



A.F.R.

Neutral Citation No. -
2026:AHC-LKO:66340
Reserved on: 10.08.2026
Delivered on: 18.09.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 2001422 of 2014

Mangnoo Jha

.....Petitioner(s)

Versus

Punjab National Bank Through Chairman Cum Managing Director

.....Respondent(s)

Counsel for Petitioner(s)	: Virendra Kumar Dubey, Shobhit Mohan Shukla
Counsel for Respondent(s)	: D.k.pathak, Gopal Kumar Srivastava

Court No. - 4

HON'BLE IRSHAD ALI, J.

**" अपराधानुरूपं च दण्डं दण्डयेषु दापयेत् ।
सम्यग्दण्डप्रणयनं कुर्यात् ।
द्वितीयमपराधं न कस्यचित् क्षमेत ।"**

**"Punishment should be awarded to the
offenders in proportion to their crime.
Justice should be administered properly.
A second offense should not be forgiven
for anyone."**

**"جرم کے مطابق ہی مجرم کو سزا دی جانی چاہیے۔ انصاف کے ساتھ
سزا کا فیصلہ کرنا چاہیے۔ کسی کا بھی دوسرا جرم ہرگز معاف نہیں کیا
جانا چاہیے۔"**

1. Heard Sri Shobhit Mohan Shukla, learned counsel for the petitioner and Sri Gopal Kumar Srivastava, learned counsel for respondent – Bank.

2. The present writ petition has been filed on following prayer:

“(i) to issue writ order or direction in the nature of certiorari quashing the impugned order of dismissal from service dated 01.11.2012 as well as the appellate order passed by the appellate authority dated 27.03.2014 as contained in Annexure No.1

respectively to the writ petition with all consequential service benefits.

(ii) to issue writ order or direction in the nature of mandamus directing and commanding the opposite parties to treat the petitioner in continuous service with all consequential service benefits as if the impugned orders contained as Annexure No.1 & 2 has never been passed.

(iii) to issue any other writ order or direction which this Hon'ble court may deem just fit and proper under the circumstances of the case.

(iv) to allow the cost of the writ petition."

3. Factual matrix of the case is that the petitioner was duly selected and was initially appointed as Clerk-cum-Cashier in substantive capacity in Punjab National Bank and joined service on 01.12.1978. He was thereafter promoted to Officer Grade-I in 1984 and, on account of his service and eligibility, he was promoted as Assistant Manager in the year 1987.

4. The work and conduct of the petitioner throughout his service remained excellent. He was awarded an 'ISO 9001 certificate (International Standard Organization)' for his commendable services rendered at Punjab National Bank, Mahanagar Branch, Lucknow, which was stated to be the first branch in the banking sector to receive such certificate. The petitioner remained posted as Assistant Manager at Mahanagar Branch, Lucknow from October 1994 to 05.09.1998, during which period nothing adverse was recorded against him. His service record was neat and clear and contained no adverse entry or remark.

5. While the petitioner was working as Assistant Manager at Punjab National Bank, Vidhan Sabha Marg, Lucknow, an FIR was registered against him on 28.02.1999 at Police Station Hussainganj, Sadar, Lucknow, as Case Crime No. 72 of 1999 under Sections 420, 467, 468 and 471 IPC. Thereafter, on 15.03.1999, another FIR was lodged

at Police Station Mahanagar, Lucknow, alleging fraud and defalcation of bank funds, which was registered as Case Crime No. 140 of 1999 under Sections 409, 420, 467, 468 and 471 IPC.

6. Pursuant to the aforesaid FIRs, the petitioner was arrested on 01.03.1999 and sent to jail. He was enlarged on bail in both cases in October 2000. After being released on bail, the petitioner submitted his joining in the Bank, but he was not permitted to join on the ground that he had been placed under suspension.

7. Although the petitioner had been suspended in the year 1999, he was served with a charge-sheet dated 29.04.2002 only after a lapse of about three years. The charge-sheet was issued under the signatures of the Zonal Manager, East U.P. Zone, as the Disciplinary Authority under Regulation 6 of the Punjab National Bank Officers Employees (Discipline & Appeal) Regulations, 1977, and was served upon the petitioner on 05.05.2002.

8. The charges contained in the charge-sheet were vague and indistinct and did not disclose a proper basis enabling the petitioner to submit an effective defence. The petitioner, therefore, made representations dated 08.05.2002 and 24.06.2002 seeking supply of relevant defence documents. He submitted a list of 48 documents, some of which were referred to in the charge-sheet and others were required for his defence, but the documents were not supplied.

9. Instead of supplying the documents and permitting the petitioner to submit his written statement, the Disciplinary Authority appointed Sri R.C. Maurya, Senior Manager, Zonal Office, Lucknow, as Enquiry Officer vide letter dated 19.06.2002, served upon the petitioner on 26.06.2002. The petitioner again requested the Disciplinary Authority on 29.06.2002 to supply the documents so that he could submit his written statement, but the request remained unheeded.

10. Since the departmental proceedings were based upon the same facts and evidence which were also the subject matter of the criminal cases arising out of the aforesaid FIRs, the petitioner requested that the disciplinary proceedings be kept in abeyance till evidence was led in the criminal proceedings. The request was rejected and the petitioner challenged the same before this Hon'ble Court by filing Writ Petition No.1356 (S/B) of 2002. The writ petition was ultimately dismissed on 08.02.2008 on the principle that there was no bar to simultaneous criminal and departmental proceedings.

11. During the pendency of the disciplinary proceedings, Sri U.S. Awasthi was appointed as Enquiry Officer vide letter dated 12.12.2007. The petitioner objected to his appointment on the ground of bias and his involvement in framing the charge-sheet. The objection was accepted and Sri Deepak Dave, Senior Manager, Branch Office, Lalbagh, Lucknow, was appointed as Enquiry Officer vide order dated 06.02.2008.

12. The newly appointed Enquiry Officer fixed 18.02.2008 for enquiry. Since the petitioner was not available on that date, he requested on 15.02.2008 for another date. However, without responding to the request, the Enquiry Officer proceeded with the enquiry on 18.02.2008 in the absence of the petitioner, permitted production of additional management documents, directed that the enquiry proceed *ex parte* and fixed further dates without ensuring proper notice to the petitioner.

13. The Enquiry Officer, thereafter, recorded the statement of Management Witness No.1- Sri A.C. Ghosh, Senior Manager, Jaunpur, behind the back of the petitioner and continued the enquiry on subsequent dates. Despite representations dated 04.05.2008 and 11.05.2008 stating that the demanded documents had not

been supplied and that the petitioner had not received proper intimation of the proceedings, the enquiry was continued in his absence and his opportunity of cross-examination was closed.

14. On 09.06.2008, Management Witness No.2 - Sri Salil Chandra, Senior Manager, Aishbagh, Lucknow, was examined behind the back of the petitioner. The petitioner had sought adjournment on medical grounds, but the same was not properly dealt with. On 21.06.2008 the petitioner submitted objections to the enquiry being conducted behind his back without supplying the documents and without affording him effective opportunity of defence. The objections were not heeded and the third Management Witness was also examined in the petitioner's absence.

15. Aggrieved by the manner in which the enquiry was being conducted and the continued non-supply of documents, the petitioner filed Writ Petition No.1324 (S/B) of 2008 before this Hon'ble Court. The writ petition was decided on 21.02.2012, wherein this Hon'ble Court held that the documents demanded by the petitioner, which were necessary for his defence, were liable to be supplied. The Court further provided that where supply of any document was not practically possible for a valid reason, inspection thereof should be permitted by fixing the date, time and place, and that the petitioner should be given free access to such documents. The enquiry was directed to be concluded in accordance with law within a maximum period of four months from the date of presentation of the certified copy of the order.

16. The certified copy of the judgment and order dated 21.02.2012 was served upon the Enquiry Officer, Disciplinary Authority and other concerned authorities through registered post on 02.03.2012. The petitioner also furnished a chart specifying the documents demanded, their relevancy and their connection with the charges.

17. Thereafter, the Enquiry Officer fixed 16.04.2012 for enquiry. The petitioner appeared and again demanded the documents along with the chart showing their relevancy. On 17.04.2012, the petitioner explained the relevancy of the documents, which was found proper by the Enquiry Officer. On 18.04.2012, the petitioner was permitted to inspect documents at Vidhan Sabha Marg Branch and Mahanagar Branch.

18. During inspection, several documents were found unavailable. The petitioner was supplied certificates regarding non-availability of certain documents and copies of some other documents. Letters dated 23.04.2012, 24.04.2012 and 26.04.2012 recorded the non-availability of several documents despite their relevancy having been accepted.

19. The petitioner also requested production of the original documents for verification of the photocopies supplied to him. Despite his repeated objections regarding the genuineness of the photocopies, the originals were not produced. On 24.05.2012, the Enquiry Officer refused inspection of several management documents on the ground that opportunity regarding the same had already been given earlier, notwithstanding the subsequent directions of this Hon'ble Court dated 21.02.2012.

20. On 26.05.2012, Management witness No.1 - Sri A.C. Ghosh, was produced for cross-examination. The petitioner again requested production of original documents, but the Presenting Officer stated that the originals of the exhibits were kept before the Enquiry Officer and that the copies could be verified where there was doubt. The petitioner maintained that the photocopies were not genuine and repeatedly requested production of the originals, but his request was not accepted.

21. During his cross-examination, Management Witness No.-1 admitted that he had never worked with the petitioner at either

Mahanagar Branch or Vidhan Sabha Marg Branch and had never been posted at Mahanagar Branch during the relevant period. Although he claimed familiarity with the petitioner's signature, he could not satisfactorily explain the basis thereof. Management Witness No.2 also disputed certain signatures attributed to the petitioner, whereas Management Witness No.1 had stated otherwise. These circumstances made production of the original documents material, but the same was not done.

