

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)
APPELLATE SIDE**

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 10517 of 2019

Bhaskar Adhikari

Vs.

Bank of India & Others

For the petitioner : Mr. Ritzu Ghosal,
Mr. Pourush Bandopadhyay,
Mr. Anirban Ghosh.

For the Respondents/Bank : Mr. R. N. Majumder,
Mr. S. M. Obaidullah.

Heard on : 11.02.2026

Judgment on : 10.03.2026

Partha Sarathi Chatterjee, J.:-

Preface:

1. By filing the present writ petition, the petitioner calls in question the legality, validity and propriety of the order of punishment dated 15th October, 2018 as well as the order passed by the Appellate Authority dated 21st January, 2019, and prays for issuance of a writ of *certiorari* for quashing and setting aside the said orders. The petitioner further prays for issuance of a writ of *mandamus* commanding the respondent authorities to reinstate the petitioner in the service of the Bank of India to the post which he held

immediately prior to his “Dismissal Without Notice”, together with all consequential service benefits including full back wages.

Petitioner’s case:

2. Before embarking upon an examination of the issues raised in the present writ petition, it would be apposite to advert to the essential facts, as projected in writ petition and the documents appended thereto, which are as delineated hereunder:

- i) The petitioner was appointed in the service of the Bank of India on 11th March, 1998 in the clerical cadre as a Cash-cum-Account Clerk on compassionate grounds, initially on probation for a period of six months, and joined the Bank on 16th March, 1998 at its Kharagpur Branch. Upon successful completion of the probationary period, the petitioner was confirmed as a permanent employee with effect from 16th September, 1998. From 1998 till April, 2017, the petitioner continuously served at the said Kharagpur Branch, rendering about nineteen years of uninterrupted and unblemished service.
- ii) Although the petitioner’s designation was cash-cum-accounts clerk, his duties were not confined to the cash department and routine counter operations. In July 2005, in recognition of satisfactory performance and diligence, the petitioner was selected for the post of Marketing Assistant, which entailed assignments outside the branch premises in addition to regular duties.
- iii) On 25 April 2017, the petitioner was served with a suspension order issued by the Zonal Manager & Controlling Authority, Bardhaman Zone, pending initiation of disciplinary proceedings.

- iv) In the order of suspension, it was indicated that, upon preliminary investigation, serious irregularities were detected in the pensioners' accounts of the Kharagpur Branch. It was further revealed that voluminous transactions involving a huge number of pension accounts, mostly belonging to illiterate pensioners affixing thumb impressions, were highly suspicious, indicating the involvement of a third party outside the bank.
- v) It was mentioned in the said order that the Financial Transaction Inquiry Reports, generated for the period from July 2016 to April 2017, revealed a series of similar high-value transactions in various pensioners' accounts (mostly dormant), aggregating approximately Rs. 84 lakhs. It was alleged that such transactions were entered using the User IDs of Saktipada Das and the petitioner, and were posted/verified by Kamal Bhattacharya and Sudip Das. In particular, the entries were made either by Saktipada Das, Head Cashier, or by the petitioner, and were verified either by Kamal Bhattacharya or Sudip Das. On the basis of such allegations, the petitioner was placed under suspension.
- vi) Subsequently, by another letter dated 10.07.2017, the petitioner was asked to submit his written version within seven days from the date of receipt thereof. The petitioner submitted such written version. However, subsequently, a charge sheet dated 25.10.2017, followed by a corrigendum dated 01.12.2017 containing three articles of charge, was served upon the petitioner.
- ix) The sum and substance of the charge was that the petitioner, acting with dishonest intent, activated 19 dormant pension accounts by

making entries in the Finacle system of the bank without obtaining the requisite KYC documents or any request from the concerned account holders. After such activation, he allegedly effected cash payments from those accounts on the basis of withdrawal slips, despite there being no valid mandate and without proper authentication or cancellation of the signatures or Left Thumb Impressions of the account holders by the branch officials. Save and except four instances, the denominations of the currency notes were also not recorded on the reverse of the withdrawal slips. By such acts, in alleged connivance with two other staff officers of the bank, the petitioner is stated to have misappropriated a sum of Rs. 38.67 lakhs from the said dormant accounts, in gross violation of the bank's operational norms, systems and procedures.

