

GAHC010014212013



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

Case No. : WP(C)/7551/2013

RABINDRA NATH SARMA
EX - MANAGER, MUSALPUR BRANCH , PATHSALA TOWN, WARD NO. 1,
JYOTI NAGAR, P.O.- PATHSALA, DIST.- BARPETA, ASSAM, PIN- 781325.

VERSUS

ASSAM GRAMIN VIKASH BANK and 3 ORS
REP. BY THE CHAIRMAN, HEAD OFFICE- G.S. ROAD, BHANGAGARH, GHY-
5, ASSAM.

2:BOARD OF DIRECTORS
REP. BY CHAIRMAN
ASSAM GRAMIN VIKASH BANK
G.S. ROAD
BHANGAGARH
GHY- 5
ASSAM.

3:CHAIRMAN
ASSAM GRAMIN VIKASH BANK
G.S. ROAD
BHANGAGARH
GHY- 5
ASSAM.

4:GENERAL MANAGER
ASSAM GRAMIN VIKASH BANK
G.S. ROAD
BHANGAGARH
GHY- 5
ASSAM

Advocate for the Petitioner : MR.P K ROY

Advocate for the Respondent : MR.S DUTTA

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

Date of hearing : 06.06.2024

Date of Judgment : 06.06.2024

Judgment & order(Oral)

Heard Mr. P. K. Roy, learned senior counsel, assisted by Mr. S. K. Chakraborty, learned counsel, appearing on behalf of the petitioner. Also heard Mr. S. Dutta, learned senior counsel, assisted by Mr. C. Sarma, learned counsel, appearing on behalf of the respondent Assam Gramin Vikash Bank(AGVB).



2. The order of penalty of compulsory retirement from his service as imposed upon the petitioner vide order, dated 22.04.2013, in pursuance of the Disciplinary Proceeding initiated against him, is challenged in the present proceeding, amongst others on the ground that in view of the misconduct proved in the matter against the petitioner; the same is shockingly disproportionate. The petitioner has also assailed the rejection of his appeal preferred before the Board of Directors(BoDs) of the respondent Assam Gramin Vikash Bank(AGVB) in its meeting held on 20.08.2013.

3. The petitioner, herein, while functioning as the Branch Manager of Musalpur Branch of Assam Gramin Vikash Bank(AGVB), was served with a Show

Cause Notice, dated 18.05.2011. In the said Show Cause Notice, 3 allegations were levelled against the petitioner. The petitioner on receipt of the said Show Cause Notice vide his reply, dated 16.09.2011, responded to the same and therein, had contended that he was not involved with the allegations levelled against him and the same was so done by tampering the computer system of the Branch by the Cashier in collaboration with the Computer Engineer.

4. The petitioner had also in his reply, dated 16.09.2011, contended that inspite of the fact that he was in no way connected with the loss of money kept in the Strong Room of the Branch, he was required to refund the same. The disciplinary authority not being satisfied with the reply as submitted by the petitioner to the Show Cause Notice, 18.05.2011, proceeded to direct for an inquiry against the petitioner with regard to the allegations levelled against him vide the said Show Cause Notice. The petitioner participated in the inquiry and on conclusion of the said inquiry, the Inquiry Officer vide order, dated 19.12.2012, proceeded to hold the 3 charges as levelled against the petitioner vide the Show Cause Notice, 18.05.2011, to have been established in the inquiry. Accordingly, the said inquiry report was furnished to the petitioner and on receipt of the representation submitted by the petitioner against the same; the disciplinary authority, on perusal of the materials, having concurred with the findings of the Inquiry Officer, had proceeded to impose upon the petitioner the penalty of compulsory retirement from his service. The petitioner being aggrieved, proceeded to submit an appeal in the matter vide his appeal memo, dated 04.06.2013. The said appeal was placed before the Board of Directors(BoDs) in its 47th meeting held on 20.08.2013, on examination of the appeal and the contemporaneous records, proceeded to reject the same

upholding the decision of the disciplinary authority in the matter. The said decision of the Board of Directors(BoDs) with regard to the appeal as preferred by the petitioner, was communicated to him vide communication, dated 24.08.2013.