22. Management Witness No.3 - Sri G.N. Gupta, deposed regarding the manner in which work was carried out in the branches in accordance with the applicable circulars and stated that the petitioner had not been allotted any role in the working under the computer system. Management Witness No.4 - Sri V.P. Saxena, who was functioning as Concurrent Auditor at Vidhan Sabha Marg Branch, could not prove any allegation against the petitioner. The complainant, Sri S.K. Jha, was never produced to prove the complaint or the alleged incident.

23. Apart from the aforesaid four witnesses, no other management witness was produced to substantiate the charges. The petitioner also demanded additional documents on 28.06.2012 in place of documents certified as unavailable and furnished the relevancy thereof. On 23.05.2012 and 03.07.2012, the petitioner made further representations to the Disciplinary Authority seeking inspection and supply of documents and also furnished a list of defence witnesses along with the relevancy of their evidence.

24. On 04.07.2012, the petitioner requested summoning of four defence witnesses, namely Sri R.B.L. Goswami, Sri Kamal Kant, Sri D.S. Hayanki and Sri Sunil Pandey. Sri Kamal Kant and Sri D.S. Hayanki were members of the balancing team and Sri Sunil Pandey was the Clerk assisting the team. The petitioner stated that their evidence was material to establish that the balancing of the bank showed no

discrepancy and that the allegations were baseless. The Enquiry Officer refused to summon Sri Kamal Kant and Sri D.S. Hayanki on the ground that their names had not been exhibited in the documents.

26. None of the defence witnesses cited by the petitioner was ultimately examined and the petitioner was not afforded an effective opportunity to present his defence. The Enquiry Officer concluded the enquiry proceedings on 06.07.2012. The petitioner nevertheless submitted his written brief on 06.08.2012.

27. The Enquiry Officer submitted his enquiry report on 17.08.2012. The report was supplied to the petitioner through the Disciplinary Authority's letter dated 24.08.2012, served upon him on 30.08.2012, and the petitioner was afforded an opportunity to submit his representation. The petitioner submitted his detailed representation against the enquiry report on 24.09.2012.

28. Notwithstanding the objections raised by the petitioner, the Disciplinary Authority passed the order of dismissal dated 01.11.2012, holding all the charges proved against the petitioner. The order was communicated vide letter dated 27.11.2012 and received by the petitioner on 07.12.2012. By the said order, the petitioner was dismissed from service, which was made ordinarily a disqualification for future employment under Regulation 4(j) of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977. The salary for the suspension period was also forfeited except the subsistence allowance already paid and the suspension period was treated as not spent on duty.

29. The petitioner, thereafter, preferred a departmental appeal against the dismissal order on 18.01.2013. The appeal was rejected by the appellate authority, General Manager, PAD, vide order dated 27.03.2014, which was served upon the petitioner in April 2014.

The appellate authority rejected the appeal on the ground that the petitioner had failed to disprove the charges by bringing any fresh fact on record.

30. The appellate authority did not independently consider whether the findings of the Disciplinary Authority were justified or whether the penalty imposed was excessive or inadequate, as required under Regulation 17 of the 1977 Regulations. The issues of natural justice, non-supply of documents, non-production of original records, denial of opportunity to examine defence witnesses and other specific grounds raised by the petitioner were not considered. A cryptic order was passed without dealing with the material grounds urged in the appeal.

31. The entire disciplinary proceedings were conducted on the premise that the charges were already proved and that the petitioner was required to disprove them. The documents relied upon by the department were not duly proved by examining their authors, nor were the originals produced despite repeated demands by the petitioner. The petitioner consistently disputed the genuineness of the photocopies and sought production of original records, but his objections were not properly dealt with.

32. A material issue throughout the disciplinary proceedings was that the petitioner had never worked as a System Administrator. The charge-sheet described the alleged misconduct as having been committed while the petitioner was functioning as System Administrator, stating:

“While working as System Administrator at B.O., V.S. Marg, Lucknow and at B.O. Mahanagar, Lucknow Shri M. Jha alleged to have committed following lapses:

The petitioner specifically denied ever having been appointed or posted as System Administrator. No documentary evidence was produced by the department establishing such appointment or posting.”

33. The Punjab National Bank had earlier instituted Regular Suit No. 117/99 against the petitioner before the Court of the 1st Civil Judge (Senior Division), Court No. 20, Lucknow, in which Issue No. 1 was framed as to whether the petitioner had ever been posted as System Administrator. The learned Civil Court decided the issue negatively and held that the Bank had failed to establish that the petitioner had ever worked as System Administrator. The suit was dismissed and Regular Civil Appeal No. 14/09 against the judgment dated 05.12.2008 was also dismissed by the Additional District Judge-X, Lucknow on 26.07.2013, after which the matter attained finality.

34. According to the Handbook of Computerization of Branches dated 28.01.1995, a System Administrator could be appointed from officers not below Scale-II. The petitioner was admittedly working in Scale-I and, therefore, could not have been appointed as System Administrator. The relevant handbook also contemplated issuance of an office order for such appointment. No such office order was ever produced by the Bank.

35. None of the four Management Witnesses stated that any office order had been issued appointing or recognizing the petitioner as System Administrator. Nevertheless, the Enquiry Officer proceeded on the assumption that the petitioner was functioning as System Administrator and held him responsible for alleged lapses associated with that post. The petitioner accordingly submits that the finding was based on no evidence.

36. In relation to Charge No. I(A)(a), it was alleged that the petitioner reopened closed Account No. 16488, originally standing in the name of Anoop Chandra Srivastava, after altering the name to Arun Kumar and fraudulently misappropriated Rs. 6,15,454/- through the account. However, there was no evidence establishing that the petitioner reopened the account or changed the name of the account holder. The account had been opened and closed at a time when the petitioner

was not posted at Mahanagar Branch; he joined the branch only in October 1994, whereas the account had been closed on 11.02.1994.

37. The alleged transactions in Account No.16488 were also not connected with the petitioner by any proved evidence. The vouchers marked E 3/6 and E 3/7 relating to the alleged transaction of Rs.15,000/- were not signed by the petitioner. Management Witnesses did not establish that the signatures were those of the petitioner. In cross-examination, MW-1 stated:

“Q.3 Please peruse exhibit 3/6 and tell who has passed the same?

A.3 I do not know the signature of the passing official.

Q.4 Do you know the signature of the attesting official?

A.4 Do not know.

Q.5 Do you recognize the signature of passing official E 3/7?

RA.5 Do not know.

Despite this, the Enquiry Officer recorded a finding of guilt and stated:

- 1. At PP-12/13 MW-1 has deposed that document E 3/6 has been initialed by M. Jha and in document E 3/7 debit has been confirmed by M. Jha through contention of CO not tenable.*

The petitioner contends that the finding ignored the cross-examination and was unsupported by evidence.

38. The other vouchers, including E 3/8 and E 3/9, were also not proved to have been signed or initialled by the petitioner. Further, the Teller Card marked E 3/3a was prepared on 26.05.1994, before the petitioner's posting at Mahanagar Branch. Thus, the documents relied upon did not establish any connection between the petitioner and the alleged transactions.

39. Charge No. I(A)(b) related to Saving Fund Account No. 18646, originally standing in the name of Sri Khem Singh, which was alleged to have been operated after alteration of the name to Arun Kumar and through which fictitious entries were allegedly made. It was further alleged that the petitioner passed a voucher for Rs.30,736.94. However, the evidence did not establish any connection between the petitioner and the account or the alleged transactions. The vouchers were

not signed by the petitioner and the witnesses did not state that the petitioner had carried out any of the alleged acts.

40. The petitioner had requested examination of Sri Kamal Kant and Sri D.S. Hayanki, who were members of the balancing team and were material witnesses concerning the alleged transactions. The Enquiry Officer refused to summon them. Although the Enquiry Officer noticed that one of the documents relied upon was torn and had not been substantiated by any witness, the charge was nevertheless treated as proved.

41. Charge No. I(A)(c) alleged that the petitioner, while functioning as System Administrator, unauthorisedly debited various impersonal heads under user ID/ISBS and thereby defrauded the Bank. The petitioner consistently denied functioning as System Administrator and relied upon the Civil Court's finding that the Bank had failed to establish such posting. No evidence was produced to establish that the petitioner had been appointed System Administrator or had been allotted the relevant password or user ID. The Enquiry Officer nevertheless held the charge proved without referring to any reliable management evidence connecting the petitioner with the alleged transactions.

42. Charge No. I(A)(d) alleged that amounts were withdrawn from Saving Fund Account No. 18646 and that, except for four cheques passed by the CTO, the remaining cheques had been passed by the petitioner. However, the evidence did not establish that the petitioner handled the said account or passed the alleged cheques. The documents relied upon were photocopies, the originals were not produced despite demand, and the petitioner disputed the signatures. There was also no proved evidence establishing transfer of any alleged misappropriated amount to Account No. 16982.

43. Charge No. I(B)(a) alleged that while working as System Administrator at Vidhan Sabha Marg Branch, the petitioner opened Saving Fund Account No. 35343 in the name of Rajesh Kumar and fraudulently credited and withdrew certain amounts. The account-opening document did not bear the petitioner's signature as introducer and the original was not produced. The other documents relied upon were photocopies and did not establish that the transactions were carried out by the petitioner. The petitioner also relied upon the banking procedure under which day-end reports were generated and preserved as records of transactions.