- x) Subsequently, a domestic enquiry was conducted between 15.12.2017 and 17.03.2018. During the enquiry, the management examined five (5) witnesses and relied upon documentary evidence marked as ME-1, ME-2 series, ME-3 series, ME-4 to ME-8, ME-9 series, ME-10 series, ME-11 series, and ME-13 to ME-15, ME-16 series, and ME-17 to ME-19, including system-generated transaction logs, withdrawal instruments, internal procedural circulars concerning activation of dormant accounts, and the report of the handwriting expert.
- xi) After conclusion of the examination of the management witnesses, the petitioner submitted his written notes of argument, wherein he denied all the allegations and specifically contended that there was no

direct evidence to establish that he had personally activated the accounts or prepared and processed the disputed withdrawal slips. The petitioner relied upon the report of a handwriting expert, which, according to him, indicated that the signatures appearing on several disputed withdrawal slips did not match his admitted handwriting. The petitioner further contended that during cross-examination of the management witnesses it transpired that the procedure for activation of dormant accounts was not clearly brought on record and that no witness could conclusively demonstrate that the petitioner had exclusive access to the system at the relevant time. The petitioner also contended that the investigation failed to identify the person who had physically handled the withdrawal instruments.

- xii) However, upon conclusion of the enquiry, the Enquiry Officer returned a finding that Charge-I(i) was partially proved, Charge-I(ii) was proved, and the charge mentioned under paragraph 4 at page 3 was not proved.
- xiii) Thereafter, the Disciplinary Authority issued a “disagreement note” dated 28.05.2018, expressing disagreement with the findings of the Inquiry Officer, and recorded its own finding that all the charges stood fully proved against the petitioner. In the said note, the petitioner was asked to submit his representation within five days from the date of receipt thereof.
- xiv) The record reveals that the petitioner submitted a joint representation in respect of the substituted findings recorded by the Disciplinary Authority as well as the enquiry report.

- xv) However, by a notice dated 4 September 2018, she was afforded an opportunity of personal hearing and was also called upon to submit a written statement to show cause as to why the proposed punishment of dismissal without notice should not be imposed upon her.
- xvi) The petitioner submitted a representation against the proposed disagreement, contending that the Disciplinary Authority had overlooked material evidence, particularly the forensic report, and had failed to indicate how the cumulative evidence established that the charges stood proved against the petitioner and how petitioner had misappropriated Rs. 38.67 lakhs in connivance with other officials of the bank.
- xvii) However, by order dated 15 October 2018, the Disciplinary Authority imposed the penalty of dismissal without notice, which, according to the petitioner, was passed with a pre-determined mind, without due consideration of her representations, documents and witnesses, and in disregard of the principle of preponderance of probability, allegedly with the sole objective of making her a scapegoat in order to shield the real culprits.
- xviii) The petitioner preferred a statutory appeal against the order of punishment on 5 December 2018; however, the same was rejected by the Appellate Authority on 21 January 2019 in a mechanical way. A further representation dated 11 March 2019 seeking reconsideration has remained unattended. Aggrieved by the orders of dismissal and rejection of appeal, the petitioner has approached the Hon'ble High Court at Calcutta under Article 226 of the Constitution of India.

Respondents' case:

3. The respondents sought to defend the writ petition with following contentions:

- i) The petitioner is a “workman” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and, as such, has an alternative statutory forum to ventilate his grievances. Accordingly, the writ petition is liable to be dismissed.
- ii) While addressing the merits of the case, it was contended that the charge sheet disclosed that the petitioner, with dishonest intent and in gross violation of the bank’s operational norms, systems and procedures, had activated 19 dormant pension accounts by entering relevant data into the system without obtaining the requisite KYC documents. It was further alleged that, upon such unauthorized activation, the petitioner proceeded to effect cash payments in eleven of those dormant accounts by posting relevant entries in the system without any authorization from a competent officer, without the presence of the account holders or their LTI, and without recording the denominations on the reverse of the withdrawal slips, thereby misappropriating Rs. 38.67 lakhs. Accordingly, it was asserted that the petitioner had acted in a manner prejudicial to the interests of the bank within the meaning of paragraph 5(j) of the Bipartite Settlement dated 10 April 2002.
- iii) The petitioner denied the allegations levelled against him. Consequently, a departmental enquiry was initiated, in which he was

afforded full opportunity to defend himself. Upon conclusion of the enquiry, all the charges were found to have been proved, and the penalty of “dismissal without notice” was imposed upon him.