5. Mr. Roy, learned senior counsel for the petitioner, after having taken this Court through the articles of charge/ allegations levelled against the petitioner, has contended that normally the keys to operate the Strong Room of the Branch is kept with the Branch Manager and the Cashier jointly and they are the joint custodians of the cash and other documents that are kept in the Strong Room of the Branch.

It is the contention of the learned senior counsel that in the case on hand, both the keys pertaining to the Strong Room of the Branch, were kept with the Cashier. It was further contended that with regard to the articles of charge No. 2 & 3 as levelled against the petitioner; the misconduct involved was so committed by the Cashier in collaboration with the Computer Engineer in-as-much as the password of the petitioner was known to the Cashier as the same was so given to the Cashier by the petitioner for smooth functioning of the Branch as there were only 2 staff who were running the Branch at the relevant point of time.

The learned senior counsel has submitted that the Bank authorities were apprised of the fact that it is the Cashier who is actually responsible for the misconduct now alleged against the petitioner. However, the Bank authorities

had not proceeded against the Cashier and he was permitted to continue with his service without subjecting him to any Disciplinary Proceeding.

The learned senior counsel has also submitted that the Inquiry Officer had not attempted to find out the manner in which the cash had gone missing from the Strong Room of the Branch and by relying more on the articles of charges No. 2 & 3; it was concluded that the petitioner, herein, had committed a misconduct in the matter and accordingly, held all the 3 charges to have been established against the petitioner.

The learned senior counsel has further submitted that in the inquiry, the petitioner was not given an adequate opportunity to defend his case. Further, the petitioner was denied a fair opportunity to cross-examine the witnesses deposing on behalf of the Management of the respondent Bank in the inquiry so held. It was also contended that the documents so relied upon by the Management of the respondent Bank in the inquiry, were not provided to the petitioner, herein. Accordingly, it is submitted that the defence of the petitioner in the matter was seriously prejudiced which has the effect of vitiating the inquiry as initiated against the petitioner.

The learned senior counsel appearing for the petitioner has further submitted that given the manner in which the proceedings have been held; the penalty as imposed upon the petitioner, is grossly disproportionate to the charges as levelled against him.

In the above premises; Mr. Roy, learned senior counsel, has submitted that the penalty as imposed upon the petitioner, requires to be interfered with by this Court and consequently, the appellate order also calls for an interference by this Court.

6. Mr. S. Dutta, learned senior counsel appearing for the respondent Assam Gramin Vikash Bank(AGVB), had categorically submitted that in the Show Cause Notice, dated 18.05.2011, the allegations levelled against the petitioner and the charges so framed thereon, were clearly mentioned with the required particulars. Accordingly, the petitioner knew the charge he was supposed to meet in the Disciplinary Proceeding so initiated against him.

The learned senior counsel for the respondent Bank has submitted that the cash amounting to Rs. 2,41,533/- was detected to be missing from the Strong Room of the Branch on 12.01.2009.

By referring to the article of charge No. 1 as levelled against the petitioner vide the Show Cause Notice, dated 18.05.2011, it is contended by the learned senior counsel that inspite of detection of the cash so missing from the respondent Bank, the petitioner had not informed the matter either to his superiors or filed any information in this connection with the police.

It is submitted that the articles of charges No. 2 & 3 pertain to the actions taken by the petitioner after the cash was so detected to be missing from the Strong Room of the Branch with a view to cover-up such loss of cash from the

respondent Bank. The learned senior counsel has submitted that the petitioner being an employee of the Bank, is expected to have an impeccable honesty and integrity and the petitioner, herein, having been found to be a man with suspected financial integrity and honesty, he was rightly imposed with the penalty of compulsory retirement from his service by the disciplinary authority.

It is further contended by the learned senior counsel for the respondent Bank that the petitioner was extended with all due opportunity to defend his case in the matter. Copies of all the relevant documents as relied upon in the inquiry, were furnished to the petitioner in the matter. Further, the witnesses as deposing on behalf of the Management of the Bank were also offered for cross-examination to the petitioner.

Accordingly, learned senior counsel, by relying on the original records produced in the matter pertaining to the inquiry, held against the petitioner, has contended that the same would reveal that he was afforded due opportunities to defend his case.

By referring to the inquiry report, the learned senior counsel for the respondent Bank, has submitted that the findings of the Inquiry Officer therein, is so based on the materials coming on record in the inquiry and the same cannot be said to be perverse.

