* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 30th August, 2022**
Pronounced on: 21st November, 2022

\+ W.P.(C) 5453/2008 & CM APPL. 10415/2008

VIJAY KUMAR GUPTA ..... Petitioner
Through: Ms. Pooja M. Saigal, Mr. Anshul Bajaj and Mr. Simrat Singh Pasay, Advocates

versus

RESERVE BANK OF INDIA & ORS ..... Respondents
Through: Mr. Suhail Dutt, Sr. Advocate with Mr. H.S. Parihar, Mr. Kuldeep Singh Parihar and Ms. Ikshita Parihar, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. This petition has been filed under Articles 226 and 227 of the Constitution of India seeking the following reliefs:-

> "*(a) issue a writ of certiorari, or any other appropriate writ, order or direction, quashing the Enquiry Proceedings and Report against the petitioner;*
>
> *(b) issue a writ of certiorari, or any other appropriate writ, order or direction, quashing the order dated*

30.10.2006 passed by Respondent no.3 by declaring the same as illegal and void being violative of Articles 14 and article 21 of the Constitution;

(c) issue a writ of certiorari, or any other appropriate writ, order or direction, quashing the order dated 6.7.2007 passed by the respondent no.2 by declaring it as illegal and void due to non application of mind and non-consideration of several important grounds and thus in violation of Article 14 and 21 read with Article 301 of the Constitution;..”

FACTUAL MATRIX

2. The petitioner was working as an Assistant Manager in Reserve Bank of India (hereinafter “RBI”) and was posted at Currency Verification and Processing System (hereinafter “CVPS”) of Issue Department. On 31st May 2005, the Petitioner was entrusted with processing and shredding of currencies worth Rs. 4,50,000/-. During a surprise check of the cancelled notes brought for shredding in the shredding room, it was noticed that there was a shortage of 50 pieces of Rs.100/- denomination in three packets.

3. Consequently, two alternate charges being that of wilfully not performing his duties towards the bank and that of surreptitiously abstracting/pilfering the said currency notes to derive pecuniary benefit and having displayed gross negligence were framed against the petitioner vide chargesheet dated 11th June 2005. After conducting the disciplinary inquiry, the charges against the Petitioner were found to be proved and accordingly vide order dated 30th October 2006, the petitioner was dismissed from the bank’s service and Rs.5000/- was ordered to be recovered from the petitioner. The appeal against the said order dated 30th October 2006 was

also dismissed by the Appellate Authority vide order dated 6th July 2007. Aggrieved by the aforesaid, the instant writ petition has been filed.

SUBMISSIONS

Submissions of Petitioner

4. Learned counsel appearing on behalf of the petitioner submitted that there is no evidence to support the findings on fact arrived at by the Inquiry Officer. It is further submitted that the material evidence has been completely disregarded without assigning any reasons. It is submitted that vide chargesheet dated 11th June 2005, the petitioner was charged with act of gross misconduct of pilferage and, in alternative, he was charged for negligence in his duties. The chargesheet issued to the petitioner was vague and charges framed against the petitioner were ambiguous and unspecific. The chargesheet neither disclosed material relied upon by the Bank to frame the charges nor it disclosed the list of witnesses to be produced by the Bank to prove the charges. It is submitted that the first and foremost charge of pilfering is with respect to the notes which were to be shredded and destroyed, and this was not currency in circulation, therefore, there is no loss caused to RBI and no pecuniary benefit could accrue to the petitioner.

5. Learned counsel for the petitioner further submitted that the Inquiry Officer conducted the inquiry against the principles of natural justice. It is stated that the Inquiry Officer did not afford the petitioner ample opportunity to present his case. It is further submitted that there is no evidence, whatsoever, whether by way of CCTV recording, documentary evidence or any oral testimony, whereby the petitioner has been seen to

have removed notes and retaining the same in his possession, having walked out of the CVPS section where he was assigned duties on the fateful day of 31st May 2005. The only evidence on which the charge has been proven is a CCTV footage recording, which suggests that the petitioner was folding certain notes in 3 packets of notes which were processed in Audit mode, which he then removed from the packet, drops the notes on the table, kept the notes folded in a piece of paper and left them on a tray beside his table, where another piece of paper was already lying in the tray.

6. It is stated that in another section of the CCTV footage, he is seen to be placing his hands on the register while standing at the table and once he moved away from the table, it is evident that there was a single sheet of paper in the tray, so it has been assumed that the folded paper with notes inside, was kept inside the register. It is stated that the petitioner can be seen with the register moving out of the coverage area of camera number 13 in the CVPS section and when he was next seen after a gap of about 20 seconds in front of another camera identified as Camera number 10 which faces the CVPS section, there was no register with him but as per Bank's witness there was a folded piece of paper in his hand. It is submitted that this is the only evidence against the petitioner on the basis of which it has been assumed that he has pilfered/abstracted 50 notes from the packets by keeping inside a folded piece of paper which he was assumed to have kept in a register with which the petitioner was seen to be walking out of coverage area of a camera. It is also submitted that the aforesaid CCTV recording was not supplied to the petitioner at the initiation of the inquiry.

7. Learned counsel for the petitioner vehemently submitted that thus, there is no evidence of a CCTV footage or any oral testimony, affirming that petitioner kept the notes in the register and that he walked out of the CVPS section with the register at the end of his shift, particularly when the Bank's witness affirms that when the petitioner is seen coming towards CVPS section, he had the folded piece of paper in his hand. The bank's main witness, BW-1 (Sh. Prabhat Ranjan) admitted that he was not aware of what happened to the register which the petitioner was seen carrying, when he moved out of the coverage area of Camera 13.