44. Management Witness No.2 specifically stated:

“Q.26. It was also provided in DE 23/30 that at the end of the day the section incharge should ensure that all entries transacted during the day and printed in the report are cross checked with vouchers/instruments and no transaction is left. All necessary reports pertaining to his seat are generated. All the reports generated at the day end should properly checked and signed. The above reports should in proper and their safe custody should be ensured. Whether these guidelines were complied with by the concern Section Incharge or not, or whether it was kept in safe custody as per guidelines or not?”

A.26. At BO Mahanagar, Lucknow all the reports were generated and checked by the respective Section Incharges as per instructions given through office order exhibit DE 23/30 and these reports were kept in proper safe custody.”

The petitioner submits that the relevant day-end reports, which constituted the contemporaneous record of the transactions, ought to have been produced and proved but were not.

45. Charge No. I(B)(b) alleged that the petitioner fraudulently got prepared two FDRs of Rs.85,000/- and Rs.65,000/- in the name of Rajesh Kumar at Vidhan Sabha Marg Branch. The originals of the documents relied upon were not produced despite repeated requests. The evidence of MW-3 did not relate to this charge and did not establish the petitioner's involvement. The finding was therefore unsupported by the evidence on record.

46. Charge No. I(B)(c) alleged issuance of a pay order for Rs.40,800/- in favour of M/s. Sun Motors by fraudulently debiting MBFD manual. The Enquiry Officer himself found that there was no debit voucher or other document establishing the alleged debit. The petitioner had never been appointed System Administrator and had never been allotted the ISBS password or ID. In the absence of the debit voucher or any evidence connecting the transaction with the petitioner, the charge could not be established.

47. Charge No.II alleged misappropriation of Rs.14,500/- stated to have been given to the petitioner by Sri S.K. Jha as margin money for sanction of a computer loan of Rs.50,000/-. However, the documentary evidence itself showed that the margin money was credited to the account of Sri Santosh Kumar Jha and the computer loan was sanctioned. Sri Santosh Kumar Jha, who was a material witness, was not produced by the Bank despite his name appearing in the list of witnesses.

48. The Enquiry Officer relied upon document E 3/101 to record that a computer loan of Rs.50,000/- had been sanctioned against margin money of Rs.14,500/- in the account of Sri Santosh Kumar Jha. The petitioner submits that this document itself negated the allegation of misappropriation. No witness stated that the amount was ever handed over to the petitioner or that it was not credited to the account of Sri Santosh Kumar Jha.

49. Charge No. III alleged misappropriation of Rs.67,000/- through an ATM imprest account at Vidhan Sabha Marg, Lucknow. The petitioner denied any involvement and stated that the original ledger showing withdrawal and deposit had not been produced. There was also no evidence that the petitioner himself withdrew any amount through the ATM or failed to deposit any amount. The mere allegation that the petitioner was functioning as ATM Incharge along

with the Head Cashier could not establish personal liability for withdrawals made by other employees.

50. Charge No.IV alleged that the petitioner removed bank records/documents to cover up the alleged misdeeds. The charge did not specify which documents or vouchers were allegedly removed by the petitioner or in what manner. The custodian responsible for maintaining the bank records was never produced to establish when or how any document became unavailable or whether any report regarding the alleged loss or removal had been made. The petitioner submits that the mere non-availability of documents could not establish their removal by him.

51. The Enquiry Officer ultimately concluded that all the charges were proved, despite the absence of cogent evidence connecting the petitioner with the alleged transactions. Heavy reliance was placed upon Management Witness No.1, who had never been posted in the concerned branches during the relevant period and had no direct knowledge of the alleged incidents. The petitioner submits that the findings were contrary to the material on record and amounted to findings based on suspicion and conjecture.

52. The petitioner specifically raised all these objections in his representation dated 24.09.2012 against the enquiry report. He pointed out that the original documents had not been produced, the duplicate/photocopy documents were disputed, the authors of documents had not been examined, material witnesses had not been produced, and the Management Witnesses relied upon by the department were not competent witnesses having direct knowledge of the relevant incidents. The Disciplinary Authority did not consider these objections while passing the dismissal order dated 01.11.2012.

53. The same material grounds were raised by the petitioner in his departmental appeal dated 18.01.2013, but the Appellate Authority also failed to consider and deal with them and rejected the appeal by the cryptic order dated 27.03.2014.

54. The petitioner submits that the enquiry report was prepared with a pre-determined approach that the petitioner had committed the alleged misconduct and that the burden was upon him to disprove the charges. Instead of requiring the Presenting Officer to establish the charges through admissible and reliable evidence, the Enquiry Officer accepted the allegations as established and expected the petitioner to disprove them.

55. The Enquiry Officer also assumed the role of the prosecuting officer by attempting to justify the management's case in the enquiry report rather than objectively determining whether the charges had been established on the evidence produced. The objections raised by the petitioner regarding the genuineness and admissibility of documents and the competence of the witnesses were not properly considered.

56. The disciplinary proceedings were also conducted in violation of Clause 20 of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977, which provides:

"Every order, notices and other process made or issued under these regulations shall be served in person on the officer employees concerned or communicated to him by registered post at his last known address."

The petitioner submits that notices fixing dates of enquiry were at times delivered after the dates fixed for enquiry. The Enquiry Officer also acknowledged that letters sent through registered or speed post had returned undelivered, yet the enquiry was proceeded with in the absence of the petitioner.

57. The entire disciplinary enquiry culminating in the dismissal order was, therefore, conducted without affording the petitioner a proper and effective opportunity to defend himself. The original documents were not produced despite repeated demands, material defence witnesses were not summoned, relevant management witnesses were not produced, and objections regarding the genuineness and proof of documents were not properly considered.

58. The dismissal order dated 01.11.2012 was passed mechanically without proper application of mind to the petitioner's representation against the enquiry report. The order proceeded on the basis that the charges stood proved and did not properly address the material objections raised by the petitioner. The forfeiture of salary for the suspension period, except the subsistence allowance already paid, and treatment of the suspension period as not spent on duty were also imposed without affording the petitioner a separate effective opportunity in accordance with law.

59. The appellate order dated 27.03.2014 likewise failed to consider the specific grounds raised by the petitioner and merely recorded that he had failed to disprove the charges by bringing fresh facts on record. The Appellate Authority did not independently examine the justification or proportionality of the penalty or the violations of natural justice alleged by the petitioner.

60. The petitioner submits that the entire disciplinary proceedings, enquiry report, dismissal order and appellate order are arbitrary, perverse and contrary to the material on record. The charges were treated as proved without cogent, relevant and duly proved evidence and the petitioner was effectively required to establish his innocence rather than the department being required to prove the charges.

61. The petitioner further submits that the entire disciplinary proceedings and punishment order are contrary to the applicable statutory provisions and violate the principles of natural justice and Article 14 of the Constitution of India. The petitioner has been punished on the basis of suspicion and unproved documents despite repeatedly requesting production and verification of the originals.

62. The petitioner has throughout maintained an excellent service record and submits that he was falsely implicated in the alleged charges. Being aggrieved by the dismissal order dated 01.11.2012 and the appellate order dated 27.03.2014 and having no other equally effective and efficacious remedy, the petitioner has approached this Hon'ble Court seeking appropriate relief against the impugned orders.

63. Submission of learned counsel for the petitioner is that the present petition challenges the validity of the order of dismissal dated 10.11.2012/01.11.2012 passed by the Disciplinary Authority/Deputy General Manager, Punjab National Bank, Circle Office, Lucknow, whereby the petitioner was dismissed from service, which shall ordinarily be a disqualification for future employment in terms of Regulation 4(j) of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977. The entire salary for the period of suspension was also forfeited, except the subsistence allowance already paid and the suspension period was treated as not spent on duty. The order was communicated to the Petitioner vide letter dated 27.11.2012 and received by him on 07.12.2012 and has been annexed as Annexure No. 1 to the writ petition.

64. He submitted that the aforesaid dismissal order was passed mechanically, without proper application of mind and without affording the petitioner a meaningful opportunity to establish his defence. The

points and objections specifically raised by the petitioner during the disciplinary proceedings were not duly considered. The recital and findings contained in the impugned order are contrary to the material available on record. The present case is, therefore, a case of **“no evidence”**, since none of the charges levelled against the petitioner was established by cogent, relevant and duly proved evidence. The charges appear to have been treated as proved at the outset and the burden was effectively placed upon the petitioner to disprove them.

65. The petitioner also challenges the appellate order dated 27.03.2014 passed by the Appellate Authority/General Manager, PAD, rejecting the petitioner's appeal. The said order was served upon the petitioner in April, 2014 and has been annexed as Annexure No. 2 to the writ petition. The Appellate Authority rejected the appeal primarily on the ground that the petitioner had failed to disprove the charges by bringing any fresh fact on record. Such an approach demonstrates non-application of mind, as the Appellate Authority was required to consider the appeal in terms of Regulation 17 of the 1977 Regulations and to independently examine the legality and correctness of the findings as well as whether the penalty imposed was excessive or inadequate. The issue of violation of natural justice was also not considered.

66. He submitted that the petitioner was suspended in the year 1999 and, after a lapse of approximately three years, was served with the charge-sheet dated 29.04.2002 on 05.05.2002. The charge-sheet was issued under the signatures of the Zonal Manager, East U.P. Zone, as the Disciplinary Authority under Regulation 6 of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977. The charges contained in the charge-sheet were vague and indistinct and no adequate factual or documentary basis was disclosed, making it impossible for the petitioner to submit an effective written statement of defence merely against contour allegations. The petitioner accordingly submitted representations dated 08.05.2002 and 24.06.2002 seeking

supply of documents, including documents referred to in the charge-sheet and other documents necessary for his defence. The petitioner submitted a list of 48 documents and his representation dated 24.06.2002 has been annexed as Annexure No. 4 to the writ petition. Despite the aforesaid request, the Enquiry Officer did not supply the documents and instead fixed 08.07.2002 as the date of preliminary hearing vide letter dated 24.06.2002, which was served upon the petitioner on 30.06.2002.