The learned senior counsel has further submitted that the articles of charge No. 2 & 3 and the allegations levelled against the petitioner therein, having

neither been categorically explained by him in the pleadings brought on record in the present proceeding nor, in the said inquiry and he having concentrated on the article of charge No. 1; the allegations as levelled against the petitioner and the misconduct as proved against him, has led to a situation wherein the respondent Bank had lost confidence on the petitioner, herein.

The learned senior counsel for the respondent Bank, has submitted that the penalty of compulsory retirement from his service as imposed upon the petitioner is commensurating to the misconduct as proved against him in the inquiry and accordingly, the same does not call for an interference from this Court.

In the above premises, Mr. Dutta, learned senior counsel, has submitted that this Court would be pleased to dismiss the writ petition upholding the penalty so imposed upon the petitioner, herein.

7. I have heard the learned counsels appearing for the parties and also perused the materials brought on record including the statements as made available before the Inquiry Officer by the witnesses deposing therein.

8. At the outset, it is to be noted that it is an admitted position that on 12.01.2009, it was detected an amount of Rs. 2,41,533/- was missing from the iron safe kept in the Strong Room of the Branch. However, from the materials on record, it is not found that the said incident was informed by the petitioner to his superiors or to the police.

9. On the said aspect of the matter coming to the notice of the authorities of the respondent Bank; preliminary inquiries were held in the matter. The preliminary investigation as made by the Regional Office of the Assam Gramin Vikash Bank (AGVB) having brought to light materials indicating the commission of misconduct by the petitioner in the matter; the disciplinary authority proceeded to issue the Show Cause Notice, dated 18.05.2011, to the petitioner, herein. The charges as levelled against the petitioner being relevant; the same is extracted hereinbelow:

"Articles of charges-

During the tenure of your service as Branch Manager of Assam Gramin Vikash Bank, Musalpur branch from 26.02.2007 to 12.09.2009, you failed to take all possible steps to ensure and protect the interest of the bank and discharge your duty with utmost integrity, honesty, devotion and diligence in as much as-

(1) An incident of missing of cash amounting to Rs.241533/- (Rupees two lakh forty one thousand five hundred thirty three) from strong Room had occurred in your branch on 12.01.2009. The amount was locked in a remittance trunk and kept in the Strong Room on 10.01.2009 after close of day's business as per record. But the same was not found by the cashier, Sri Madhu Ram Boro, when he opened the Strong Room on 12.01.2009 (11.01.2009 was Sunday). The branch was under lock & key and no attempt of robbery/breaking of locks etc noticed as reported. In this regard, you as Branch Manager of the branch neither reported the same immediately to the Controlling Office nor to the Police. Moreover, you tried to conceal the actual fact of missing of cash from Strong Room and made an arrangement along with the Cashier to adjust the amount by collecting money from one Sri Narad Chandra Basumatary (Account holder, SB A/C No.-4) by means of creating one LAD (A/C No.348) for Rs 230000/- against his own Term Deposit accounts & Rs. 11533/- from the personal a/c of Cashier. Thus, you adjusted the cash shortage on that date and tried to suppress the matter.

(2) On 10.07.2009, you opened one fictitious SB A/C (No.51) in the name of Sri Ramo Nath Sarma of Village & Post Office-Subankhata, District-Baksha. As per Master, the account was introduced by BM (yourself). Computer entry was done by you using ID-MGR' as operator and authorized by using your own ID-RNS' as supervisor. The opening balance of the account was shown as Rs.241533/- (exactly the same missing amount from Strong Room). There is no any voucher of such transaction on that day. On the other hand, there is no any record in the SB A/C opening Register and no Account Opening Form & Specimen Signature Card has been found in the branch. From the above, it is crystal clear that only ledger entry of the amount was done by you with your malafide intention by opening the fictitious account.

(3) On 04.08.2009, entire Rs.241533/- was transferred from SB a/c No.51 to SB a/c No.4 (A/C of Sri Narad Chandra Basumatary) without preparing any vouchers by you effecting Book's of Accounts as follows-

- (i) Transfer Debit SB a/c No.51 for Rs.241533/-,**
- (ii) Transfer Credit SB a/c No.4 for Rs.230000/-&**
- (iii) Transfer Credit SB a/c No.4 for Rs. 11533/-**

All these fraudulent transactions were entered in the Computer by using the same ID i.e. 'MGR' as operator and 'RNS' as supervisor by you with your malafide intention.