- iv) Aggrieved thereby, the petitioner preferred a statutory appeal against the order of punishment. The Appellate Authority, upon due consideration of the materials on record, dismissed the said appeal. The petitioner has sought to raise certain disputed questions of fact which cannot be adjudicated in the present writ proceeding.

Contents of affidavit-in-reply:

- 4. In the affidavit-in-reply, it was specifically denied that the writ petition is liable to be dismissed on the ground of non-exhaustion of an alternative remedy. It was asserted that the provisions of the Banking Regulation Act, 1949 override those of the Industrial Disputes Act, 1947, particularly Section 10 thereof, and that this Court has the jurisdiction to entertain, try, and determine the issues raised in the present writ petition.
- 5. While denying the charges in their entirety, it was further contended that there is no direct evidence on record to establish that the allegations levelled against the petitioner have been duly proved.

Arguments:

- 6. Mr. Ghoshal, learned advocate appearing for the petitioner, advanced arguments on her behalf. The submissions advanced by Mr. Ghoshal may be crystallised as follows:

- i) The petitioner was initially appointed as a Cash-cum-Accounts Clerk and, upon being found satisfactory in his overall performance, was subsequently selected as a Marketing Assistant of the bank. He was occasionally entrusted with additional duties in the cash section. However, on 25 April 2017, an order of suspension was served upon him alleging that he had activated dormant pension accounts, effected cash payments in gross violation of the bank's norms, and thereby misappropriated Rs. 38.67 lakhs.
- ii) He submits that, thereafter, a charge sheet containing three charges was served upon the petitioner. The petitioner submitted his representation in response thereto, and a departmental enquiry was conducted. The Enquiry Officer, in his report, concluded that Charge No. 1 was partially proved and charge no.2 was proved but the remaining charge was not proved. However, the Disciplinary Authority disagreed with the findings of the Enquiry Officer, held that all the charges stood proved, and ultimately imposed the penalty of dismissal without notice.
- iii) He contended that the decision of the Disciplinary Authority is based on no evidence. According to him, there is neither direct nor cogent, much less corroborative evidence to establish that the petitioner had personally activated the dormant pension accounts, effected payments in gross violation of the bank's norms, or misappropriated a sum of Rs. 38.67 lakhs. He further

submitted that even the Enquiry Officer, in his report, did not return any finding conclusively holding the petitioner guilty of such acts.

iv) He submitted that, in the present case, it was the bank itself that forwarded the relevant documents to obtain the opinion of a handwriting expert. A crucial aspect of the matter is the expert's report, which clearly opined that the signatures appearing on the disputed withdrawal slips, through which a sum of Rs. 38,67,000/- was allegedly misappropriated, were not those of the petitioner. In view of such categorical opinion of the handwriting expert confirming that the signatures belonged to other individuals, it was contended that the Enquiry Officer could not have conclusively connected the petitioner with the alleged act of forging the withdrawal documents.

v) Referring to certain portions of the evidence of MW-1 and MW-2, he submitted that both the witnesses deposed that, in the ordinary course of business, an illiterate customer approaches a designated officer of the branch with the withdrawal slip for authentication. Thereafter, the passbook and the withdrawal slip are placed before the paying cashier, who enters the relevant data in the Finacle system. The documents are then forwarded to the dealing officer for cancellation of the LTI, and upon such cancellation, they are returned to the paying cashier for disbursement of payment. However, in the present case, he claimed, MW-1 was unable to identify the officers who had

authenticated the withdrawal slips or cancelled the LTIs of the concerned customers.

- vi) Referring to the minutes of the proceedings dated 2nd February, 2018, Mr. Ghosal submitted that, despite a specific request made on behalf of the petitioner, the bank failed to produce the documents on the basis of which the petitioner had allegedly entered the relevant data into the system.
- vii) Inviting attention to the deposition of MW-2, Mr. Ghosal submitted that MW-2, who was serving as a manager of the bank, admitted that it is the designated officer who is authorised to obtain and verify the KYC documents of a customer. He further admitted that it would not be possible for a paying cashier to ascertain the particular officer, along with his SOL, by whom a payment voucher exceeding Rs. 50,000/- had been posted and/or verified. It was also acknowledged by MW-2 that the petitioner was not empowered to check or verify the LTI of a customer. Moreover, MW-2 stated that the report of the handwriting expert did not reveal anything adverse against the petitioner.
- viii) Mr. Ghoshal contended that the Disciplinary Authority, proceeding merely on presumptions and assumptions, concluded that all the charges stood proved against the petitioner. He submitted that such a finding, being unsupported by cogent evidence, is wholly unsustainable in law. He also claimed that the appellate authority has mechanically affirmed

the decision of the DA and accordingly, he claimed, findings of the AA cannot be allowed to stand.

