



GAHC010226392014



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

**Case No. : WP(C)/3862/2014**

PARITOSH KUMAR DAS  
S/O- LT. PYARI MOHAN DAS, R/O- JAIL ROAD, SHILLONG, MEGHALAYA.

VERSUS

STATE BANK OF INDIA and 4 ORS  
REP. BY ITS CHAIRMAN, MADAME CAME ROAD, MUMBAI- 400021.

2:CHIEF GENERAL MANAGER CUM APPELLATE AUTHORITY  
STATE BANK OF INDIA  
LOCAL HEAD OFFICE  
P.O.- ASSAM SACHIVALAYA  
DISPUR  
GHY- 6.

3:THE GENERAL MANAGER NETWORK- II and APPOINTING AUTHORITY  
LOCAL HEAD OFFICE  
P.O.- ASSAM SACHIVALAYA  
DISPUR  
GHY- 6.

4:DISCIPLINARY AUTHORITY and DY. GENERAL MANAGER DGM  
LOCAL HEAD OFFICE  
VIGILANCE DEPTT.  
N.E. CIRCLE  
G.S. ROAD  
P.O.- ASSAM SACHIVALAYA  
DISPUR  
GHY- 6.

5:ASSTT. GENERAL MANAGER  
REGION I  
ZONAL OFFICE  
DHANKHETI  
SHILLONG- 1



MEGHALAYA

**Advocate for the Petitioner** : MR.S K GHOSH  
**Advocate for the Respondent** : MR.S S SHARMA

Linked Case : I.A.(Civil)/1078/2016

PARITOSH KUMAR DAS

VERSUS

STATE BANK OF INDIA and 4 ORS

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Advocate for : MR.S K GHOSH  
Advocate for : MR.S S SHARMA appearing for STATE BANK OF INDIA and 4 ORS

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

Date of hearing : 02.04.2024

Date of Judgment : 02.04.2024

**Judgment & order(Oral)**

Heard Mr. S. K. Ghosh, learned counsel, appearing on behalf of the petitioner. Also heard Mr. H. Buragohain, learned standing counsel, State Bank of India, appearing on behalf of all the respondents.

**2.** The petitioner by way of instituting the present writ petition, has presented a challenge to an order, dated 07.11.2013, passed by the disciplinary authority imposing upon him a penalty of dismissal from service on conclusion of a departmental proceeding initiated against him. The petitioner has also presented a challenge to an order, dated 08.04.2014, passed by the appellate authority rejecting the appeal as preferred in the matter by the petitioner.



**3.** As projected in the writ petition, the petitioner, herein, while working as a Deputy Manager, State Bank of India, Nongstain Branch, received a communication, dated 18.11.2011, requiring him to submit his explanation on the allegations as levelled against him therein. The allegations as levelled against the petitioner in the said communication, dated 18.11.2011, pertains to the action on his part in dealing with TDS amount, as credited to the Bankers' Cheque Accounts, of customers who were exempted from TDS deductions.

**4.** The petitioner vide his reply, available at Annexure-II to the writ petition, while submitting his clarifications in the matter, had admitted to the fact that the amount involved were transferred in favour of a third-party, but the same was said to have been done unmindfully for which he had expressed regret and had contended that such incident will not happen in future. Not being satisfied with the reply as submitted by the petitioner, the disciplinary authority proceeded to institute a departmental proceeding against him by way of issuing a charge-sheet, dated 18.07.2012. The article of charge as framed against the petitioner pertain to the illegality as committed by him in payment of a good number of Bankers' Cheques. The statement of imputation as annexed to the charge-sheet levelled 3 allegations on the issue against the petitioner. The petitioner vide his written statement, dated 08.08.2012, replied to the allegations as levelled against him and placed on record, his clarifications in the matter. Thereafter, the reply of the petitioner not being satisfactory, an inquiry was directed against the petitioner and the Inquiry Officer on conclusion of the said inquiry, proceeded to hold that the allegations No. 2 and 3 as levelled against him vide the said charge-sheet to be proved while the allegation No. 1 was held to be not proved.