8. Learned counsel for the petitioner, submitted that without even establishing the fact that the petitioner has removed the notes and walked out of the CVPS section with the notes, no reasonable person could have drawn the conclusion that he had pilfered the notes, a charge that he was found guilty of. It is further submitted that the movement of petitioner captured in CCTV footage of camera 10 which shows that the petitioner coming towards CVPS hall is at 7:57:31 hrs. The Camera 13 after 7:57:44 hrs was shown to the BW-1 for the purpose of identifying the petitioner's movements. These movements have been recorded in the footage after 7:57:31, when even as per respondent Bank, he was seen coming towards CVPS hall, and in these movements as identified by Bank's witness, the petitioner was shown again handling loose notes and the folded piece of paper was lying on the table. It is thus evident that the petitioner handled the loose notes after coming back to the CVPS section.

9. Learned counsel for the petitioner submitted that there is no testimony in which any witness of the bank has identified that he found the petitioner's

actions on the fateful date suspicious and all evidence and testimony are contrary to each other. Learned counsel for the petitioner submitted that there is no evidence produced by the bank which suggests that the petitioner, was seen to have kept notes in a folded piece of paper, and this crucial fact has been completely disregarded by the Inquiry Officer, competent authority as well as by the Appellate Authority.

10. Learned counsel appearing on behalf of the petitioner submitted that the machines installed were malfunctioning which was admitted by the respondent's witnesses during the course of inquiry proceedings dated 14th November 2005 and that the Engineers provided in the Section were found sitting on the machine for longer duration only to remedy the malfunctioning of the machines which was repaired more than thirty times during the day. It is also seen that one Rahul, an on-site engineer was working for more than 20 minutes on the machine while even feeding notes in the machine, which is not authorised by the Bank. It is submitted that there is no record maintained in the time book at the CVPS section to record the entry and the exit of people from that section, nor was there any frisking of the bags of the on-site Engineers, when they exited from the CVPS section.

11. It is submitted that the packets which were identified and in which shortage was found was not sealed. Even on 1st June 2005, when admittedly the notes were counted once again in the presence of the petitioner, the packets from which the shortage was noticed, was not shown to the petitioner for the purposes of identification. The petitioner was only present, when the recounting was done. It is vehemently submitted that during the

inquiry proceedings, none of these packets or bundles were produced before the Inquiry Officer.

12. It is further submitted that the testimony of BW-1 was not an independent version. Further, it is stated that the BW-1 declined to answer questions on pilferage and also on excess notes found on 1st June, 2005 of which adverse inference ought to have been drawn but was not done. It is submitted that the Competent Authority has simply accepted the Inquiry Report without any independent examination. The Appellate Authority has also not given the opportunity of hearing to the petitioner despite a specific request made and dismissed the appeal without assigning any proper reason and without application of mind. Therefore, it is submitted that the petitioner was denied fair opportunity and a fair hearing to defend his case.

13. Learned counsel for the petitioner submitted that the inquiry was conducted with a *mala fide* intention and with the sole aim to convict the petitioner on Charge 1 since all 3 persons who were charged with the offence arising out of the same transaction, a joint inquiry in terms of Regulation 47 was not carried out. It is submitted that Mr. V.K. Jain, being the other Assistant Manager charged alongwith the Petitioner was found only negligent and not even grossly negligent and was punished by denial of last 4 increments in his pay for the same charges of pilferage. There being no proof of any pilferage and nobody having seen the petitioner walking away with the notes since the CCTV footage shows the petitioner walking out of the CVPS section empty-handed. It is stated that the finding of wilfully abstracting or pilfering notes for pecuniary benefit is not proven and the punishment of dismissal imposed is not based on any evidence. The

impugned order is improper, illegal and without application of mind. It is thus submitted that there is no evidence to prove the charges levelled by the respondent.

14. While buttressing the arguments, reliance has also been placed upon several judgments of the Hon'ble Supreme Court in ***Union of India vs H.C. Goel*** **AIR 1964 SC 364;** ***Roop Singh Negi vs Punjab National Bank and Others*** **(2009) 2 SCC 570;** ***State Bank of Bikaner and Jaipur vs Nemo Chand Nalwaya*** **(2011) 4 SCC 584;** ***Deputy General Manager (Appellate Authority) and Others vs Ajai Kumar Srivastava*** **(2021) 2 SCC 612; and** ***United Bank of India vs Biswanath Bhattacharjee*** **decided on 31st January 2022.**

15. Learned counsel for the petitioner submitted that in view of the foregoing discussion and the law laid down, the impugned order is liable to be set aside and the instant petition may be allowed.

Submissions of Respondent

16. Learned senior counsel appearing on behalf of the respondent submitted that by way of filing the instant writ petition, the petitioner seeks interference of this Court for re-appreciation of evidence, interference with the conclusions in the inquiry, adequacy and reliability of evidence and the alleged error of facts which as per well settled principles of law is impermissible under Articles 226/227 of the Constitution of India.