- ix) He claimed that even if it is assumed that it has been proved that the petitioner's User ID was used and no denominations were mentioned on the reverse of the withdrawal slips, for that reason, a punishment of 'dismissal without notice' is disproportionate.

7. In rebuttal, Mr. Majumder, learned advocate appearing for the respondent bank and its functionaries, argued that a writ court cannot sit in appeal over the decision of the Disciplinary Authority or reappreciate the evidence recorded during the departmental enquiry proceedings. In support of such contention, Mr. Majumder relied upon the decisions reported in (2003) 3 SCC 583 (Lalit Popli vs. Canara Bank & Ors.), (2003) 9 SCC 191 (Sub-Divisional Officer, Kouch vs. Maharaj Singh), (1997) II LLJ 26 (Tara Chand Vyas vs. Chairman & Disciplinary Authority & Ors.) and (2015) 2 SCC 610 (Union of India & Ors. vs. P. Gunasekaran).
8. He submitted that, in the present case, upon due assessment of the evidence on record and by applying the principle of preponderance of probabilities, the bank arrived at a finding that the charges levelled against the petitioner stood proved. According to him, it has been conclusively established that the petitioner entered the relevant data in the Finacle system by using his User ID, effected payments in respect of 19 dormant pension accounts and misappropriated a sum of Rs. 38.67 lakhs.
9. He contended that, in the present case, there is no flaw in the decision-making process and that every opportunity was afforded to the petitioner to

defend himself. Therefore, according to him, there is no scope for interference in the case at hand.

10. He contended that a bank employee deals with public money and, as such, a high standard of integrity is expected from him and that, in a disciplinary proceeding initiated against him, a strict view is required to be taken. To lend support to such contention, he referred to the decision reported in (1998) 4 SCC 310 (*Union Bank of India vs. Vishwa Mohan*).
11. Mr. Majumder asserted that, in respect of a disciplinary proceeding against a bank employee, proof of actual monetary loss is not necessary; rather, gross negligence involving or likely to involve the bank in serious loss is sufficient and, in support of such contention, he relied upon the decision reported in (1999) 4 SCC 759 (*State Bank of India & Ors. vs. T.J. Paul*).
12. By referring to the decision reported in (2009) 13 SCC 272 (*Government of Andhra Pradesh & Ors. vs. P. Chandra Mouli & Anr.*), he contended that the power to punish an employee fall within the domain of the employer and that Courts ordinarily do not interfere unless it is found that the enquiry proceedings or the punishment is vitiated due to non-observance of the relevant rules or principles of natural justice, or that the punishment is disproportionate to the proved misconduct.
13. He claimed that when a bank employee is proved to have been involved in misappropriation of funds, there is nothing improper in awarding the punishment of dismissal from service and that such punishment is appropriate; in support of such contention, he cited the decision reported in (2005) 3 SCC 254 (*Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane*). He further asserted that, in the present case, the magnitude of

misappropriation of funds justifies the dismissal of the petitioner without notice in order to preserve institutional discipline and public trust.

Analysis and conclusion:

14. The record reveals that the respondents raised a preliminary issue regarding the maintainability of the writ petition in view of the fact that the petitioner, being a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, cannot maintain a writ petition before this Court. A Co-ordinate Bench of this Court, by an order dated 20.03.2024 passed in this writ petition, determined the said issue and held that the writ petition is maintainable. The order dated 20.03.2024 has not been assailed by either of the parties and, as such, the same has attained finality. The said order is binding upon the respondent bank and the bank cannot now re-agitate the self-same issue.