**5.** The disciplinary authority, thereafter, on consideration of the Inquiry Report, proceeded to draw his own conclusions in the matter and in terms of the conclusions so drawn, a disagreement note was prepared with regard to allegation No. 1 and the same was held to be proved while the allegation No. 2 which was held to be proved by the Inquiry Officer, was agreed to by the disciplinary authority whereas the allegation No. 3 which was held to be proved by the Inquiry Officer; was held to be not proved by the disciplinary authority. Accordingly, along with the Inquiry Report, the findings of the disciplinary authority was forwarded to the petitioner vide communication, dated 30.07.2013. The petitioner, thereafter, responded to the said communication, vide his representation, dated 19.08.2013.

**6.** The disciplinary authority, on perusal of the representation as submitted by the petitioner, proceeded vide communication, dated 25.10.2013, to hold that it is proposed to impose a major penalty upon the petitioner i.e. removal from service and accordingly, he was afforded an opportunity of hearing before the disciplinary authority on the date so fixed. The petitioner appeared before the disciplinary authority and also made a written submission in the matter on 06.11.2013. Thereafter, on consideration of the matter and having found the conduct of the petitioner with regard to the allegations as levelled against him to be unbecoming of an Bank Officer, proceeded vide the order, dated 07.11.2013, to impose upon the petitioner the penalty of removal from service.

**7.** The petitioner, being aggrieved, submitted an appeal on 17.01.2014, against the order, dated 07.11.2013, before the designated appellate authority. The appellate authority on a detailed consideration of the matter, proceeded,



vide an order, dated 08.04.2014, to reject the said appeal. The order, dated 08.04.2014, issued by the appellate authority in the matter was forwarded to the petitioner vide a communication, dated 16.04.2014. Being aggrieved by the order of the disciplinary authority as well as the appellate authority in the matter; the petitioner has instituted the present proceeding.

**8.** Mr. Ghosh, learned counsel for the petitioner, has submitted that a perusal of the allegations so levelled against the petitioner in the charge-sheet, dated 18.07.2012, would reveal that the petitioner had not committed any misconduct in the matter and he had actually advanced the image of the Bank by providing to the beneficiaries the amount as deducted from them towards TDS deductions and which were kept in the Bank in the form of a Bankers' Cheque.

**9.** Mr. Ghosh, learned counsel, has contended that the materials as coming on record has not proved the allegations as levelled against the petitioner and it is stated that the beneficiaries who had appeared in the inquiry, had actually admitted to have received the amount involved in the matter.

**10.** Mr. Ghosh, learned counsel for the petitioner, has contended that although the PW-6, one of the beneficiaries, had deposed that she had signed the money receipt evidencing the receipt of the money in the course of her examination-in-chief taken on 08.05.2013, however, such examination was so made behind the back of the petitioner and thereafter, the said witness was not produced for cross-examination by the petitioner or by his defence representative.



**11.** Mr. Ghosh has also contended that the penalty as imposed upon the petitioner was so imposed without having regard to the evidences coming on record and the same was so done only to punish the petitioner for reasons other than that evidenced during the course of the inquiry.

**12.** Mr. Ghosh, learned counsel, has submitted that the penalty of removal from service as imposed upon the petitioner, is grossly disproportionate to the allegations as levelled against him moreso in the light of the evidences coming on record in the inquiry proceeding. In the above premises, Mr. Ghosh, has prayed that this Court would be pleased to interfere with the penalty as imposed upon the petitioner vide the order, dated 07.11.2013, and consequently, the appellate authority's order, dated 08.04.2014, also requires to be interfered with.

**13.** Per contra, Mr. Buragohain, learned counsel for the respondent Bank, has submitted that the inquiry had proceeded against the petitioner by affording him to all reasonable opportunity to defend the allegations as levelled against him.

**14.** Mr. Buragohain, learned counsel, has submitted that although the prosecution witnesses were offered for cross-examination immediately after their examination-in-chief, however, the petitioner as well as his defence representative refused to cross-examine the said witnesses after their examination-in-chief were over and the same was contended only with a view to prolong the inquiry. It was also contended that some of the witnesses were subsequently cross-examined and defence exhibits introduced through them.