67. Subsequently, Sri U.S. Awasthi was appointed as Enquiry Officer vide letter dated 12.12.2007. Since Sri U.S. Awasthi was involved in the matter and had framed the charge-sheet against the petitioner, the petitioner apprehended bias and requested change of the Enquiry Officer. The request was accepted and Sri Deepak Dave, Senior Manager, Branch Office, Lalbagh, Lucknow, was appointed as Enquiry Officer vide order dated 06.02.2008. The Enquiry Officer thereafter fixed 18.02.2008 as the date of enquiry. The Petitioner repeatedly requested supply of the documents demanded by him. By representations dated 04.05.2008 and 11.05.2008, the petitioner pointed out that the documents had still not been supplied and that he had not received proper intimation regarding the enquiry proceedings. Despite these requests, the enquiry was proceeded with in the absence of the petitioner, including the proceedings dated 09.05.2008 and the Enquiry Officer closed the petitioner's opportunity of cross-examination. The petitioner objected to the manner in which the enquiry was being conducted and pointed out that the proceedings were being held behind his back without supplying the documents necessary for his defence.

68. On 21.06.2008, the petitioner specifically objected to the enquiry being conducted behind his back and without providing the documents and opportunities required at various stages of the disciplinary enquiry. The objection was not meaningfully considered and the enquiry was again proceeded with, including examination of the Management Witness-3 behind the back of the petitioner.

69. Being aggrieved by the continuous denial of documents and the manner in which the enquiry was being proceeded with, the petitioner approached this Hon'ble Court by filing Writ Petition No. 1324 (S/B) of 2008, which was decided on 21.02.2012. This Hon'ble Court specifically held that the documents demanded by the Petitioner were liable to be supplied to him, without which the Petitioner could not effectively defend himself. The judgment and order dated 21.02.2012 has been annexed as Annexure No. 5 to the writ petition.

70. Learned counsel for the petitioner submitted that the entire disciplinary proceedings against the petitioner proceed on the foundational assumption that the Petitioner was functioning as a **“System Administrator”** at B.O. Vidhan Sabha Marg, Lucknow and B.O. Mahanagar, Lucknow. The statement of imputation appended to the charge-sheet dated 29.04.2002 specifically records:

“While working as System Administrator at B.O. V.S. Marg, Lucknow and at B.O. Mahanagar, Lucknow Shri M. Jha alleged to have committed following lapses;”

His submission is that the said foundational assumption is demonstrably incorrect and goes to the very root of the disciplinary proceedings.

71. He submitted that the petitioner was never appointed, designated or posted as System Administrator by any formal order of the Respondent Bank. The Respondent Bank has not produced any office order, posting order or other contemporaneous document showing that the petitioner was appointed as System Administrator. Significantly, none of the Management Witnesses produced during the enquiry stated that any such appointment or designation had ever been made in favour of the petitioner.

72. He submitted that the error is further established from the Bank's own *Handbook of Computerization of Branches* dated 28.01.1995,

according to which the post of System Administrator could only be assigned to an officer not below Scale-II. The petitioner was an Officer Grade-I/Assistant Manager in Scale-I. Thus, in the absence of any specific order and having regard to the Bank's own rules, the petitioner could not have been saddled with duties and liabilities specifically attached to a System Administrator.

73. He submitted that a disciplinary charge founded upon a factual status, which the employee never possessed is legally unsustainable. The Respondent cannot attribute to the petitioner statutory, regulatory or departmental duties attached to a post which he was neither appointed to nor authorized to hold. Consequently, even assuming that any irregularity had occurred in the functioning of the computer system, the same could not automatically be attributed to the petitioner.

74. He submitted that the question whether the petitioner was ever posted or appointed as System Administrator was not merely an internal departmental controversy. The said issue was specifically adjudicated by a competent Civil Court in Regular Suit No. 117/1999, decided on 05.12.2008 by the learned 1st Civil Judge (Senior Division), Lucknow. An issue was specifically framed regarding the petitioner's alleged appointment/posting as System Administrator and the same was decided against such appointment.

75. He submitted that the Respondent Bank preferred Regular Civil Appeal No. 14/2009 against the aforesaid decree, which was dismissed on 26.07.2013. The judicial finding consequently attained finality between the parties. The Respondent Bank, having failed to establish the petitioner's appointment as System Administrator before the competent Civil Court, could not thereafter sustain a disciplinary finding by proceeding on the very same foundational fact as though it stood established.

76. He submitted that the principle applicable is not merely one of technical *res judicata* but also the fundamental principle that a party cannot be permitted to approbate and reprobate on a foundational factual issue, which has already been conclusively adjudicated by a competent court between the same parties. The disciplinary authority was, at the very least, required to take the binding judicial finding into consideration before attributing duties of System Administrator to the petitioner.

77. He submitted that the failure to consider the aforesaid binding judicial finding renders the disciplinary findings vulnerable on the ground of jurisdictional error, perversity and non-application of mind. The very foundation upon which several allegations were constructed having disappeared, the consequential findings could not legally survive.

78. He submitted that the petitioner repeatedly sought relevant documents for the purpose of effectively defending himself. The charge-sheet contained vague and indistinct allegations and did not furnish sufficient particulars enabling the petitioner to answer the charges effectively. The petitioner accordingly submitted representations dated 08.05.2002 and 24.06.2002 and furnished a list of 48 documents required for his defence.

79. He submitted that the dispute regarding supply of documents ultimately resulted in Writ Petition No.1324 (S/B) of 2008 before this Hon'ble Court, wherein vide judgment and order dated 21.02.2012, this Hon'ble Court specifically recognized the necessity of the documents for the petitioner's defence and directed that relevant documents be supplied or, where supply was not practically possible for a valid reason, inspection thereof be permitted. He submitted that the aforesaid direction was not complied with in its true spirit. Although the petitioner submitted a detailed chart specifying the documents required, their relevance and the charges to which they related, several documents were

declared unavailable. Even thereafter, when the petitioner disputed the genuineness of photostat copies and sought inspection and production of the originals, the request was refused.

80. He submitted that the denial of documents cannot be treated as a mere procedural irregularity, where the documents are directly connected with the allegations and are required to enable the delinquent employee to test the Management's case. The prejudice in the present case is manifest because the Enquiry Officer ultimately relied upon documentary material whose authenticity was disputed and whose originals were not produced.

81. He submitted that the denial of documents assumes greater significance in the present case because the charges themselves were sought to be established primarily through old records, vouchers, ledgers, transaction documents and computer-related records. Without access to the primary records, the petitioner was effectively deprived of the opportunity to test the authenticity, authorship, signatures and contents of the documents relied upon against him.

82. He submitted that the Enquiry Officer relied upon photostat/duplicate documents despite the petitioner's specific objection regarding their genuineness and despite his demand for production of the originals. Where the delinquent employee specifically disputes the authenticity of a document and the document is relied upon as substantive evidence to establish misconduct, the disciplinary authority cannot mechanically treat an unproved copy as conclusive proof.

83. He submitted that the Respondent-Bank also failed to produce the authors, custodians or attesting officers of several documents relied upon against the petitioner. Consequently, the petitioner was deprived of the

opportunity to test the authorship and authenticity of such documents through cross-examination.

84. He submitted that the defect is not cured merely because the proceedings are departmental in nature. Though strict rules of the Evidence Act may not be applicable in their entirety to departmental proceedings, the findings must nevertheless be based upon material, which has some probative value and upon which a reasonable person could legitimately conclude that the charge stands established.

85. He submitted that where the primary documents are withheld, their authenticity is disputed, their authors are not examined and the substitute photostat copies are relied upon without proper foundation, the resulting finding becomes vulnerable as a finding based upon no legally relevant or reliable evidence.

86. He submitted that the disciplinary authority and the Enquiry Officer have failed to distinguish between an allegation, a suspicion and proof of misconduct. The charges appear to have been treated as established first and the petitioner was, thereafter, expected to disprove them. Such reversal of the burden of establishing the charge is contrary to the basic requirement of a disciplinary enquiry.

87. He submitted that the Management examined only four witnesses. None of them provided direct and reliable evidence establishing the petitioner's involvement in the alleged acts. MW-I, Sri A.C. Ghosh, admitted that he had never worked with the petitioner at the concerned branches and had never been posted at Mahanagar Branch during the relevant period.

88. He submitted that despite the aforesaid admission, the Enquiry Officer treated MW-I as a reliable and material witness and proceeded on the reasoning contained under the heading **“Reliability of the**

Deposition of MW-1”. The approach adopted by the Enquiry Officer is legally unsustainable because the inability of the petitioner to extract something adverse from a witness cannot itself establish the reliability or relevance of that witness.

89. He submitted that it was the Management which was required to produce the relevant witnesses and establish the charges. The petitioner was not required to prove a negative or to disprove allegations which had not first been established by reliable evidence.

80. He also submitted that the primary complainant, Sri S.K. Jha, was never examined to prove the allegation forming the basis of Charge-II. Similarly, the authors or attesting officers of disputed financial documents were not produced. The absence of such material witnesses assumes importance because the charges depended upon establishing who prepared, passed, authorized or authenticated the relevant transactions.

81. He submitted that MW-II also gave evidence inconsistent with the evidence of MW-I regarding signatures on the relevant documents. The petitioner himself denied the signatures. In such circumstances, production of the originals and examination of the appropriate persons acquainted with the documents assumed direct relevance. The failure to do so renders the finding unsafe.