17. In support of the arguments, he has relied upon the judgment of Hon'ble Supreme Court in the case of ***Union of India vs P Gunasekaran*** **(2015) 2 SCC 610**, wherein it is held as follows:-

> "***14.*** *In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] , many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)*
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> > *"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very*

face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. *In State of A.P. v. Chitra Venkata Rao [(1975) 2 SCC 557 : 1975 SCC (L&S) 349 : AIR 1975 SC 2151] , the principles have been further discussed at paras 21-24, which read as follows: (SCC pp. 561-63)*

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed

in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board v. Niranjan Singh [(1969) 1 SCC 502 : (1969) 3 SCR 548] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh case [(1969) 1 SCC 502 : (1969) 3 SCR 548] this

Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on 31-5-1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be

> *corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. (See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477].)*
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> *24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.*"

18. Learned senior counsel for the respondent Bank submitted that in the present case, among other cogent evidence, there is clear CCTV footage showing the petitioner taking out some notes from packets, wrapping them in a piece of paper, putting the notes in a register and taking that register out

with him. Upon return, the said register was not with the petitioner. Moreover, Petitioner's contention that he had handed over the folded paper and loose notes to Shri Muni Ram, Assistant Treasurer through Mr. V.K. Jain is untenable, since neither was Shri Muni Ram produced as a witness during inquiry nor is it supported by the CCTV recording produced during the inquiry.

19. It is further submitted there is no force in the allegation as submitted by learned counsel for the petitioner that he was not provided documents and the CCTV recording relied upon by the disciplinary authority at the time of initiation of the inquiry and that the Presenting Officer himself recorded the statement of the witness. It is submitted that as far as providing documents and CCTV recording is concerned, it is not the case of the petitioner that they were not provided. The record of the case duly shows that these documents were duly provided to the petitioner at the time when evidence of the management was being recorded. The petitioner had ample opportunity to cross-examine the witness and counter the said documents by bringing his own witness. It is submitted that the delinquent was given more than 12 opportunities/hearings to cross examine the witness and therefore there is no infraction of principles of natural justice.

20. Learned senior counsel for the respondent Bank vehemently submitted that the submissions regarding alleged recording of evidence by the Presenting Officer himself is factually incorrect as BW-1 had clearly deposed in this regard. In any case, the same pertains to what is recorded in the CCTV footage which is not denied by the petitioner and hence, it cannot be said that any prejudice has been caused to the petitioner in this regard. It

is submitted that the petitioner has failed to make out the case of violation of principles of natural justice as it is well settled that any alleged violation of principles of natural justice which does not cause any prejudice to the delinquent officer has no legal effect and cannot vitiate the inquiry or the punishment order passed therein.

21. In support of his arguments, learned senior counsel has relied upon the judgment passed in ***Sanjay Kumar Singh vs Union of India (UOI) and Ors.*** **(2011) 14 SCC 692**, wherein it was held as follows:-

> "***23.*** *In the present case two Benches of the High Court after looking into the records have found that there is no violation of the principles of natural justice and that the charges have been established against all the appellants and that the punishment awarded is not disproportionate to the offences alleged. After the said findings have been recorded by the learned Single Judge and the Division Bench, there is hardly any scope for this Court to substitute its findings and come to a different conclusion by reappreciating the evidence. The findings recorded by the Benches of the High Court are concurrent findings and the same cannot be interfered with lightly.*
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> ***24.*** *In our considered opinion, to reappreciate the evidence and to come to a different finding would be beyond the scope of Article 136 of the Constitution of India. Therefore, we hold that the judgment and order passed by the High Court suffers from no infirmity.*"

22. Learned counsel for the respondent submitted that the petitioner has alleged that procedure for conducting surprise check was not properly followed and the packet containing the discrepancy was not preserved and sealed. It has further been contended that they were also not shown to the

officer for his satisfaction that they contain shortage. A bare perusal of the Record of the inquiry proceedings shows that due process was followed. BW-3 has clearly deposed on 16th November 2005 in the inquiry proceedings that in the evening on the same day, the entire lot of notes were put under triple lock in the presence of Regional Director, Chief General Manager, General Manager (Issue Department), Treasurer and the Manager (CVPS). Therefore, there is no force in the contention of the petitioner that he was not shown the concerned packet. In fact, the petitioner was fully associated with the work of detailed manual recounting on 1st June 2005 of all the process notes of 31st May 2005 as shown in the management Exhibit-11 (ME-11).

23. Learned senior counsel for the respondent further submitted that the petitioner has alleged that the inquiry of both the officers involved in the misconduct, i.e., petitioner and Shri V K Jain, were conducted separately in contravention of Regulation 47 of the Reserve Bank of India (Staff) Regulations 1948. It is submitted that Regulation 47 does not provide that inquiries are to be mandatorily conducted jointly or that approval/sanction of any higher authority is required for conducting inquiries separately.

24. Learned senior counsel for the respondent submitted that the Petitioner has also raised an objection that the charges levelled against him are vague. Charge proved against the petitioner specifically states that the petitioner has been charged for not serving the bank diligently by wilfully and surreptitiously abstracting/pilfering 50 pieces of Rs. 100/- denomination notes to derive pecuniary benefit thereby committing a breach of regulation 34 read with regulation 47 (1) of Reserve Bank of India (Staff) Regulations

1948. It is submitted that the charges are absolutely clear and there is no vagueness as such, as alleged by the petitioner.