**15.** Mr. Buragohain, learned counsel for the respondent Bank, has contended that the customers of the Bank who had deposed in the inquiry as prosecution witnesses not being under the control of the Bank authorities, a few of them after deposition in their examination-in-chief and the refusal of the petitioner to cross-examine them at that point of time, could not be, thereafter, produced for their examination in-as-much as the said witnesses thereafter did not respond to the request made for appearance in the inquiry by the Bank authorities and the Bank was not in a position to compel their presence. However, it is contended that the said aspect of the matter did not cause any prejudice to the defence of the petitioner, herein.

**16.** Mr. Buragohain, learned counsel, has further submitted that the petitioner being a Bank employee 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 removal from service after holding a free and fair inquiry by complying with the principles of natural justice.

**17.** Mr. Buragohain, learned counsel for the respondent Bank has submitted that the Inquiry Officer had arrived at his findings basing on the materials available on record which were again examined in detail by the disciplinary authority who had also basing on materials coming on record, forwarded his views with regard to the allegations levelled against the petitioner. Accordingly, it was contended that due application of the mind of the authorities involved in the process being evident; the decisions as arrived at in the matter requires no



interference from this Court.

**18.** Mr. Buragohain, learned counsel, has submitted that a perusal of the findings as recorded by the Inquiry Officer as well as by the disciplinary authority with regard to the allegations levelled against the petitioner, would reveal that the same was so recorded basing on the materials coming on record in the inquiry proceeding and accordingly, there exists no infirmity with regard to the same and accordingly, this Court would be pleased not to interfere with the penalty as imposed upon the petitioner.

**19.** I have heard the learned counsels appearing for the parties and also considered the materials placed on record.

**20.** The allegations as levelled against the petitioner through the charge-sheet, dated 18.07.2012, being relevant, is extracted hereinbelow:

**ANNEXURE-II**

**STATEMENT OF IMPUTATION OF LAPSES AGAINST SHRI PARITOSH KUMAR DAS, MMGS-II IN RELATION TO ARTICLE OF CHARGE(S) ALLEGED AGAINST HIM VIDE ANNEXURE-I, WHILE SHRI DAS WAS POSTED AS DEPUTY MANAGER (BRANCH OPERATIONS) OF STATE BANK OF INDIA, MAIRANG BRANCH DURING THE PERIOD FROM 1ST JUNE, 2010 TO 2ND MAY, 2011**

**ALLEGATION NO.1**

***It is alleged that while refunding the undernoted TDS amount to the following STDR customers, you had issued Banker's cheques in favour of the respective beneficiaries instead of crediting to their accounts. Subsequently, on 16/08/2010 you had cancelled those Banker's cheques with malafide intention and issued a draft/IOI No. 40941932 for Rs 18000/- in favour of one M/s S P Stationery drawn on our Malki branch. The remaining amount of the aforesaid Banker's cheques i.e. Rs 632/- you credited to Branch Commission a/c (98353057344) in two parts i.e. Rs 236/- & Rs 396/- on the same day to camouflage your misdeeds. Thus, you allegedly misappropriated customers' money with malafide motive by violating Bank's laid down systems & procedures.***



SI N	B./Chq No	Date of issue	TDS amount	Beneficiary	Date of payment
1	803546	17/04/09	Rs. 11,824/-	Ibina Marbaniang	16/08/10
2	803560	17/04/09	Rs. 1,205/-	Telmeris Nongrang	16/08/10
3	803552	17/04/09	Rs. 2,454/-	Distar Kharsyntiew	16/08/10
4	803559	17/04/09	Rs. 3,101/-	Kmensimai K.Syntie	16/08/10
5	803573	17/04/09	Rs. 48/-	Trilian Warjri	16/08/10
	Total		Rs. 18,632/-		

**ALLEGATION NO. 2**

***It is further alleged that you had received the cash payment of the following banker's cheques as detailed below from both Shri Aibor Singh Wanwar, Senior Assistant and Shri Anselem Nongkynrih, Special Assistant which were posted by them at your instance and subsequently authorized for payment by you in the system, although you were not the beneficiaries of the instruments. The aforesaid amount was returned to the beneficiaries much later from the date of payment of the said Banker's cheques. Thus, it is alleged that you had misappropriated the customers money by violating Bank's laid down systems & procedures.***