15. As noticed previously, in the present case, three charges were levelled against the petitioner which are as follows:

- i) With dishonest intention and in gross violation of the Bank's operational norms, systems and procedures, the petitioner resorted to unauthorisedly activating 19 (nineteen) dormant pension accounts (as detailed in the charge sheet) by entering the related data in the Finacle system of the Branch without any request from the concerned account holders and without obtaining KYC documents. Subsequently, by way of a corrigendum, the words "without obtaining KYC documents" were omitted and a table containing particulars of three accounts,

along with the dates of activation and the last withdrawal dates in respect thereof, was incorporated.

ii) After unauthorisedly activating the aforesaid accounts in the manner stated above, the petitioner, in gross violation of the Bank's operational norms, systems and procedures, made cash payments from 11 (eleven) of such activated dormant pension accounts on the basis of withdrawal slips by posting the related data in the system, without any valid mandate and without proper authentication/cancellation of the signatures/LTIs of the account holders by the Branch officials, and without recording the denominations on the reverse of the withdrawal slips, barring 4 (four) instances.

iii) The petitioner, in the aforesaid manner, misappropriated the Bank's funds aggregating Rs. 38.67 lakhs from the aforesaid activated dormant pension accounts, in connivance with Shri Sudip Das, a Staff Officer earlier posted at the Kharagpur Branch and subsequently transferred to the Kantapahari Branch, and Shri Kamal Kumar Bhattacharya, Manager of the Kantapahari Branch.

16. As noticed previously, in the present case, the Enquiry Officer returned a finding that Charge-I(i) was partially proved, Charge-I(ii) was proved, and the charge mentioned under paragraph 4 at page 3 was not proved.

17. However, the Disciplinary Authority disagreed with the said findings of the Enquiry Officer and ultimately held that all the charges stood proved and imposed the punishment of "Dismissal without notice". The statutory appeal

preferred by the petitioner against the said order of punishment was also decided against him.

18. In the present case, Mr. Ghosal did not contend that there was any illegality in the decision-making process; rather, it was urged on behalf of the petitioner that the decision is perverse and unsupported by evidence. It was further submitted that although the Enquiry Officer himself observed that there was no direct evidence linking the petitioner to the charges, he nonetheless held Charge-I(i) to be partially proved and Charge-I(ii) to be proved, while the other charge was not proved. According to him, the Disciplinary Authority mechanically reversed the said findings without proper analysis of the evidence and merely on presumptions.

20. Indisputably, judicial review encompasses illegality, irrationality (including Wednesbury unreasonableness), and procedural impropriety. The doctrine of reasonableness gives way to the doctrine of proportionality. Judicial review aims to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. Article 14 requires fairness in state action. While judicial review is generally limited to the decision-making process, a decision that is perverse, irrational, or grossly disproportionate falls within its scope. Although a writ court cannot sit in appeal over the decision of the disciplinary authority or re-evaluate the evidence recorded during the inquiry, it may examine the evidence to assess whether the allegation that the decision is based on no evidence is justified.

21. In disciplinary proceedings also, admittedly, the scope of judicial review is generally limited to examining the decision-making process. The authority to punish an employee lies within the employer's domain, and courts typically

refrain from intervening unless it is established that the enquiry proceedings have been tainted due to the failure to adhere to established rules or principles of natural justice. This includes the denial of a reasonable opportunity for the employee to defend themselves, or where the punishment is found to be disproportionate to the proven misconduct.

22. The principles of natural justice require that the findings recorded in a disciplinary proceeding must be founded on some evidence on record. Suspicion, however grave, cannot take the place of proof. It is well settled that in matters arising out of departmental proceedings a writ court does not sit in appeal over the findings of the disciplinary authority. Nevertheless, where it is alleged that the impugned finding is based on no evidence, the writ court is not precluded from examining whether there existed any material on record to sustain such finding and, if it finds that the conclusion is unsupported by any evidence, the same would be liable to be interfered with in exercise of judicial review.

23. In the peculiar facts and circumstances of the case, upon evaluation of the evidence brought on record both the management and the petitioner, the EO returned his findings dated 27.04.2018, wherein it was recorded, inter alia, as follows:

“(iv) During enquiry, any ill motive, nexus or unholy alliance of the CSE with Sudip Das, PF no. 201334, staff officer &/or with Kamal Bhattacharya, PF no. 144298, erstwhile Branch Manager of Kantapahari Branch, was not established.

(v) Finally, there is no evidence to establish that the CSE has misappropriated Rs. 38, 67,000/- i.e. the aggregate

amount of 17 disputed withdrawal slips, which were paid by the CSE under his user ID BA 167915, instead of paying the amounts to the respective pensioners/persons appeared before the CSE's Cash counter for receiving payments.