82. He submitted that in respect of Account No.16488, the allegation was that the petitioner reopened a closed account and altered its name. However, the material relied upon by the Enquiry Officer itself shows that the account had been closed on 11.02.1994, whereas the petitioner was posted at Mahanagar Branch only in October, 1994. There is, therefore, no evidence connecting the petitioner with the opening or closing of the said account.

83. He submitted that even with respect to the alleged debit transaction of Rs.15,000/-, the petitioner's signatures on the relevant vouchers E 3/6 and E 3/7 were denied. MW-I could not identify the signatures of the passing or attesting officials. The following questions and answers recorded during cross-examination are material:

Q.3- Please peruse exhibit 3/6 and tell who has passed the same?

A.3- I do not know the signature of the passing official.

Q.4- Do you know the signature of the attesting official?

A.4- Do not know.

Q.5- Do you recognize the signature of passing official E 3/7?

A.5- Do not know.

Therefore, in view of the aforesaid evidence, the finding that the petitioner authorized the transaction is unsupported by reliable evidence.

84. He submitted that similarly, in respect of documents E 3/8 and E 3/9, the Management Witnesses could not reliably identify the petitioner's signatures. The Enquiry Officer failed to properly deal with this material aspect of cross-examination and nevertheless held the allegation proved. Such a finding ignores material evidence and is, therefore, perverse.

85. He submitted that in relation to Saving Fund Account No.18646, the Management failed to produce evidence showing that the petitioner prepared or signed the documents relating to the alleged transactions. The denial of the balancing team members as defence witnesses further deprived the petitioner of evidence directly relevant to the alleged transactions.

86. He also submitted that Charge-II alleged misappropriation of Rs.14,500/- said to have been given to the petitioner by Sri S.K. Jha as

margin money for sanction of a term loan of Rs.50,000/-. However, the admitted factual position is that the margin money was credited to the account, the loan was sanctioned and the computer and accessories were purchased. Significantly, the person who allegedly gave the money to the petitioner, namely Sri S.K. Jha, was not examined by the Management despite being a material witness. The charge could not, therefore, be established merely through secondary or hearsay material.

87. His submission is that in the absence of the material complainant, and particularly when the basic allegation of misappropriation is inconsistent with the subsequent sanction and utilization of the loan, the finding on Charge-II could not reasonably have been recorded against the petitioner.

88. He further submitted that Charge-III alleged misappropriation of Rs.67,000/- through ATM transactions. There is no finding based upon evidence that the petitioner himself withdrew the said amount or that any particular amount withdrawn by him was not deposited. The petitioner cannot be held personally liable for every transaction undertaken by other employees merely because he was functioning as In-charge ATM along with the Head Cashier. The Management was required to establish the particular transaction, the person who withdrew the money, the petitioner's role therein and the specific duty which he failed to discharge.

89. His submission is that the original ledger and primary records relating to the alleged ATM withdrawals and deposits were not produced and proved. In absence of such material evidence, the finding against the petitioner rests upon assumption and cannot constitute proof of misconduct.

90. His submission is that Charge-IV alleging removal of bank records/documents to cover up the alleged misconduct is vague. The

Respondent-Bank had a designated custodian responsible for maintenance and preservation of records, yet the said custodian was not produced to establish when the records went missing, from whose custody they went missing, or what steps were taken upon discovery of their absence. The Enquiry Officer relied upon the statement of MW-I regarding missing documents even though MW-I admittedly had no relevant posting or direct knowledge of the branch during the relevant period. Such evidence could not establish that the petitioner had removed the records, much less that he had done so with an intention to conceal misconduct.

91. He submitted that the petitioner's request dated 04.07.2012 for summoning defence witnesses, including Sri Kamal Kant, Sri D.S. Hayanki and Sri Sunil Pandey, was arbitrarily rejected. The said witnesses were members of the balancing team and were directly relevant to the transactions and balancing work relied upon in the charges. The reason given for refusing to summon Sri Kamal Kant and Sri D.S. Hayanki, namely that their names had not appeared in exhibited documents, is wholly insufficient. The relevance of a defence witness cannot be determined merely by whether his name happens to appear in a Management document. The relevant consideration is whether his evidence could assist the delinquent employee in answering the charges.

92. He submitted that the denial of these witnesses caused actual and substantial prejudice to the petitioner, particularly because the Management itself failed to produce witnesses capable of proving the relevant transactions. The enquiry was, therefore, conducted in a manner which materially impaired the petitioner's right of defence.

93. He submitted that Regulation 20 of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977 provides as under:

“Every order, notices and other process made or issued under these regulations shall be served in person on the officer employees concerned or communicated to him by registered post at his last known address.”

The requirement of effective communication of notices is an essential safeguard because the delinquent employee cannot be expected to participate in an enquiry of which he has not been duly informed.

94. He also submitted that in the present case, notices were repeatedly sent in such a manner that they were received after the date fixed for enquiry. The Enquiry Officer also acknowledged that notices sent by registered/speed post had been returned undelivered. Despite such knowledge, the enquiry was proceeded with in the absence of the petitioner, including examination of Management Witnesses. The proceedings conducted in the absence of the delinquent employee, despite knowledge that notice had not been effectively served, defeat the very purpose of an opportunity of hearing. The subsequent conclusion of the enquiry cannot, therefore, be sustained merely by asserting that notices had technically been dispatched.

95. He submitted that the alleged incidents relate to the period between 1994 and 1998. The petitioner was suspended in 1999, but the charge-sheet was issued only on 29.04.2002. No satisfactory explanation for the delay in initiating the disciplinary proceedings has been furnished. The delay in disciplinary proceedings assumes particular significance where the defence depends upon old records, witnesses and documents. In the present case, several documents were subsequently declared unavailable, relevant witnesses were not produced and the petitioner was denied access to primary records. The prejudice caused by the delay is, therefore, not merely theoretical but demonstrable from the record itself.

96. His submission is that the unexplained delay, coupled with the subsequent non-availability of relevant records and denial of defence

evidence, has materially impaired the petitioner's ability to defend himself and renders the disciplinary proceedings unfair.

97. He submitted that the Enquiry Officer was required to objectively assess whether the Management had established each charge on the basis of evidence produced during the enquiry. Instead, the approach adopted demonstrates that the allegations were treated as established and the petitioner was required to disprove them. The Enquiry Officer went further by seeking to justify the relevance and reliability of Management Witness-I despite his admitted lack of direct knowledge. The Enquiry Officer's approach effectively supplemented the deficiencies in the Management's evidence instead of examining whether the Presenting Officer had discharged the burden of establishing the charges. An Enquiry Officer cannot fill the evidentiary gaps in the Management's case by drawing presumptions in favour of the prosecution or by requiring the delinquent employee to establish his innocence. Therefore, the findings recorded through such an approach are legally unsustainable.

98. He submitted that the Disciplinary Authority failed to consider the material objections raised by the petitioner, including the absence of evidence, denial of documents, non-production of originals, non-examination of material witnesses, denial of defence witnesses, defective service of notices and the foundational error regarding his alleged designation as System Administrator. The Disciplinary Authority mechanically accepted the enquiry findings without independently considering whether the charges were actually established by reliable evidence. The penalty of dismissal, being the severest punishment, required a careful consideration of the entire record and the proportionality of the penalty.

99. His submission is that the Appellate Authority was equally required under Regulation 17 to consider the grounds raised by the petitioner and independently examine the correctness of the findings and the proportionality of punishment. Instead, the appeal was rejected on the ground that the petitioner had failed to bring any fresh fact to disprove the charges. This reasoning is fundamentally flawed because the initial burden was upon the Management to establish the charges. The appellate order is consequently cryptic and non-speaking. It does not deal with the petitioner's specific objections regarding perversity, violation of natural justice, denial of documents, denial of defence witnesses, non-production of originals and the petitioner's alleged appointment as System Administrator. Such failure to consider material grounds vitiates the appellate decision.

100. His submission is that the same set of allegations also resulted in registration of FIR bearing Case Crime No. 72 of 1999 under Sections 420, 467, 468 and 471 IPC at Police Station Husainganj, District Lucknow, in respect of which the petitioner was tried in W.S. Case No. 2500939 of 2012. Vide judgment and order dated 24.03.2026, the learned Additional Chief Judicial Magistrate-I, Court No. 25, Lucknow acquitted the petitioner. The said judgment has been brought on record as Annexure SA-1 to the supplementary affidavit dated 09.04.2026.

101. He submitted that although the disciplinary and criminal proceedings operate in distinct fields, the subsequent acquittal is a relevant circumstance when the disciplinary findings themselves suffer from the absence of primary evidence, non-examination of material witnesses and reliance upon disputed documents. The said judgment is, therefore, required to be considered along with the entire record while examining whether the impugned disciplinary findings can legitimately be sustained.

102. He submitted that the cumulative effect of the aforesaid circumstances demonstrates that the disciplinary proceedings were not a fair adjudication of the charges. The Management failed to establish the foundational fact that the Petitioner was a System Administrator; relevant documents were not supplied; original documents were not produced; disputed photostat copies were relied upon; material witnesses were not examined; defence witnesses were denied; proceedings were conducted without effective notice; and the Enquiry Officer placed the burden upon the petitioner to disprove allegations which had not been established by the Management.

103. He submitted that the findings recorded by the Enquiry Officer are, therefore, perverse in the legal sense, as they disregard material evidence and rely upon evidence incapable of establishing the alleged misconduct. A finding which no reasonable person could arrive at on the material available on record is liable to judicial interference.