From the above facts, it is evident that you had misappropriated Rs.241533/- from the Bank, which was lost from the Strong Room on 12.01.2009, and in order to refund the amount to Sri Narad Chandra Basumatary, you committed the forgery by manipulating the books of accounts of the branch."

10. A perusal of the article of charge No. 1 would reflect that the same pertains to an incident of missing of a cash amount of Rs. 2,41,533/- from the Strong Room of the Branch which was detected on 12.01.2009. The said charge levelled against the petitioner is to the effect that he as the Branch Manager of the Branch on detection of the cash amount, referred to above, missing, neither, immediately informed the superiors nor the police. It was further alleged that to conceal the fact of the cash missing from the Strong Room of the Branch, the petitioner had made an arrangement with the Cashier to adjust the missing amount proceeded to create in respect of one Shri Narad Chandra Basumatary, a LAD for Rs. 2,30,000/- against his own term deposit and Rs. 11,533/- from the personal account of the Cashier and thereby, adjusted the cash shortage on that day and suppressed the matter.

11. The article of charge No. 2 as levelled against the petitioner pertains to the creation of one saving bank account in the name of one Sri Ramo Nath Sarma of village Subankanta. It was alleged that the said account was so

opened on the applicant being introduced by the petitioner. The requisite entry on behalf of Sri Ramo Nath Sarma was made by using the ID of the petitioner, herein, and it was so approved again by the petitioner himself. The opening balance of the said account was shown as Rs. 2,41,533/- which matches with the amount missing from the Strong Room of the Branch. It is further alleged that no voucher of such transaction so occasioning on that day was found and in the record maintained of SB Account Opening, no account opening form and specimen signature card was also found. Accordingly, the said account was so opened with mala fide intention by making a ledger entry in the matter.

12. The article of charge No. 3 levels an allegation that on 04.08.2009; neither the amount of Rs. 2,41,533/- was transferred from Account No. 51 to the Account No. 4 without preparing any vouchers by the petitioner himself in the form of 3 transactions. It is alleged that the said fraudulent transactions were entered into the computer by using the ID of the petitioner and it was also approved by the petitioner himself. Therefore, the petitioner was alleged that he had misappropriated the amount missing from the Strong Room of the Branch on 12.01.2009 and in order to refund the amount to Narad Chandra Basumatary; he had committed forgery by manipulating the books of account of the Branch.

13. In the inquiry so held in the matter into the allegations levelled against the petitioner, the Inquiry Officer with regard to the article of charge No. 1, had recorded a finding that the petitioner had actually concealed the fact of missing of cash from the Strong Room of the Branch on 12.01.2009 and he had not reported the incident to his controlling office or to the police. It was concluded

by the Inquiry Officer that by the said action on the part of the petitioner, herein, it was demonstrated that he had failed to take possible steps to ensure and protect the interest of the respondent Bank.

With regard to the second part of the said charge i.e. creation of one LAD in the name of Narad Chandra Basumatary; the Inquiry Officer had concluded that the same was not proved in the inquiry in-as-much as the said LAD account was sanctioned and the amount of Rs. 2,30,000/- disbursed as per the extent norms of the Bank.

With regard to the article of charge No. 2, the Inquiry Officer has concluded that the opening of the account in the name of Shri Ramo Nath Sarma by the petitioner was with mala fide intention and there was no account opening form or specimen signature card of the applicant of the said account and the account was so opened on being introduced by the petitioner. However, the petitioner had made a ledger entry to reflect an opening balance of the account to be Rs. 2,41,533/-. It is contended that the said position as coming on record in the inquiry, was not disputed by the petitioner and accordingly, it was held that the petitioner had opened the said saving bank account in the name of Shri Ramo Nath Sarma in a fictitious manner with mala fide intention.

With regard to the article of charge No. 3, the Inquiry Officer basing on the materials coming on record, had recorded a finding to the effect that the transactions as indicated in the charge were all fraudulent transactions made with the intention to conceal the missing cash of Rs. 2,41,533/-. Accordingly, it

was held that the petitioner not having disputed the evidences coming on record, the article of charge No. 3 was held to be established.