(vi) Based on the aforesaid discussion/analysis & also discussions/analysis made under Charge-I(i) and Charge-I(ii) & on the basis of preponderance of probability, the allegations made against the CSE vide Para 4 (Page-3) of Chargesheet dated 25.10.2017 & the relevant portion of Corrigendum dated 01.12.2017 stand **Not Proved.**"

25. In the enquiry report, it was specifically observed that the applications of the pensioners and their KYC documents were not available in the branch on the basis of which the petitioner was alleged to have entered data in the Finacle system of the branch. It was further noted that the management did not produce any designated officer of the branch, such as the Branch Head or the Manager (Administration), who were posted during the relevant period, to establish that no instruction had been issued to the CSE for carrying out the said task. In the absence of any documentary or oral evidence, it was found to be extremely difficult to ascertain the correct factual position. The report also observed that, in the absence of any circumstantial evidence, it would not be logical to conclude that the CSE had entered the data for activation of the accounts with any dishonest intention.

26. The Enquiry Officer observed that the CSE had performed the preliminary work for activating the accounts, which took effect only upon authorization of the transactions under the user IDs of Sudip Das and K.K. Bhattacharya. During the enquiry, no ill motive, unholy alliance, or

connivance between the petitioner and Mr. Das or Mr. Bhattacharya came to light.

27. Regarding Charge No. I(ii), the Enquiry Officer observed that, in the absence of CCTV footage, it was not clear whether the withdrawal slips presented to the CSE were accompanied by the passbooks containing photographs of the respective pensioners.
28. In his findings, the Enquiry Officer observed that there was no concrete evidence regarding the death of the respective pensioners or their non-availability at the recorded addresses during the relevant period.
29. The Enquiry Officer further observed that the Document Examiner had opined that the CSE was not involved in the alleged forgery; rather, it was the Head Cashier of the branch who had forged the signatures/initials by which the LTIs on the disputed withdrawal slips were authenticated. The Enquiry Officer also noted that, had the CSE harboured any ill motive, he would have ensured that the denominations on the reverse of the withdrawal slips were properly recorded.
30. Therefore, the Enquiry Officer himself observed that there was no concrete evidence to establish that the respective pensioners had died or had changed their recorded addresses during the relevant period, which struck at the very foundation of the management's case. The Enquiry Officer further noted that the applications of the pensioners and their KYC documents, on the basis of which the petitioner was alleged to have entered data in the Finacle system of the branch, were not available in the branch records. The management also failed to produce any designated officer of the branch, such as the Branch Head or the Manager (Administration), who had been posted

during the relevant period, to establish that no instruction had been issued to the CSE for carrying out the said work. In such circumstances, the Enquiry Officer observed that there was no oral, documentary, or circumstantial evidence to substantiate Charge No. I(i). He also observed that CCTV footage would have been necessary to establish Charge No. I(ii). In respect of the remaining charge, the Enquiry Officer relied upon the opinion of the handwriting expert, who opined that the CSE was not involved in the alleged forgery.

31. However, in his ultimate findings, EO held that the charge-I (i) was partly proved, charge- I(ii) stood proved whereas the other charge stood not proved.
32. The Disciplinary Authority disagreed with the findings of the Enquiry Officer and recorded that, in departmental proceedings, the applicable standard of proof is that of “preponderance of probabilities” and not proof beyond reasonable doubt. It was further observed that the fact that the transactions were executed through the petitioner’s user ID was sufficient to attribute responsibility to him.
33. In his findings regarding Charge I(i), the Disciplinary Authority observed that the Presenting Officer (PO) had examined management witnesses whose oral evidence, in his view, substantiated the charge in the enquiry. He further held that although no supporting documents were available before the CSE for entering the relevant data for activation of the accounts, the certification of the Branch Head that no such documents existed in the branch records corroborated that the CSE had acted in an unauthorised manner. The DA also noted that most of the data had been verified as SOL, indicating absence of any instruction from the branch officials. According to him, these

circumstances reflected an ill motive on the part of the CSE, and therefore the view taken by the Enquiry Officer on Charge I(i) was unjustified.