104. His submission is that the Disciplinary Authority and Appellate Authority failed to cure these fundamental defects and mechanically affirmed the conclusions of the enquiry. The impugned orders consequently suffer from violation of principles of natural justice, perversity, non-application of mind and failure to comply with the governing Regulations. The following authorities are relied upon by learned counsel for the petitioner in support of the aforesaid legal submissions:

1. ***Kashinath Dikshita Versus Union of India*, 1986 (3) SCC 229**, particularly paragraphs 11, 12 and 13;
2. ***Government of A.P. and others Versus A. Venkata Naidu*, 2007 (1) SCC 338**, particularly paragraph 9;
3. ***Union of India Versus Prakash Kumar Tandon*, Civil Appeal No. 7349 of 2008**, particularly paragraphs 17 to 20;

4. ***State Bank of India & others Versus Ranjit Kumar Chakraborty & another*, 2008 SCC Online SC 1148**, particularly paragraph 3;
5. ***Roop Singh Negi Versus Punjab National Bank and others*, 2009 (2) SCC 570**, particularly paragraphs 14 to 23;
6. ***State of U.P. Versus Saroj Kumar Sinha*, 2010 (2) SCC 772**, particularly paragraphs 24 to 37;
7. ***Jai Prakash Saini Versus Managing Director U.P. Cooperative Federation Ltd. and others*, 2026 INSC 305**, particularly paragraphs 17 and 18;
8. ***Ramesh Mishra Versus Punjab National Bank*, Writ-A No. 2193 of 2014**, Allahabad High Court, Lucknow Bench, particularly the last two paragraphs; and
9. ***Vijay Singh Yadav Versus Bhopal Development Authority and another*, Writ Petition No. 15125 of 2019**, High Court of Madhya Pradesh, Jabalpur, particularly paragraphs 17 to 22.

105. Therefore, in view of the aforesaid submissions, the impugned disciplinary proceedings and the consequential orders cannot be sustained in law. The proceedings are fundamentally vitiated by denial of reasonable opportunity, non-compliance with the directions of this Hon'ble Court, reliance upon unproved and disputed documents, non-examination of material witnesses, denial of defence evidence, absence of evidence connecting the Petitioner with the alleged misconduct, perversity of findings and failure of the Disciplinary and Appellate Authorities to independently apply their minds. Therefore, the impugned dismissal order dated 01.11.2012/10.11.2012, the appellate order dated 27.03.2014 and the enquiry report are liable to be quashed and set aside. The petitioner is consequently entitled to reinstatement with continuity of service and all consequential benefits, including back wages, in accordance with law.

106. On the other hand, learned counsel for the respondent – Bank submitted that the writ petition is misconceived and devoid of merit. The petitioner seeks to assail the disciplinary proceedings, the findings recorded by

the Enquiry Officer, the order of punishment passed by the competent disciplinary authority and the order passed by the appellate authority. The proceedings, however, were conducted in accordance with the applicable service regulations and after affording the petitioner adequate and reasonable opportunity of defending himself.

107. He further submitted that the allegations levelled against the petitioner arose out of serious financial irregularities and unauthorized banking transactions committed during his tenure. The charges were founded upon documentary as well as oral evidence produced during the departmental enquiry. The Enquiry Officer, after considering the evidence available on record and the defence of the petitioner, recorded findings on the charges. The disciplinary authority, thereafter, considered the enquiry record and passed the punishment order in accordance with the applicable regulations.

108. He submitted that the petitioner was afforded repeated opportunities during the course of the enquiry to participate, inspect documents, cross-examine management witnesses and submit his defence. The record itself demonstrates that the petitioner extensively participated in the proceedings, including by putting a substantial number of questions to the management witnesses. Consequently, the allegation that the petitioner was denied reasonable opportunity or that the principles of natural justice were violated is unsustainable.

109. He further submitted that the petitioner was proceeded against for serious acts of financial irregularity and unauthorized transactions involving the funds of the Bank. The charges were considered in the departmental enquiry on the basis of oral and documentary evidence. The petitioner was suspended in accordance with the applicable service regulations and departmental proceedings were thereafter initiated. The disciplinary authority, being the competent authority, considered the enquiry report and the material available on record before passing the order of punishment. The petitioner was afforded adequate opportunity to defend himself during the enquiry, including opportunity to cross-examine the management witnesses. The extent of his

participation in the proceedings itself demonstrates that he was not denied an opportunity of defence.

110. He submitted that the rejection of the petitioner's appeal was not arbitrary but was made by the competent appellate authority after consideration of the material available on record and the grounds raised by the petitioner. It is, however, submitted that the petitioner cannot claim immunity from disciplinary action merely on the basis of his previous service record. The disciplinary proceedings were initiated in respect of the specific charges levelled against him and the punishment was imposed on account of the misconduct found proved in the departmental enquiry. It is submitted that the criminal proceedings/FIR referred to by the petitioner arose out of the alleged financial irregularities and unauthorized transactions forming part of the subject matter. The initiation of such proceedings does not invalidate the departmental proceedings, which were independently conducted under the applicable service regulations.

111. He submitted that the suspension of the petitioner was an administrative/disciplinary measure taken in accordance with the applicable service regulations and did not amount to imposition of the final penalty. The allegation that the petitioner was deprived of relevant documents is incorrect. The documents considered relevant for the enquiry and referred to in the charge-sheet were made available to the petitioner in accordance with the procedure applicable to the departmental proceedings. The petitioner was also afforded opportunities to inspect the relevant records. The allegation of denial of documents, therefore, cannot be accepted merely on the basis of a general assertion unsupported by identification of any particular document which was material to the defence and whose non-supply caused prejudice to the petitioner. It is further submitted that the departmental charges related to serious irregularities in the Bank's records and transactions. The relevance of the documents and the evidence produced in the enquiry was considered by the Enquiry Officer while determining the charges. The issues raised by the petitioner were considered in the earlier proceedings before this Hon'ble Court and the orders passed therein operate in accordance with law.

112. He further submitted that the charges against the petitioner were based upon the material produced during the departmental enquiry and the findings recorded by the Enquiry Officer. The enquiry report dealt with the charges on the basis of the oral and documentary evidence available on record. The mere allegation of bias, without establishing any actual prejudice or violation of the prescribed procedure, does not render the enquiry invalid. The record demonstrates that the petitioner was granted repeated opportunities to participate in the enquiry. The representation dated 15.02.2008 was not received by the Enquiry Officer before the proceedings held on 18.02.2008. Upon receipt of the said representation, the petitioner was informed of the subsequent date fixed for the enquiry. Proceedings conducted, thereafter, were also communicated to the petitioner. The petitioner cannot rely upon his own failure to participate on particular dates to contend that the enquiry was conducted in violation of natural justice. Adequate opportunity was afforded to him to participate, cross-examine witnesses and present his defence.

113. He next submitted that the enquiry was conducted after affording the petitioner reasonable opportunity of defence. The Enquiry Officer considered the defence taken by the petitioner along with the evidence produced during the proceedings. The petitioner was permitted to inspect relevant documents and was afforded opportunities to place his defence. The enquiry was also required to be concluded within the period stipulated by the order of this Hon'ble Court dated 21.02.2012. The Enquiry Officer proceeded accordingly while continuing to afford the petitioner opportunity to participate and represent his case. The petitioner had been granted opportunities on several dates to inspect and verify the relevant documents. The subsequent demand for documents, particularly at an advanced stage of the enquiry, was considered in the context of the material already made available and the requirement to conclude the proceedings within the time directed by this Hon'ble Court. There was, therefore, no denial of a reasonable opportunity of defence.

114. He submitted that on 02.05.2012, at the request of the petitioner, time was granted to enable him to submit his defence. The enquiry was, thereafter, fixed on successive dates, but the petitioner did not appear on the dates fixed.

The Enquiry Officer nevertheless afforded further opportunity before proceeding further in accordance with the applicable procedure. The petitioner cannot contend that the enquiry was conducted *ex parte* without opportunity when the record demonstrates that repeated opportunities were afforded to him. The allegations subsequently made against the Enquiry Officer were not supported by any material establishing bias or denial of fair hearing.

115. He submitted that the management witnesses were examined during the enquiry and were subjected to cross-examination by the petitioner. The petitioner's challenge to the competence or familiarity of the witnesses with the relevant facts does not, by itself, render their evidence inadmissible or unreliable. The evidentiary value of their testimony was a matter for consideration by the Enquiry Officer on the basis of the entire enquiry record. The evidence on record also supported the petitioner's role and responsibilities as System Administrator/Data Base Administrator, as relied upon by the Enquiry Officer.

116. He submitted that the findings of misconduct were not based upon the number of witnesses alone but upon the cumulative effect of the documentary and oral evidence produced during the enquiry. The petitioner's contention regarding non-availability of certain old records does not, by itself, establish that the charges were unsupported by evidence. The Enquiry Officer was required to consider the material actually produced before him and the findings were recorded on the basis of the evidence available on the enquiry record. It is further submitted that the petitioner had been afforded opportunities to inspect the relevant documents and raise his objections during the enquiry.

117. He next submitted that the request for defence witnesses was considered in the light of the relevance of the proposed witnesses to the charges under enquiry. The petitioner was afforded opportunity to present his defence in accordance with the applicable regulations. The mere non-production of a witness does not establish violation of natural justice, particularly where the petitioner had sufficient opportunity to identify and produce relevant defence evidence.

118. He submitted that the management witnesses and documentary material relied upon during the enquiry supported the finding regarding the petitioner's role as System Administrator/Data Base Administrator and his access to the relevant banking system. The findings were based upon the evidence produced during the enquiry and not upon any extraneous consideration. He submitted that the charges were considered on the basis of documentary as well as oral evidence. The fact that certain documents were computer-generated does not, by itself, render the material incapable of being considered in departmental proceedings. Their evidentiary value was considered along with the testimony of the management witnesses and the other material available on record.