SI N	B./Chq No	Date of issue	TDS amount	Beneficiary	Date of payment
1	803574	17/04/09	Rs. 11,824/-	Trilian Warjri	17/08/10
2	942177	26/10/10	Rs. 2,664/-	T.Kharsyntiew	26/10/10
3	942179	26/10/10	Rs. 2,306/-	Jarop Jyrwa	26/10/10
4	942083	29/09/10	Rs. 3,780/-	B.R.Ryntathiang	29/09/10
5	942176	26/10/10	Rs. 1,303/-	L.Marbanlang	01/11/10
6	803496	04/04/09	Rs. 5,000/-	Karbsius Marbaniang	20/11/10
7	803491	04/04/09	Rs. 11,391/-	Stanly Nonglait	11/11/10

8	941999	15/09/10	Rs. 15,050/-	Kwinly Warbah	17/09/10
9	942178	26/10/10	Rs. 2,460/-	Margaret k.Syntiew	27/10/10
10	22017	19/05/10	Rs. 4,542/-	J Dkhar	14/09/10
11	941999	15/09/10	Rs. 15,050/-	Kwinly Warbah	20/08/10

**ALLEGATION NO.3**

*It is also alleged that you yourself had posted the banker's cheques as detailed in the Allegation No. 2 in the system and put up for passing the queue so generated in the system to another officer of the branch which was rejected by the officer concerned considering the irregularities. However, later on you yourself had posted and passed those banker's cheques in the system. Thus, it is alleged that you had willfully violated the Bank's laid down systems & procedures for malafide intention.*

**21.** Before proceeding to examine the allegations so levelled against the petitioner, it is to be noted that the Inquiry Officer in his Inquiry Report, dated 24.07.2013, had held the allegation No. 1 to be not proved while he had held the allegations No. 2 and 3 to be so proved. The disciplinary authority on perusal of the materials had disagreed with the conclusions as reached by the Inquiry Officer with regard to the allegations No. 1 and 3 and thereafter, allegation No. 1 was held to be proved against the petitioner and allegation No. 3 was held not to be so proved.

**22.** A perusal of the allegations as levelled against the petitioner would reveal that the same pertains to his conduct in dealing with the disbursal of the amounts deducted towards Tax Deducted at Source(TDS) from the accounts of the customers who admittedly being residents of the Sixth Schedule area, were exempted from such deductions. The allegation No. 1 pertains to the manner in which an amount of Rs. 18,632/- available in the Bank from TDS deductions of around 5 customers were dealt with by the petitioner. It is a position also



admitted to by the petitioner that out of the said amount; an amount of Rs. 18000/- was issued in a form of a Draft/IOL in favour of one M/s S. P. Stationery drawn on State Bank of India Malki Branch and the remaining amount of Rs. 632/- was credited to the said Branch as Commission in two parts i.e. Rs. 236/- and Rs. 396/-. The said Draft/IOL was so made on 16.08.2010. M/s. S. P. Stationery admittedly is not one of the entities from whom the TDS amounts were so deducted and the said entity was in no way entitled to receive the amount so involved. Accordingly, it is seen that the petitioner had acted in the manner unbecoming of a Bank Official and the same had exposed the Bank to the demands being made by the customers to whom the said amount would actually have accrued to.

**23.** The disciplinary authority on consideration of the materials coming on record, had recorded a finding to the effect that the petitioner after joining the said Branch on 01.06.2010 and having come to learn about the said unpaid Bankers' Cheques lying with the Bank for more than 1 year because of the ignorance of the local customers, taking advantage of the situation, had involved in malpractice. The petitioner was contended to have admitted to the above position in his reply, dated 08.08.2012, to the charge-sheet, dated 18.07.2012, wherein, he had stated that the above act of his was on account of an error. It was further contended that the petitioner had submitted that the Draft could not be cancelled as it was delivered to the party against whom it was drawn on 16.08.2012. However, it was contended that the TDS amounts involved, were returned to the customers on the next day itself. While the petitioner had contended about a rectification process being undertaken, however, the records did not reflect any such rectification exercise so carried-out



by him. The money receipts as produced by the petitioner in the form of defence exhibits, however, did not reveal that the money was so paid to them on the next day itself.

**24.** It was further contended that the entire exercise for disbursal of the amount as lying in the form of Bankers' Cheques with the Bank was so initiated by the petitioner himself and the amount was so credited in a form of a Draft and Commission to the Bank as noticed hereinabove. Accordingly, the said allegation was held to be proved against the petitioner.