34. With regard to the charge referred to in paragraph 4 at page 3, the Disciplinary Authority observed that the CSE had effected payments in respect of 17 disputed withdrawal slips. In 11 of those transactions, the LTIs of the pensioners were cancelled by a single official instead of two branch officials, despite the presence of four officers at the branch during the relevant period. In one instance, the LTI of the customer was not cancelled by any official. According to the Disciplinary Authority, the CSE had grossly overlooked these irregularities and had not brought such discrepancies to the notice of the branch officials. It was further noted that in 13 out of the 17 transactions the denominations of the currency notes were not recorded on the reverse of the withdrawal slips. Most of these transactions were verified by officers of other SOLs, which, in the view of the Disciplinary Authority, indicated that the instructions for such transactions had not emanated from the officials of the branch.

35. It was further observed by the Disciplinary Authority that several of the pensioners had not operated their accounts for nearly ten years and that many of them had either expired or shifted their places of residence. In such circumstances, they were unlikely to have personally appeared to withdraw the pension amounts. The Disciplinary Authority, therefore, raised the question as to whom the payments had actually been made by the CSE. On the basis of these circumstances, he concluded that the CSE had misappropriated the cash with ulterior motive, in connivance with the staff officers of the

Kantapahari Branch, and accordingly held that all the charges stood proved against the CSE.

36. Therefore, a comparative reading of the findings of the Enquiry Officer and the Disciplinary Authority reveals a clear divergence. While the Enquiry Officer observed that the management had failed to produce the documents on the basis of which the CSE allegedly carried out the preliminary work of entering data in the system for activation of the accounts and held that, in the absence of oral, documentary or circumstantial evidence, it would be illogical to infer any dishonest intention on the part of the CSE, the Disciplinary Authority, by merely paraphrasing certain portions of the Enquiry Officer's report and the written submissions of the CSE, concluded that the oral evidence adduced by the management substantiated the charges. The Disciplinary Authority further treated the absence of documentary evidence as corroborative of the allegation that the CSE had acted in an unauthorised manner by entering the dates for activation of the concerned accounts, without undertaking any independent discussion of the evidence on record.
37. The Enquiry Officer observed that the management had failed to produce the Branch Head or any other designated officer to establish that the CSE had acted without any instruction from the branch officials. However, the Disciplinary Authority concluded that since most of the data had been verified as SOL, it indicated that no instruction had emanated from the branch officers. If such verification in SOL was by itself sufficient to establish the charges, there would have been no necessity to hold a departmental enquiry or to adduce evidence for examining the validity of the allegations.

38. The Enquiry Officer observed that there was no evidence to establish that the pensioners had died or had changed their addresses, and the handwriting expert had also opined that the CSE was not involved in the alleged forgery. However, the Disciplinary Authority merely raised a question as to whom the CSE had made those payments and, on that basis, proceeded to conclude that the CSE had misappropriated a sum of Rs. 38.67 lakhs.
39. In a disciplinary proceeding against a bank employee for alleged misappropriation from pension accounts, the charge of misappropriation must be established on the basis of evidence placed on record in the enquiry. Although the standard of proof in departmental proceedings is not as strict as in a criminal trial, the finding must still be supported by reliable material and reasonable inference drawn from the evidence.
40. In service jurisprudence, the disciplinary authority is required to establish the charge on the basis of the preponderance of probabilities. This implies that the conclusion arrived at in the disciplinary proceeding must reasonably flow from the materials available on record. Such materials may include documentary evidence, system or official records, testimony of witnesses, circumstantial evidence, expert opinion and other relevant materials produced during the enquiry. The findings, therefore, must be supported by some evidence on record and cannot rest merely on conjectures or assumptions. In other words, upon examination of the evidence, it must appear to a prudent person that it is probable that the CSE had committed the misconduct.
41. Where the allegation in a disciplinary proceeding relates to misappropriation of funds, the enquiry is ordinarily required to establish certain essential elements. It must be shown that the money belonging to the

account holders or the bank was wrongfully withdrawn or diverted, that such withdrawal was unauthorized or irregular, and that the delinquent employee was responsible for, or involved in, the said act. If these elements are not supported by evidence on record, the charge of misappropriation cannot logically be sustained.

42. Therefore, it is quite vivid and luminescent that the decision of the DA was based on no evidence and therefore, the submissions of Mr. Ghosal appears to be justified.