119. He submitted that the allegation that the proceedings were biased or that the Enquiry Officer mechanically accepted the case of the management is unsupported by the enquiry record. The principal charges concerning unauthorized alteration of accounts, fictitious credits and unauthorized transactions were considered by the Enquiry Officer on the basis of the documentary evidence and the depositions of the management witnesses. The evidence on record supported the finding that the petitioner had access to and performed functions relating to the relevant banking system and that transactions forming the subject matter of the charges were carried out using the relevant IDs/system access attributed to him. The petitioner's challenge to individual entries or documents essentially seeks re-appreciation of the evidence, which cannot be undertaken as an appellate exercise in writ jurisdiction unless the findings are shown to be perverse or based on no evidence.

120. He submitted that the documentary evidence and testimony of the management witnesses were considered by the Enquiry Officer while determining the petitioner's role in the transactions forming the subject matter of the charges. The petitioner's denial of having performed the functions of Data Base Administrator/System Administrator is contrary to the material considered during the enquiry. The findings were recorded on the basis of the enquiry record and cannot be displaced merely by a contrary assertion made in the writ petition. The petitioner's challenge to the transactions relating to the

relevant accounts, fixed deposits and pay order similarly involves appreciation of evidence, which had already been undertaken by the Enquiry Officer. The charges relating to unauthorized financial transactions and the handling of Bank funds were supported by documentary evidence and the evidence of the management witnesses. The Enquiry Officer considered the material placed before him and recorded findings in respect of the charges. The petitioner had opportunity to contest the evidence during the enquiry.

121. He submitted that as regards missing or unavailable records, the petitioner has failed to demonstrate that any particular material document, indispensable to his defence, was deliberately withheld by the respondents and that such non-availability caused actual prejudice to him. The appellate authority considered the appeal preferred by the petitioner and rejected the same on merits. The Enquiry Officer arrived at his conclusions on the basis of the oral and documentary evidence led during the enquiry. The allegation that the Enquiry Officer merely accepted the submissions of the Presenting Officer is specifically denied. The enquiry report reflects consideration of the evidence and the defence of the petitioner.

122. He submitted that the allegation that the disciplinary proceedings were based on no evidence is contrary to the enquiry record. The notices issued during the enquiry were sent through the prescribed modes and the petitioner was informed of the dates fixed for the proceedings. The punishment order was passed by the competent authority on the basis of the charges found proved in the departmental enquiry. The grounds raised by the petitioner do not disclose any jurisdictional error, violation of the applicable service regulations, denial of reasonable opportunity, perversity in the findings, or any other ground warranting interference with the disciplinary action.

123. He further submitted that the departmental enquiry was conducted in accordance with the applicable regulations. The petitioner was informed of the charges and was afforded opportunity to participate in the enquiry, inspect relevant documents, cross-examine management witnesses and submit his defence. There was no violation of the principles of natural justice. The record demonstrates repeated opportunities granted to the petitioner. Mere non-participation on particular dates or dissatisfaction with the manner in which his requests were dealt with does not establish denial of reasonable opportunity.

124. He further submitted that the findings were based on evidence. The Enquiry Officer considered documentary material as well as oral evidence of management witnesses. The petitioner's challenge essentially seeks re-appreciation of such evidence.

125. He also submitted that the disciplinary authority was competent to impose the punishment. After considering the enquiry report and the material on record, the competent disciplinary authority passed the punishment order in accordance with the applicable service regulations. The appellate authority independently considered the petitioner's appeal. The rejection of the appeal cannot be termed arbitrary merely because the appellate authority did not accept the petitioner's contentions. The petitioner has failed to establish prejudice. Even where a procedural objection is raised, interference is not warranted in the absence of demonstration that the alleged procedural irregularity caused substantial prejudice to the petitioner's defence.

126. He submitted that the seriousness of the misconduct is relevant to the punishment. The charges concerned financial irregularities and unauthorized transactions involving Bank funds. The misconduct, as found proved in the departmental enquiry, was of a nature having a direct bearing upon the integrity and trust reposed in an officer of a banking institution. The previous service record does not extinguish the misconduct proved in the disciplinary proceedings. The punishment was imposed with reference to the charges established against the petitioner and not merely on the basis of his previous service record.

127. He submitted that the writ jurisdiction cannot ordinarily be converted into an appellate forum over disciplinary findings. Unless the petitioner establishes violation of natural justice, lack of jurisdiction, findings based on no evidence, perversity, or some other recognised ground for judicial review, the findings recorded by the competent departmental authorities do not warrant interference. No case for interference with the punishment order or appellate order is made out. The petitioner has failed to demonstrate any legally sustainable ground warranting exercise of extraordinary jurisdiction by this Hon'ble Court.

128. He lastly submitted that in view of the facts and circumstances stated hereinabove, it is most respectfully submitted that the writ petition is devoid of merit and is liable to be dismissed. The impugned disciplinary order and the order passed by the appellate authority having been passed by the competent authorities in accordance with the applicable regulations and on the basis of the material available on record, no interference by this Hon'ble Court is warranted. The writ petition may, therefore, kindly be dismissed. In support of his submissions, he placed reliance upon following judgments:

- a) State Bank of India Vs. Bela Baghi; 2005 (7) SCC 435, para 15**
- b) Disciplinary Authority cum Regional Manager Vs. Nikunj Bihari; 1996 (9) SCC 69, para 7 & 8**
- c) A.P.S.R.T.C. Vs. Raghuda Shiva Shankar Prasad; 2007 (1) SCC 222, para 15, 17, 18, 19, 20, 23, 21, 22.**
- d) T.N.C.S. Corporation Vs. Meera Bai; 2006 (2) SCC 255, para 28, 29, 35.**
- e) A. Sudhakar Vs. Post Master General; 2006 SCC 348, para 27 to 30.**
- f) Dy. Registrar Cooperative Societies Vs. Bunni Lal Chaurasia; 2005 (11) SCC 570, para 2 & 3.**
- g) State of U.P. Vs. Raj Kishore; 2006 (5) SCC 673, para 4.**
- h) V. Ramana Vs. A.P.S.R.T.C.; 2005 (7) SCC 338, para 4, 6, 11 & 12.**

I) Ganesh Shanta Ram Sirur Vs. S.B.I.; 2005 (1) SCC 13, para 14, 16, 31, 34 & 36.

j) Government of A.P. Vs. Mohd. Nasrullah Khan; 2006 (2) SCC 373, para 8, 11, 15, 16 & 17.

129. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned counsel for the parties.

130. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the parties as being quoted below:

Judgments relied upon by learned counsel for the petitioner:

a) Kashinath Dikshita (Supra):

“11. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit [P. 309 of SLP paper-book] has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant.

12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities

cited on behalf of the parties, beyond making passing reference to some of the citations, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend upon the facts pertaining to this matter.

13. 13. *The appellant relied on Tirlok Nath v. Union of India [1967 SLR 759 (SC)] in support of the proposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case:*

“Had he decided to do so, the document would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.”

Reliance has also been placed on State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18 : AIR 1974 SC 2335 : (1975) 2 SCR 370] and State of U.P. v. Mohd. Sharif [(1982) 2 SCC 376 : 1982 SCC (L&S) 253 : (1982) 2 LLJ 180] in support of the proposition that copies of statements of witnesses must be supplied to the government servant facing a departmental inquiry. It has been emphatically stated in State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18 : AIR 1974 SC 2335 : (1975) 2 SCR 370] by this Court as under: [SCC p. 156, SCC (L&S) p. 19, paras 6, 7 and 8]

“The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and

produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.”

b) Government of A.P. and others (Supra):

“We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge 1, what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in Charge 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the respondent, the number of that GO, etc. but that was not done. Copies of the said GOs or directions of the Government were not even placed before the enquiry officer. Hence, Charge 1 was not specific and hence no finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.”

c) Union of India (Supra):

“17. The principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi-judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice.

18. In M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919] this Court has held: (SCC p. 95, para 25)

“25. ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, 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.”

19. If the disciplinary proceedings have not been fairly conducted, an inference can be drawn that the delinquent officer was prejudiced thereby.

20. In *S.L. Kapoor v. Jagmohan* [(1980) 4 SCC 379] this Court has held that non-compliance with the principles of natural justice itself causes prejudice. We are not oblivious of the fact that the said principle has since been watered down but in a situation of this nature, we are of the opinion that the concurrent findings of the Tribunal, as also the High Court cannot be said to be unreasonable or suffering from any legal infirmity warranting interference.”

d) State Bank of India & others (Supra):

“3. In this case, the respondent, who was punished with a major penalty, was not heard. Therefore, the order of removal was set aside. We have been taken through Rule 68(3)(iii) and we are in full agreement with the view taken by the High Court. When the disciplinary authority is not competent to pass a major penalty, that is, of the removal or other major penalty prescribed in the Rule, the papers are required to be placed by the disciplinary authority to the appointing authority who is competent to pass a major penalty. In the present case, the disciplinary authority was not competent to pass major penalty, therefore, the matter was placed before the appointing authority and the appointing authority passed major penalty of dismissal without hearing the delinquent. Such order which is on the face of it is against the principles of natural justice, cannot be countenanced as it is void *ab initio*. The proviso certainly says that the appointing authority, on the recommendation given by the disciplinary authority, shall be competent to pass the major penalty. Simply by recommending the matter and sending the papers to the appointing authority, does not mean that the incumbent who is going to be served with the major penalty is not required to be heard in the matter. It is now settled principle that wherever the Rule is silent, the principles of natural justice shall be read in it. A hearing should be given to a person who is being punished with a major penalty. Therefore, the principle of natural justice has to be read in this Rule. A notice ought to have been issued to the delinquent by the authority to whom papers were sent to show cause why the major penalty may not be imposed on him. It is true that the competent authority could pass the order of major penalty but not without hearing the incumbent. Therefore, in this context of the matter, we are of the opinion that the view taken by the Division Bench [*Ranjit Kumar Chakrabarty v. SBI, APOT No. 316 of 2001, order dated 20-8-2004 (Cal)*] of the Calcutta High Court is correct and there is no ground for interference in this appeal.”

e) Roop Singh Negi (Supra):

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported

evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, *inter alia*, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

16. In *Union of India v. H.C. Goel* [AIR 1964 SC 364 : (1964) 4 SCR 718] it was held: (AIR pp. 369-70, paras 22-23)

“22. ... The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting *bona fide*; the said infirmity may also exist where the Government is acting *mala fide* and in that case, the conclusion of the Government not supported by any evidence may be the result of *mala fides* but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of *mala fides*. That is why we are not prepared to accept the learned Attorney General's argument that since no *mala fides* are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

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 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 legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."