25. It is submitted that it is a well settled principle of law that employees of bank hold position of trust and utmost integrity and in cases where public money is involved strict punishment is to be given. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. The petitioner, being an officer in Class I Cadre, is expected to be absolutely honest and the charges proved against the petitioner amounts to serious misconduct which cannot be tolerated and do not warrant any leniency. It is submitted that misconduct in such cases has to be dealt with iron hands. Therefore, where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable.

26. In support of his arguments, learned senior counsel for the respondent Bank has relied upon judgments passed by Hon'ble Supreme Court in ***State Bank of India and Ors. vs S.N. Goyal*** **(2008) 8 SCC 92** and ***Regional Manager, U.P. SRTC, Etawah and Others Vs. Hoti Lal & Another*** **(2003) 3 SCC 605**.

27. In view of the above discussions, learned senior counsel for the respondent vehemently submitted that the petitioner has failed to make out

any case for interference of this Court in the instant writ petition. There is no illegality or error in the disciplinary proceedings as well the order of competent authority and Appellate Authority. Hence, the instant petition is devoid of any merit and is liable to be dismissed.

ANALYSIS AND FINDINGS

28. The show cause notice dated 2nd June 2005 was issued by the General Manager (Banking)/Competent Authority of the respondent Bank to the petitioner and asked to reply within three days as to why disciplinary proceedings should not be initiated against him. He was suspended from service on 4th June 2005. He replied to the show cause notice on 6th June 2005. The chargesheet was issued to the petitioner on 11th June 2005 to which the petitioner had give reply dated 17th June 2005. Thereafter, the respondent instituted a domestic inquiry vide their letter dated 24th June 2005 and appointed one Mr. M.K. Mali, Deputy General Manager, Exchange Control Department as Inquiry Officer.

29. The main argument of the petitioner is that the present case is a case of no evidence, and that the petitioner was held guilty by the Inquiry Officer without following due process of law. It has further been submitted that the Inquiry Officer has not taken into consideration the material evidence which negates the charges levelled against him and rather relied upon only those pieces of evidence against the petitioner which were actually 'no evidence' to prove the charges levelled against the petitioner. During the course of arguments, the petitioner alleged the *mala fide* intention of the department to intentionally hold the petitioner guilty in the misconduct as alleged

against the petitioner. It was also argued by the petitioner that there is violation of Regulation 34 read with Regulation 47(1) of the Rules of 1948 as two officers who were working together on the same day and charged separately and proceedings have also been initiated against both the employees i.e., the petitioner as well as one Mr. V.K. Jain. It is also argued that while dismissing the appeal, the Appellate Authority has not taken into consideration whatever was stated or contended by the petitioner in appeal and without application of mind, the said appeal was rejected.

30. On the contrary, the respondent has argued that there is sufficient material on record against the petitioner to hold him guilty for the offences as per chargesheet dated 11th June 2005. It is also argued that there is no procedural lapse in conducting the inquiry and there was no violation of principles of natural justice as well as it is also vehemently argued that despite giving opportunities to the petitioner, he failed to cross-examine the witnesses. It is stated that the Inquiry Officer, after conducting inquiry in a fair manner, reached to the conclusion that petitioner is guilty for the misconduct as alleged. The competent authority has accepted the report of the Inquiry Officer, after considering the entire material on record and finding of the Inquiry Officer. The Appellate Authority also did not find any error or illegality in the decision taken by the competent authority as well in the report submitted by the Inquiry Officer. Learned senior counsel for the respondent has submitted that there is no force in the argument of the petitioner that instant case is case of no evidence.

31. In the instant case, the following charges were leveled against the petitioner :-

(i) not serving the Bank diligently by wilfully and surreptitiously abstracting/pilfering 50 pieces of Rs.100/- denomination notes to derive pecuniary benefit therefrom, thereby committing a breach of Regulation 34 read with Regulation 47(1) of the Reserve Bank of India (Staff) Regulations, 1948.

(ii) having displayed gross negligence in the discharge of his duties leading to the shortage/pilferage of 50 pieces of Rs.100/- denomination notes worth Rs.5,000/- thereby acting in a manner detrimental to the interests of the Bank.

32. As per the foregoing discussions, the questions that arise for consideration in the present petition are as follows:-

(i) *Firstly*, whether the entire disciplinary proceedings against the petitioner is based on no evidence?

(ii) *Secondly*, whether the High Court in dealing with the writ petition filed by the Government employee, who has been dismissed from service, is entitled to hold that the conclusion reached by the competent authority regarding misconduct of the petitioner is not supported by any evidence at all?

(iii) *Thirdly*, whether the High Court in dealing with the writ petition filed by Government employee can re-appreciate the evidence and other material available on record for the purpose of reaching to the conclusion which is contrary to that of Disciplinary Authority and Appellate Authority?

ISSUES No. 1 and 2

33. For proper adjudication of the instant matter, it is deemed appropriate to record certain documents as well as evidence available on record.

34. The disciplinary authority by way of adjudicating two charges, as stated above, leveled against the petitioner has taken on record the CCTV footage and also recorded the statement of the witnesses. The documents which have been relied upon by the Inquiry Officer had been duly served to the petitioner. The petitioner was given opportunity for cross-examination of the concerned witness who proved/verified the documents on record but he chose not to cross-examine the said witness. The petitioner had also not produced his own witness for deposition in his favour. The Inquiry Officer had given at least twelve opportunities to the petitioner for cross-examining the witness.