43. It is also to be considered that activation of a dormant account is not a unilateral process and such a job claims involvement of more than one employee. The Enquiry Officer noted that the management witnesses had admitted that, as per bank's operational norms, a withdrawal slip placed by an illiterate customer is first placed before an officer who authenticate the LTI and then the slip comes to cash paying employee who entered the relevant data in the system and then against it goes to officer of the bank for cancellation of LTI and then again it comes to the cash paying employee. In the present case, it has been proved that relevant data were entered under the User ID of the petitioner; however, surprisingly, no documents have been traced in the bank based on which, the petitioner had entered such data. It has also not been proved that who authenticated and/or cancelled the LTIs of the pensioners.

44. The Enquiry Officer further observed that it would not be possible for the cash-paying staff to ascertain who had authenticated the LTI. In the present case, it was also submitted that no disciplinary proceeding had been initiated against any other staff member of the branch. In such circumstances, it

appears wholly improbable that the entire process was carried out solely by the petitioner and that he alone misappropriated the entire amount.

45. The management placed reliance upon the system-generated transaction logs, withdrawal instruments, and internal procedural circulars concerning dormant account activation and the DA held that the fact that activation of the accounts through the petitioner's User ID was sufficient to attribute responsibility and as the petitioner overlooked that LTIs on certain withdrawal slips were not authenticated and/or cancelled, the petitioner acted with dishonest intention and misappropriated a sum of Rs. 38.67 lacs.

46. Basically, it can be stated that upon perusal of the records, it is apparent that the management only could prove from the system-generated transaction logs, certain data were entered in the system under the user ID of the petitioner and payment was made by the petitioners without recording denominations on the reverse of the certain withdrawal slips and the petitioner overlooked that LTIs appearing on certain withdrawal slips were not properly authenticated and/or cancelled by two officers of the bank. Here, the EO himself observed that the death or change of address of pensioners were not proved and therefore, misappropriation was also not proved satisfactorily.

47. Undoubtedly, it is within the discretion of the Disciplinary Authority to determine the appropriate punishment. It is only when punishment is found outrageously disproportionate to the nature of charge that it shocks conscience of Court and the Court finds it totally unreasonably and arbitrary, the principle of proportionality becomes applicable.

48. Therefore, the acts which, at best, can be said to have been proved against the petitioner, namely entering data in the system for activating certain accounts without any dishonest intention, failure to record denomination on the reverse of certain withdrawal slips, and overlooking the fact that the LTIs appearing on certain withdrawal slips were not properly authenticated and/or cancelled, do not appear to warrant the imposition of the extreme penalty of dismissal in service jurisprudence.
49. I have carefully considered the decisions cited by Mr. Majumder. There is no scintilla of doubt regarding the binding nature of the precedents laid down in those decisions. However, in the present case, the specific contention of the petitioner is that the impugned decision is based on no evidence. The respondents have failed to shed any light on this aspect and have instead placed reliance upon those decisions; however, the same do not come to the aid of the respondent bank in the facts of the present case.
50. In such conspectus, the decision of the DA cannot be sustained. Accordingly, the order of the DA is set aside. As the Appellate Authority glossed over these aspects, the order of the AA is also quashed.
51. In disciplinary matters, a writ court does not ordinarily substitute its own findings for those of the disciplinary authority. If the court finds that the enquiry or the decision-making process suffers from a procedural defect, such as violation of the principles of natural justice, non-consideration of relevant materials, or reliance on inadmissible evidence, the normal rule is not to finally set aside the entire proceeding. Instead, the matter is generally remitted to the competent authority from the stage at which the defect

occurred, so that the proceedings may be continued and concluded in accordance with law.

52. Accordingly, the matter is remanded to the Disciplinary Authority from the stage of submission of the enquiry report and the written submission filed by the petitioner. The Disciplinary Authority is directed to reconsider the enquiry report in its proper perspective and in accordance with law, without being influenced by his earlier decision. While doing so, the Disciplinary Authority shall take into consideration the written submission submitted by the petitioner to the enquiry report as well as the observations made in this order and shall thereafter take a fresh decision in the matter. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

53. With these observations and order, the writ petition being WPA 10517 of 2019 is, thus, disposed of; however, without any order as to the costs.

(Partha Sarathi Chatterjee, J.)

Later :-

After pronouncement of this judgment, Mr. Obaidullah, learned Advocate appearing for the Respondents/Bank prays for stay of operation of the judgment.

Such prayer is considered and rejected.

(Partha Sarathi Chatterjee, J.)