**25.** With regard to the allegation No. 2, the Inquiry Officer had contended that the petitioner had received the cash payment against the Bankers' Cheques as involved in the said allegation himself from the Senior Assistant and Special Assistant of the Bank who had posted the same in the system at his instance and subsequently, the petitioner had authorized for the payment of the same which was again received by himself although he was not the beneficiary of the said instruments. In the Inquiry Report, it was held that the petitioner had resorted to misappropriation and/or temporary misappropriation in the matter and accordingly, the said charge was held to be proved.

**26.** With regard to the allegation No. 3, the same although was held to be proved by the Inquiry Officer, the disciplinary authority basing on the materials coming on record, held the said charge not to be proved against the petitioner and accordingly, the same is not dealt with.



**27.** Accordingly, in view of the above position, it is to be noted that it is the allegations No. 1 and 2 which had been held to be so proved against the petitioner, herein, and it is to be seen as to whether the same having been established, would mandate the imposition of a penalty of removal from service as was imposed upon the petitioner in the matter by the disciplinary authority vide the order, dated 07.11.2013.

It is to be noted that the petitioner is a Bank official and the conduct as expected from him in discharge of his duties, is of a higher degree.

**28.** Mr. Ghosh, learned counsel for the petitioner, has submitted that the petitioner was not extended with an opportunity to cross-examine certain PWs who had deposed in the inquiry. The said grievance is raised in respect of PWs who were customers and in whose favour the TDS deductions were due for payment. The respondent Bank had clarified the above matter and has contended that on conclusion of the examination-in-chief of such Bank customers who had deposed as PWs in the matter; the petitioner as well as his defence representative were asked to cross-examine such witnesses, however, the petitioner as well as his defence representative refused to cross-examine such PWs immediately after their examination-in-chief and had contended that they would be so cross-examined after the conclusion of deposition of all prosecution witnesses. It is contended by the respondent Bank that the witnesses whom the petitioner now alleged were not offered to him for cross-examination were the bank customers who had appeared and deposed in the inquiry and because of non cross-examination by the petitioner and/or by his defence witnesses, they were discharged on that day itself. However, the Bank



despite taking all possible steps for their re-appearance of such witnesses in the inquiry proceeding had failed to do so and the Bank not having control of such Bank customers/PWs, could not compel the presence of the said witnesses.

**29.** At this stage; it is to be noted that while the petitioner has made a contention to the effect that he was denied an opportunity to cross-examine certain PWs, he has not contended in the inquiry proceeding or in the present proceeding as to what prejudice was so caused to him in the matter on account of non cross-examination of the said witnesses who admittedly were offered to him for cross-examination immediately after their examination-in-chief. The petitioner having not accepted the opportunity as afforded to him to cross-examine the said witnesses and having allowed the witnesses to leave the inquiry, later, it being impossible on the part of the Bank authorities to compel their presence again in the inquiry; the petitioner now cannot be permitted to take advantage of the said lapse. The petitioner has been unable to demonstrate before this Court as to what prejudice was caused to him due to non cross-examination of the said witnesses.

**30.** 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.

**31.** 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.”*

**32.** 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."**

**33.** 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.”**

**34.** 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 removal from service as imposed upon the petitioner does not warrant any interference.

**35.** However, this Court would also like to deal the contention raised by the learned counsel for the petitioner that the penalty of removal 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.

**36.** 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."*

**37.** 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.

**38.** 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.

**39.** 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.

**40.** 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'."*

**41.** 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."*

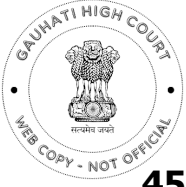
**42.** In view of the pronouncement, as noticed above in the matter, of the Hon'ble Supreme Court as well as of this Court; it is clear that it is not for the



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 describe 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.

**43.** 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.

**44.** For all the aforesaid reasons, this Court does not find any merit in the writ petition and accordingly, the same is dismissed upholding the impugned order, dated 07.11.2013, passed by the disciplinary authority as well as the order, dated 08.04.2014, passed by the appellate authority.



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

**JUDGE**

**Comparing Assistant**