35. The Inquiry Officer has given detailed report on 30th October 2006 of the inquiry proceedings which have been initiated against the petitioner. Inquiry Officer issued Show Cause notice to the petitioner on 12th April 2006 and the petitioner submitted his reply to the said Show Cause notice on 19th April 2006. The relevant portion of the inquiry report is reproduced herein below:-

> "*2. I have carefully gone through the entire case papers and the written representation dated May 07, 2006 received from the Charge-sheeted Officer. I have carefully examined the submissions put forth by the Charge-sheeted Officer in his representation. The Charge-sheeted Officer in his representation has stated that he had handed over the folded paper and loose notes*

to Shri Muni Ram, Assistant Treasurer (although written as Muni Lal by the Charge-sheeted Officer) for consolidation through Shri V.K. Jain. He has further stated that the handling of loose notes was a part of functioning of the process of CVPS and at no stage loose notes were removed or taken out by him. Thus the theory of folding of notes/removal of notes from the packets for the purpose of taking them out of CVPS is only a myth and not the fact. The Charge-sheeted Officer has also repeated the contention of asking leading questions by the Presenting officer during the oral enquiry. The Charge-sheeted Officer has produced some extracts of the oral enquiry in his representation.

In addition to the above contentions, the Charge-sheeted Officer has raised a number of other contentions. I find contentions raised by Charge-sheeted Officer in his representation are similar to those which he had raised in his representation against the Enquiry Officer's report and the same have already been dealt with by me in my findings. As regards the "Charge-sheeted Officer's claim that he had handed over the folded paper and loose notes to Shri Muni Ram, I find that the CCTV recording produced during the oral enquiry did not show the Charge-sheeted Officer handing over the above said folded paper containing loose notes to Shri V.K. Jain. The Charge-sheeted Officer's contention of handing over the notes purported to be run in Audit Mode in the morning to Shri Muni Ram through Shri V.K. Jain and that too at the end of the day, appears to be unbelievable. Further, Shri Muni Ram was not produced as witness during the oral enquiry by the defence to corroborate this point. It is pertinent to note that as per CCTV recording the folded paper containing the notes taken out from the packets processed in Audit Mode was kept by the Charge-sheeted Officer in a register and this register was picked up by him. He went out of the CCTV coverage (Camera No. 13) for few seconds and when he appeared

*under CCTV coverage of another Camera No.10) the register was not seen in his hands. Therefore, the Charge-sheeted Officer's contention of handling over the notes to Shri Muni Ram is ..... (**not legible**). Regarding the contention made by the Charge-sheeted Officer ..... (**not legible**) questions being asked by the Presenting Officer, I find from the record of oral enquiry that the Presenting Officer was only explaining the recording of CCTV which was produced by him during the oral enquiry and the Charge-sheeted Officer is challenging the submissions of the Presenting Officer on the technical grounds. Further, the Enquiry Officer had also given his ruling, wherever required, during the oral enquiry. Here, I would also like to clarify that the standard of proof required during the domestic enquiry is different from that of criminal proceedings.*

I. therefore, observe that the contentions raised by the Charge-sheeted Officer in his representation against the show-cause notice are untenable and do not warrant reconsideration of my findings. As regards the quantum of proposed penalty, I have once again given a serious thought to it. In view of the seriousness of charges proved against the Charge-sheeted Officer I am not inclined to take a lenient view in the matter. Thus, I am of the opinion that such misconduct calls for severe punishment against the Charge-sheeted Officer so that the same should also act as a deterrent for the other employees/officers of the Bank intending to commit, such, misconduct. I, therefore, confirm the proposed penalty and order that:-

> *(i) "In terms of Regulation 47 (1) (e) of the Reserve Bank of India (Staff) Regulations, 1948 Shri Vijak Kumar Gupta III, Assistant Manager (under suspension) (PF Index No. DG0158) be dismissed from the Bank's service with effect from the close of business on October 30, 2006"*

(II) "In terms of Regulation 47 (1) (d) of the Reserve Bank of India (Staff) Regulations,. 1948 an amount of Rs. 5,000.00 (Rupees Five Thousand only) being the pecuniary loss caused to the Bank be recovered from the Charge-sheeted Officer."

36. The relevant portion of deposition of BW-1 is reproduced herein below for ready reference:-

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PO Please tell who was working on the CVPS machine No.1 on 31st May 2005 and Who was handling the notes processed in audit mode.

BW-1 No records as to who was doing what work at a given point of time was maintained in CVPS section. However, on the said date on Machine No.1, AMs Shri V.K. Jain and Shri V.K. Gupta were working during audit mode processing. They were being assisted by two mazdoors Shri R.S. Rathi and Shri Sat Pal.

PO Whenever pockets processed by the machine in audit mode are banded with paper band, does it mean that packets prepared by the machine contain 100 pieces?

BW-1 Normally, yes.

PO What do you mean by normally?

BW-1 Sometimes during jams, the machine asks the operator to count the notes lying in a particular stacker and enter its numbers on the screen. Sometimes, it asks the operator to take out a given

number of notes from a particular stacker. In such cases, if the operator makes a mistake either in counting or in entering the number, the concerned packets may not contain 100 pieces and will be Jess or more depending upon the figures entered by the operator on the screen of the machine. This is why the extant instructions say that every packet/note given out by the machine should be re-counted by the concerned NPT.

PO On 31st May, 2005 was there any jam in CVPS machine while running in audit mode?

BW-1 Jams are part of machine operation. However, I cannot recall occurrence of any jam during a given period of time.