14. The petitioner was, thereafter, forwarded with a copy of the inquiry report and thereafter, he submitted his representation thereon, on 05.02.2013. A perusal of the said representation would reveal that the petitioner had not brought on record any material to dispute the findings as recorded by the Inquiry Officer in the matter. In the said representation, the petitioner had not averred that he was in any manner denied a due opportunity to defend his case. The disciplinary authority on receipt of the representation as submitted in the matter by the petitioner and on considering the materials coming on record in the inquiry, by concurring with the findings of the Inquiry Officer, proceeded vide the communication, dated 22.04.2013, to impose upon the petitioner the major penalty of compulsory retirement from his service. As indicated above; the appeal as preferred by the petitioner against the said penalty of compulsory retirement from his service, was rejected by the Board of Directors(BoDs) in its 47th meeting held on 27.08.2013 after due consideration of the same.

15. The petitioner in the Disciplinary Proceeding held against him as well as in the present proceeding, has laid emphasis only on the missing cash amount and has not dealt with the articles of charge No. 2 & 3 in the manner required.

16. The allegations as forming the part of the article of charge No. 1 as noted hereinabove, pertains to the action on the part of the petitioner in not reporting the said incident to his controlling officer or the police. The Inquiry Officer in his

findings with regard to the said charge, has held that the said action on the part of the petitioner demonstrates that he had failed to take steps to ensure and protect the interest of the Bank. The second part of the article of charge No. 1 was not proved in the inquiry.

17. The article of charge No. 2 pertains to an allegation against the petitioner of opening a fictitious saving bank account in the name of one Shri Ramo Nath Sarma without following the mandatory procedure as prescribed for opening of such bank account. The Inquiry Officer on the basis of the materials coming on record, had come to a conclusion that the said account was so opened on the account holder being introduced by the petitioner himself. There was no documents found on record pertaining to the opening of the said account except for a ledger entry demonstrating the opening balance in the said account as Rs. 2,41,533/- which corresponds to the missing cash in the Bank.

18. Likewise, the article of charge No. 3 levels an allegation of the petitioner entering into fraudulent transactions which was contended to be for the purpose of concealing the missing cash. The said allegations were held to be proved against the petitioner basing on the documents as produced in the inquiry which includes the ledgers maintained in the respondent Bank. The said findings as recorded by the Inquiry Officer with regard to the charges as held to be proved against the petitioner in the proceeding held against him, were not disputed by the petitioner even in the present proceeding.

19. Accordingly, the above conclusions by the Inquiry Officer in the matter

being so based on the materials coming on record, this Court would not re-evaluate the same by assuming the role of an appellate authority. At this stage, it is to be noted that while the petitioner had made a contention that he was denied an opportunity to cross-examine the Management witnesses; it is found that such a contention was never raised by the petitioner during the inquiry proceeding or in the representation as filed by him against the inquiry report. Such contentions came to be so made only in the appeal memo as preferred by the petitioner against the penalty as imposed upon him. In view of the above position, the said contention of the petitioner that he was denied an opportunity to cross-examine the Management witnesses, cannot be accepted by this Court.

20. 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 in particular, a Bank Officer and if this is not observed; the confidence of the public/depositors would be impaired.

21. 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 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."

22. 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."

23. 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 mis-appropriation is immaterial the factum of mis-appropriation 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."

24. 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 compulsory retirement from service as imposed upon the petitioner does not warrant any interference.

25. However, this Court would also like to deal the contention raised by the learned counsel for the petitioner that the penalty of compulsory retirement 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.

26. This Court in this connection 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."

27. 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 Officer of the respondent Bank; it is to be noted that the petitioner cannot be 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 in extenuating circumstances, if any. Accordingly, the penalty as imposed upon the petitioner in the matter, in the considered view of this Court, is proportionate to the allegations levelled against him and established in the inquiry.

28. 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 circumstances warranting interference with the penalty as imposed upon the petitioner.

29. 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.

30. 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'."

31. 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."

32. In view of the pronouncement, as noticed above in the matter, 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 holding a responsible position 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.

33. Accordingly, in view of the above discussions and conclusions, this Court if 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.

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

35. The records as produced by the learned counsel for the respondent Bank be returned forthwith.

JUDGE

Comparing Assistant