You have violated the lending norms of the Bank in sanctioning business loan to a Govt. Employee.

(3) You have sanctioned 2 (two) loans to Sri Lohit Chandra Deka of village Niz Borsola, PO- Borsola under Sonitpur district and 1(one) loan to his wife Smti. Junmoni Deka. The loans were sanctioned on 10.10.2007, 26.08.2006 and 27.02.2008 for an amount of Rs.32000/-, Rs. 50000/- and Rs.45000/- under CDL, PLS and MTL scheme respectively. The recovery position of the PLS loan bearing Account No.7034300000323 sanctioned on 29.08.2006 was very poor and this account had turned to NPA, But you sanctioned two subsequent loans of CDL and MTL (to his wife) on 10.10.2007 and 27.02.2008 respectively to this family having defaulter status. In doing so, you have violated Bank's guidelines on this score and have exposed the Bank to suffer financial losses. The balance outstanding against loan account No. CDL/7034300000378 is Rs.29741/-, PLS/7034300000323 is Rs.63976/- and MTL/7034300000100 is Rs.50822/- as on 31.03.2014 plus interest.

(4) One business loan (SBL/ 7034300000227) was sanctioned to Md. Badaruddin of village Bhairaguri Patha PO-Kacharison under Sonitpur district on 31.05.2006 for an amount of Rs.45000/-. No recovery was ever made by the borrower in this account and the outstanding balance as on 31.03.2014 stood to Rs.79611/-. But in most reckless manner you have sanctioned another AGCC loan bearing Account No.7034300000033 to M Badaruddin for

Rs.20000/-on 24.06.2008 though the status of his previous loan was NPA. No recovery is there in this AGCC loan also and the outstanding balance as on 31.03.2014 is Rs.28785/-.

Mention may be made here that this Md. Badaruddin has subsequently availed two more loans on 13.09.200 and 04.08.2011 for Rs.60000/- (A/C No-7034250000024) and Rs. 12000/- (A/C No-7034300000736) respectively and all these loans are NPA,

Thus with your malafide intention for personal gain and purpose, you have exposed the Bank to suffer a total financial loss of Rs.596352/- (Rupees five lakh ninety six thousand three hundred fifty two) only as on 31.03.2014 plus interest”.

15. A perusal of the article of charge no. 1 would go to reveal that the petitioner had sanctioned 6(six) loans during the period 07.03.2005 to 16.09.2006 to one Sarbananda Nath, although he was not entitled to be sanctioned loans under the schemes it was so sanctioned. Out of the 6(six) loans so sanctioned, 2(two) loans continues to be remain un-liquidated.

16. Article of charge no. 2 as framed against the petitioner, vide the show-cause notice dated 11.06.2014, alleges that he had sanctioned 3(three) separate loans to one Ninao Boro and accordingly, it was further alleged that the said loans not being liquidated, the loan accounts were declared NPA.

17. The article of charge no. 3 alleges that the petitioner had sanctioned two loans to one Lohit Chandra Deka and one loan to his wife Smti Junmoni Deka. It was alleged that the recovery position with regard to the loans so sanctioned were bad and had been declared NPA. It is further alleged that after the customers were declared defaulters, the petitioner had sanctioned two further loans to Smti Junmoni Deka in clear violation of the norms of the bank in this

connection. The loans so sanctioned were alleged to have remained un-liquidated exposing the bank to losses.

18. The article of charge no. 4 as leveled against the petitioner, vide the show-cause notice dated 11.06.2014 alleges that he had sanctioned loan to one Md. Badaruddin on 31.06.2006, however, no recovery was made from the said borrower and the outstanding amount against the said loan has been on 31.03.2014 stood as Rs. 79611/-. It is alleged that the petitioner after sanctioning the said amounts on 31.05.2006 and the said loan account having been declared NPA, the petitioner had sanctioned further loan to said Md. Badaruddin on 24.06.2008.

19. In view of the above mis-conduct so committed by the petitioner in sanctioning loans to the individuals so sanctioned, it was alleged that the bank had suffered a financial loss of Rs. 5, 96, 352/-.

20. The enquiry report has dealt with each and every loan account so involved and purportedly sanctioned by the petitioner, herein. The enquiry officer, in his enquiry dated 16.05.2015, after considering the materials available on record, had proceeded to conclude that the charges leveled against the petitioner, herein, stood established in the enquiry. Thereafter, the enquiry report was also duly forwarded to the petitioner and he had submitted his representation against the same.

21. The Disciplinary Authority thereafter, considered the enquiry report along with the materials coming on record in the enquiry and by concluding that the

petitioner was given all reasonable opportunity in the enquiry for defending the allegations so leveled against him concurred with the findings of the enquiry officer and held that the charges so leveled against the petitioner, vide the show-cause notice dated 11.06.2014 stood established against him.

22. On reaching the above conclusions, the Disciplinary Authority proceeded to impose upon the petitioner the penalty of "reduction of basic pay by 4(four) stages with cumulative effect".

23. At this stage, it is to be noted that during the enquiry in process, the defense representative of the petitioner had submitted a representation before the enquiry officer and therein, had contended that the petitioner would not be liable to the loss occasioning to the bank to the extent as quantified in the show-cause notice dated 11.06.2014 i.e., Rs. 5, 96, 352/- as on 31.03.2014, but, would be liable only to the extent of Rs. 1, 81, 220/-. The said contention as made with regard to the liability of the petitioner in the matter was also reiterated by the petitioner in the rejoinder so filed by him in the present proceedings to the affidavit filed by the respondent bank.

24. The petitioner had submitted in the rejoinder that in the enquiry he had proved that he may be made accountable only for an amount of Rs. 1, 81, 220/- with the further contention that the same could also have been easily recovered if the bank authorities would have taken timely steps to recover the same.

25. In view of the above position and also noticing the admission of the petitioner, herein, with regard to his liability for the loss so occasioning to the

respondent bank, this Court would conclude that the said admission by the petitioner would go to reveal that the allegations so leveled against him, in the enquiry, has been established. However, given the fact that the petitioner had not accepted the liability for the loss occasioning to the bank to the extent of Rs. 5, 96, 353/- but, having so admitted his guilt only to the extent of Rs. 1, 81, 220/-, this Court would be required to examine as to whether the reduced liability so admitted by the petitioner would justify the imposition of the penalty now imposed upon him by the respondent authorities.

26. 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, more so, in absence of any material brought on record by the petitioner to demonstrate that such conclusions were perverse.

27. 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 30.09.2015.

28. 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 defense 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.”

29. 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 show-cause notice, 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 herein below:

“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."

30. 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.”

31. 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. It is to be also held that the admission by the petitioner to a lower liability would in no manner have a mitigating effect on the misconduct so committed by him in the matter. Accordingly, the penalty as imposed upon the petitioner vide the order dated 30.09.2015, does not warrant any interference.

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

33. 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.”

34. 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.

35. 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.

36. 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'.”

37. 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."

38. 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 and the petitioner being a Bank employee ought to have maintained utmost integrity, devotion, diligence and honesty, which, he admittedly, has failed to do so.

39. 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.

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

JUDGE

Comparing Assistant