PO When there is any jam in the machine, does it come to the notice of the CVPS In-charge?

BW-1 As I have said, jams are routine in nature. There may even be upwards of 50 jams in a machine in a day. As long as these are routine in nature, these need not be brought to the notice of the CVPS In-charge every time. However, if such jams are going to adversely affect the output significantly, these are brought into the notice of CVPS In-charge.

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PO Do these jams not affect the processing of notes?

BW-1 Yes output of the machine is adversely affected due to increase in the idle time and decrease in the singler time of the machine.

PO During the course of processing the notes in CVPS machine, if any jam break down occurs, at that point of time what action is taken by you?

BW-1 Routing jams are cleared by the concerned operator himself. When some thing unusual is observed by the operator or when it is felt that output may be affected adversely in a significant way due to the jam, the matter is brought to the notice of the CVPS In-charge. After this, the latter supervises the jam clearing process. Sometimes help of the onsite engineer is also taken. If felt necessary, the matter is reported to the higher ups.

PO On the occurrence of such problems/break downs, does it affect reconciliation process? How the notes processed till such time are reconciled?

BW-1 Jams do occur during machine operations. These do not affect reconciliation process. No mid term reconciliation is required to be done after every jam in a machine.

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BW-1 Details such as Machine No., Date, Time, Value (of the note packet). Stacker No. etc. are printed on the Paper Band

PO If such packets, which have been processed in audit mode, banded with paper band are again subjected to counting by Counting Machine or manual counting by the person handling the notes. What it ensures?

BW-1 Recounting is done to ensure that there are 100 pieces of notes in the packet.

PO If the notes handled in audit mode process are found less than 100 or more than 100 pieces by the person handling the notes, is it required to bring this fact to the notice of other members of NPT and CVPS In-charge?

BW-1 If a note packet made by the CVPS machine is found to contain less than or more than 100 pieces, the person counting the packet quite naturally informs the other members of the NPT about this. This is also important in view of the fact that the concerned persons exercise adequate care during processing of notes to avoid any manual error leading to such shortage or excess. The matter is, however, brought to the notice of CVPS In-charge in case such shortage or excess is unusually high, say more than five pieces and for which no definite reason can be attributed.

PO If this information that the packets contain less than 100 or more than 100 pieces is not passed on by the concerned person of NPT handling the notes to the other members of NPT and CVPS In-charge. Who will be responsible for this?

BW-1 The person handling such packets will be responsible for this.

PO As CVPS In-charge whether you deliver any instructions to NPT concerned in this regard, if you receive such information that packets processed in audit mode contain less than 100 or more than 100 pieces?

BW-1 The concerned NPT is advised to ascertain whether such shortage or excess in a packet is compensated by corresponding excess or shortage

in a preceding or a following packet collected from a given stacker. If this is not so, then the concerned NPT is advised to reconcile the processed notes at the earliest possible time.

PO *If person handling the packet processed in audit mode, banded with paper hand folds some pieces of notes by counting them. Why the notes are foiled in a counted packet (first counted by the CVPS machine and thereafter counted again), what does it indicate? What practice is prevailing in CVPS section in this regard?*

BW-1 *After the note packets are collected from different stackers of a machine, these are examined and counted by a member of the concerned NPT. After it has been examined and counted, I do not see any definite reason why some notes in the packets should be again counted and folded.*

PO *If a person handling the notes being processed in audit mode picking up the packet where he had folded some pieces of notes removing the paper band, removes the folded notes. What does it indicate? Does the packet contain less than 100 pieces?*

BW-1 *If the packet from which the folded notes were removed contained more than 100 pieces, then only one could remove such excess notes. But if the packet in question was already recounted by the concerned person, it is assumed that it contained 100 pieces of notes: Under the circumstances, removal of any note from the packet will reduce the number of notes in the packet and the packet will not contain 100 pieces.*

PO If a person handling notes processed in audit mode removing the folded notes after removing paper band without replacing the folded notes, wraps the same paper band removed earlier on the same packet. What would you observe this activity and what is indicated by this activity?

BW-1Naturally, the packet so handled will contain less than 100 pieces of notes, if the notes were removed from an already counted and verified packet.

PO If similar act is done with other packet by a person handling the notes after being processed in audit mode where folded notes are again removed without replacing them, same paper band is again wrapped on the packet. What will you say to this act again?

BW-1 This seems to be an inexplicable activity. I fail to understand why a person handling the notes should fold/remove some notes from a packet that has already been counted and verified by him.

PO How the bundles are made and the binding is done? Who performs it?

BW-1 10 packets of notes, after these are examined and counted by a member of the NPT, are bound into a bundle with the help of a bundling machine by a mazdoor upon getting instruction to this effect from the concerned (or any) member of the NPT.

PO If those packets from where folded notes are removed kept with other packets placed on the table and just after this act, these packets are taken along with other packets to the binding machine for binding a bundle. The person himself binds the bundle. What it ensures?

BW-1 If any of the packets bound into such a bundle contained less than 100
pieces of notes (after removal of the folded notes from the counted packet), the bundles so prepared will not contain the required number of notes (1000 pieces) in it.

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PO to Shri PrabhatRanjan,
Please see this report and tell us what this report speaks BW-1 about as far as reconciliation is concerned?

BW-1 This Parameter Section Balance Report pertains to the processing of Rs.100/- denomination notes of ICICI Bank in CVPS Machine No. 1 on May 31, 2005. The first report pertains to audit mode processing and the second one to normal more processing. As per the report, in audit mode processing 2000 pieces of notes were processed out of which 1906 notes were categorised by the machine as 'unfit', 64 notes as 'suspect' and 16 notes as 'fit'. 14 pieces of notes were inspected manually (reject notes). In normal mode processing, 18,141 notes were categorised by the machine as 'suspect', 70 pieces as 'fit' and 4,23,541 notes were shredded on line by the machine. 6247 notes were manually inspected (reject notes). One note was reported to be short out of the total 4,48,000 pieces processed in normal mode. In order to reconcile the tender, one note (shortage) was added to manual inspection (reject) figure as per practice. As per the report, 400 pieces of fit notes were manually taken out from the reject notes in terms of extant Central

> *Office instructions. After final reconciliation of the total notes processed on Machine No. 1 (4,50,000 pieces), the final figures were: fit notes (re-issuable) – 486, suspect note 18,205, reject (MI) notes – 5862 (including one shortage), unfit notes – 1906 and notes shredded on line 4,23,541. The discrepancies reported in the tender were: defective notes – 2 pieces, forged notes – 1 piece and shortage- 1 piece. Thus the tender was reconciled.*

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37. It is well settled law that in a domestic inquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act are not applicable. The evidence which has probative value of reasonable nexus and credibility can be relied upon in support of the allegations.

38. It is not in dispute that the charges in disciplinary proceedings are not required to be proven to the same extent as in a criminal trial i.e., beyond reasonable doubt. The Inquiry Officer is not required to observe the strict adherence of Indian Evidence Act but to arrive at the conclusion, he has to consider the document/evidence available before him on the basis of preponderance of probabilities to prove the charges.

39. In the case of ***M.V. Bijlani vs Union of India*** **(2006) 5 SCC 88**, the Hon'ble Supreme Court held as under:-

> *"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a*

> *departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."*

40. It is settled law that this Court will not act as Appellate Court and will not reassess the evidence already led during inquiry so as to interfere on the ground that another view is possible on the basis of material on record. After perusal of the aforesaid inquiry report as well as the statement of BW-1 and other material on record, I do not find any force in the argument of the petitioner that there is no evidence against the petitioner with the Inquiry Officer to hold him guilty for the charges which were leveled against him.

41. Hon'ble Supreme Court in the case of ***State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya*** **(2011) 4 SCC 584,** held as under:-

> "**7.** *It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not*

> *interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)*"

42. In the case of ***Union of India vs H.C. Goel*, AIR 1964 SC 364,** Hon'ble Supreme Court held as under:-

> "**23**. *That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge No. 3 was proved against him?*

> *In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance in well founded, because, in our opinion, the finding which is implicit is the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.*"

43. In the case of ***K.L. Tripathi vs State Bank of India and Others*** **1984 SCC (1) 43**, the Hon'ble Supreme Court held as under:-

> "**32.** *The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitablly form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not*

> *invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.*

44. In view of the discussion in the foregoing paragraphs, there is no force in the argument that the entire disciplinary proceedings against the petitioner is based on 'no evidence'. Hence, issues no. 1 and 2 are decided accordingly.

ISSUE No. 3 (Scope of Writ Jurisdiction)

45. Argument has been advanced on behalf of the petitioner that the mandatory procedure has not been followed by the disciplinary authority and by the Inquiry Officer. For adjudicating this argument, this Court has to look into the deposition of BW-3 wherein it is stated that in the evening of the same day, the entire lot of notes was put under triple lock in the presence of RD, CGM, GM (ID), Treasurer and Manager (CVPS) and preserved in the CVPS Vault. Therefore, the contention of the petitioner that procedure has not been followed or he was not shown the concerned packet, which was kept under lock is not tenable. In fact, the petitioner was fully associated with the work of the detailed manual recounting on 1st June 2005 of all the processed notes of 31st May 2005 as shown in Management exhibit-11. Therefore, in view of the above facts and circumstances, the arguments of the petitioner in the instant writ petition that the entire disciplinary proceedings initiated by the respondent bank against the petitioner is contrary to the provisions of law cannot be entertained. It has also been contested that there was gross violation of Principles of Natural

Justice due to non-supplying of documents and by also not considering the material or reply submitted by the petitioner before the Inquiry Officer. However, there is nothing on record to substantiate the claim made by the petitioner. Therefore, this Court does not find force in the said arguments of learned counsel for the petitioner.

46. It is also settled law that there is limited scope for interference in the disciplinary proceedings by a writ Court. At the outset, it is pertinent to outline the scope of writ jurisdiction under Articles 226 and 227 of the Constitution of India while examining and adjudicating upon an impugned order.

47. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed down to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record.

48. The Hon'ble Supreme Court in ***Union of India vs. P. Gunasekaran,* (2015) 2 SCC 610,** elaborating upon the extent of exercise of writ jurisdiction, held as under:-

> *"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*
>
> *(i) reappreciate the evidence;*
>
> *(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
>
> *(iii) go into the adequacy of the evidence;*
>
> *(iv) go into the reliability of the evidence;*
>
> *(v) interfere, if there be some legal evidence on which findings can be based.*
>
> *(vi) correct the error of fact however grave it may appear to be:...."*

49. Further, the Hon'ble Supreme Court in ***Sarvepalli Ramaiah vs. District Collector, Chittoor,*** **(2019) 4 SCC 500**, made the observations as reproduced hereunder, while examining the scope of Article 226 of the Constitution of India:-

> *"41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.*
>
> *42. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.*

> *43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact."*

50. Further in ***Sanjay Kumar Jha vs. Prakash Chandra Chaudhary*, (2019) 2 SCC 499,** the following observations were made by the Hon'ble Supreme Court:-

> *"13. It is well settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a court of appeal over the findings recorded by a competent administrative authority, nor reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings, which the High Court has done in this case...."*

51. In the case of ***General Manager (Operations) State Bank of India & Anr. vs. R. Periyasamy*, (2015) 3 SCC 101** the Hon'ble Supreme Court held as under:-

> "***11***. *It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218] , this*

Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in SBI v. Ramesh Dinkar Punde [(2006) 7 SCC 212 : 2006 SCC (L&S) 1573] . More recently, in SBI v. Narendra Kumar Pandey [(2013) 2 SCC 740 : (2013) 1 SCC (L&S) 459] , this Court observed that a disciplinary authority is expected to prove the charges levelled against a bank officer on the preponderance of probabilities and not on proof beyond reasonable doubt.

12. *Further, in Union Bank of India v. Vishwa Mohan [(1998) 4 SCC 310 : 1998 SCC (L&S) 1129] , this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus, in that case the Court set aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.*

13*. While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a government department, this Court in Commr. of Police v. Mehar Singh [(2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a*

> *departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often the criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long-standing view on this subject was settled by this Court in R.P. Kapur v. Union of India [AIR 1964 SC 787] , whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view.*
>
> ***XXX***
>
> ***17**. We also find it difficult to understand the justification offered by the Division Bench that there was no failure on the part of the respondent to observe utmost devotion to duty because the case was not one of misappropriation but only of a shortage of money. The Division Bench has itself stated the main reason why its order cannot be upheld in the following words, "on reappreciation of the entire material placed on record, we do not find any reason to interfere with the well-considered and merited order passed by the learned Single Judge".*

52. In the case of ***Allahabad Bank vs. Krishna Narayan Tewari*, (2017) 2 SCC 308**, the Hon'ble Supreme Court held as under:-

> "**7**. *We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case*

> *where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the disciplinary authority and the appellate authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the disciplinary authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the appellate authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the disciplinary authority. All told, the enquiry officer, the disciplinary authority and the appellate authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the disciplinary authority and the appellate authority.*"

53. While dealing with the scope of interfering with the finding of fact recorded in departmental inquiry on the basis of the evidence available on record, similar view has been reiterated by the Hon'ble Supreme Court in

the case ***State of Bihar v. Phulpari Kumari*** **(2020) 2 SCC 130**. It is held as under:-

> "**6.** *The criminal trial against the respondent is still pending consideration by a competent criminal court. The order of dismissal from service of the respondent was pursuant to a departmental inquiry held against her. The inquiry officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in reappreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the respondent:*
>
> ***6.1.*** *It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of "no evidence". Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.*
>
> ***6.2.*** *The High Court ought not to have interfered with the order of dismissal of the respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the inquiry officer.*"

54. The law, as has been interpreted by the Hon'ble Supreme Court, is clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned unless there is a gross illegality or error apparent on the face of record. Hence, this Court will also limit itself to the question of law to see whether there is any gross illegality or error apparent on record in the same.

55. After examining the impugned order as well as the material on record, I do not agree with the arguments/submissions made by learned counsel for the petitioner that the departmental proceeding has been proceeded and concluded contrary to the principles of Departmental Inquiry. It is clearly established that these charges were duly proven and the petitioner was rightly held guilty by the competent authority. The Appellate Authority while rejecting the appeal of the petitioner herein has passed a detailed and reasoned order after considering all the material and evidence on record before it. Hence, there is no illegality or error on the appellate order.

56. In view of the foregoing discussion, issue no.3 is decided accordingly.

57. In the instant case, the petitioner is a bank employee. A bank employee/officer must perform one's duty with absolute devotion, diligence, integrity and honesty, so that the confidence of the public/depositors is not lost in the bank. The banking system is the backbone of the Indian economy. An officer who is found to have been involved in financial irregularities while performing his duty as bank officer, cannot be let off even if there is a minor infraction in the

inquiry report. In the departmental inquiry, the standard of proof is not that of a criminal case i.e., beyond reasonable doubt, rather the test applicable is that of merely the preponderance of probabilities.

58. As goes the popular saying – "Caesar's wife must be above suspicion". It is settled law that honesty of integrity of employees/officers working in the banks who are dealing with public money must be paramount. The allegations which have been leveled against the petitioner are certainly serious in nature and this amount to gross misconduct. Therefore, I do not find any force in the argument of the petitioner that the punishment which has been awarded to the petitioner for removing from service is not proportionate.

CONCLUSION

59. In view of the above discussion on facts as well as law, this Court does not find that there has been any procedural infraction or violation of Principles of Natural Justice in conducting the inquiry against the petitioner. It is also decided in the foregoing paragraphs that there is sufficient material on record to establish the guilt of the petitioner.

60. Considering the facts and circumstances of the present case, this Court does not find any substance in the instant petition. The petitioner has failed to establish a case warranting interference in the impugned order.

61. Accordingly, the instant petition being devoid of merits is dismissed.

62. Pending application, if any, also stands dismissed.

63. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 21, 2022
Aj/@k