17. In *Moni Shankar v. Union of India* [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court held: (SCC p. 492, para 17)

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

18. In *Narinder Mohan Arya v. United India Insurance Co. Ltd.* [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] whereupon both the learned counsel relied, this Court held: (SCC p. 724, para 26)

*"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See *State of Assam v. Mahendra Kumar Das* [(1970) 1 SCC 709] .) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See *Khem Chand v. Union of India* [AIR 1958 SC 300 : 1958 SCR 1080] and *State of U.P. v. Om Prakash Gupta* [(1969) 3 SCC 775] .) (3) Exercise of discretionary power involves two elements—(i) objective, and (ii) subjective and existence of the exercise of an objective*

element is a condition precedent for exercise of the subjective element. (See *K.L. Tripathi v. SBI* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62] .) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See *Sawai Singh v. State of Rajasthan* [(1986) 3 SCC 454 : 1986 SCC (L&S) 662] .) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (See *Export Inspection Council of India v. Kalyan Kumar Mitra* [(1987) 2 Cal LJ 344] .) (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See *Central Bank of India Ltd. v. Prakash Chand Jain* [AIR 1969 SC 983 : (1969) 1 SCR 735] and *Kuldeep Singh v. Commr. of Police* [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] .)”

19. The judgment and decree passed against the respondent in *Narinder Mohan Arya* case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non-application of mind.

19. The judgment and decree passed against the respondent in *Narinder Mohan Arya* case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non-application of mind.

20. This Court referred to its earlier decision in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] to opine: (*Narinder Mohan Arya* case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] , SCC p. 729, paras 41-42)

“41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. See e.g. *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor*

Sangh [(2004) 8 SCC 200 : 2004 SCC (L&S) 1067] and RBI v. S. Mani [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] . Each case is, therefore, required to be considered on its own facts.

42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it it would be lawful to do so. In RBI [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] this Court observed: (SCC p. 116, para 39)

‘39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.’ ”

In that case also, the learned Single Judge proceeded on the basis that the disadvantage of an employer is that such acts are committed in secrecy and in conspiracy with the person affected by the accident, stating: (Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] , SCC p. 730, paras 44-45)

“44. ... No such finding has been arrived at even in the disciplinary proceedings nor was any charge made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

45. The findings of the learned Single Judge to the effect that ‘it is established with the conscience (sic) of the Court reasonably formulated by an enquiry officer then in the eventuality’ may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of the court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error.”

Arya

21. 21. Yet again in M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919] this Court held: (SCC p. 95, para 25)

“25. ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all

reasonable doubt, 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.”

22. Yet again in *Jasbir Singh v. Punjab & Sind Bank* [(2007) 1 SCC 566 : (2007) 1 SCC (L&S) 401] this Court followed *Narinder Mohan Arya v. United India Insurance Co. Ltd.* [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] , stating: (*Jasbir Singh case* [(2007) 1 SCC 566 : (2007) 1 SCC (L&S) 401] , SCC p. 570, para 12)

“12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so.”

22.22. Yet again in *Jasbir Singh v. Punjab & Sind Bank* [(2007) 1 SCC 566 : (2007) 1 SCC (L&S) 401] this Court followed *Narinder Mohan Arya v. United India Insurance Co. Ltd.* [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] , stating: (*Jasbir Singh case* [(2007) 1 SCC 566 : (2007) 1 SCC (L&S) 401] , SCC p. 570, para 12)

“12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so.”

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

f) State of U.P. Versus Saroj Kumar Sinha (Supra):

“24. At this stage it would be appropriate to notice the charges that had been framed against the respondent which are as under:

“(I) Work pertaining to Salon Jagat Pur Road, had been given to Shri Jitendra Mohan Bajpai, Contractor vide Tender No. 5/AE-2 dated 10-6-1996 through 3054-PW Work Plan. The last payment of the tender has been paid by the then Executive Engineer, Shri Akash Deep Sonkar and accordingly payment of Rs 1,93,047 was to be paid vide Cheque No. 13/256064 dated 2-8-1996. Thereafter you have made this payment through Voucher No. 142 dated 31-12-1998 to the amount of Rs 1,93,047 through Cheque No. 78/001355 dated 31-12-1998. At p. 138 of the cash book Part 73, Entry No. (illegible) has been made. You have deliberately made the aforesaid entry in order to cause loss to the Government and had made the payment twice through Voucher No. 142 for the amount of Rs 1,93,047 dated 31-12-1998 and the amount of Rs 1,93,047 has been changed to Rs 1,34,305. Therefore the payment of Rs 58,742 which has already been made has been shown to be not paid in the aforesaid entry.

In this manner you have deliberately caused loss to the Government by the fraudulent act conspiring for the same and had recovered Rs 58,742 from the contractor through Voucher No. 141 dated 21-3-2000, reason for which has been mentioned that Rs 58,742 has been deducted due to excess payment made for the work at Salon Jagat Pur Road through Voucher No. 142 dated 31-12-1998. Nowhere in Voucher No. 142 dated 31-12-1998 it is mentioned that due to what reason deduction has been made after the issuing of cheque regarding the amount to be paid which shows bad intention on your part. You have made wrong entries regarding deduction mentioned in the voucher amount which is proved to be violation of the Financial Handbook Section 5 (Part 1) Paras 4-D and 83. Voucher No. 141 dated 31-3-2000 and entry to such effect proves that the Divisional Accounts Officer has issued the cheque [Sic amount.] of Rs 1,85,777 regarding the aforesaid payment through cheque and the cheque for amount of Rs 1,85,777 has been passed by the Assistant Engineer. At the time of issuing cheque deduction of Rs 58,742 from the amount to be paid makes your conduct suspicious and you are found responsible for the misconduct in this regard. Therefore, you are found guilty of misconduct according to Para 3 of the U.P. Government Servant Conduct Rules, 1956.

(II) You had passed order for supply of mobile patcher 6 to M/s B.N. Traders, Karhal, Mainpuri through letter Memo-2/Camp-72-99 dated 17-7-1999, M/s B.N. Traders, Karhal, Mainpuri had submitted Receipt No. 149 regarding the aforesaid supply. The supply has been passed for the amount of Rs 1,29,600 by the Assistant Engineer and had been passed by you for the amount of Rs 1,29,600 vide Cheque No. 96/002075 dated 16-11-1999. The cheque dated 16-11-1999 has been issued in your name which has been provided for payment to B.N. Traders to bank draft. In the place of this cheque you had issued Cheque No. 005/003492 dated 13-11-1999 for Rs 1,29,600 to M/s B.N. Traders and which had to be encashed by them. It is clear from the documents that the original cheque dated 31-11-1999 has been cut and self has been inserted and the cheque has been encashed by you. In the counter-filed cheque book name of M/s B.N. Traders had been mentioned.

Therefore, the cheque has been wrongly encashed by you after making fraud entry by self-name and the amount has not been taken in the cash book. Therefore, the forgery in this regard is proved.

You have made bank drafts in favour of M/s B.N. Traders on 8-3-2000 for Rs 1,29,600 from State Bank of India, Rai Bareilly. In the application form of the draft the name of M/s B.N. Traders is mentioned whereas the order regarding supply of the draft to M/s B.N. Traders, Karhal, Mainpuri has been made in favour of the firm. Therefore bank draft was to be sent on the address of Mainpuri. M/s B.N. Traders, Karhal, Mainpuri had informed the Chief Engineer, Lucknow on 28-7-2000 that you have made payment at the address of firm in Mainpuri. In this regard the bank draft has been made in the name of M/s B.N. Traders and the draft amount has been received in the name of your relative and no payment as such has been made to M/s B.N. Traders. You had cut the cheque and had violated Para 77 of the Financial Handbook Section 6, and Paras 19-22 of the Financial Handbook Section 5, Part I. Receiving of payment after cutting the name of firm from the cheque and entering our own name (self) shows that the payment had been received after committing fraud. Again in order to conceal this act you had made Draft No. PL00008/392289 dated 8-3-2000 for Rs 1,29,600 from SBI, Rai Bareilly. The bank draft had been made for the address of Lucknow of the firm not of the address at Karhal, Mainpuri so that the fraud can be committed and no payment as such has been made to the firm. The firm has alleged that you had received payment after committing fraud therefore, you are found guilty and [Sic of.] misconduct regarding the misappropriation of amount of Rs 1,29,600 after committing fraud on the documents and violating the financial rules. You are also held guilty for misconduct according to Para 3 of the U.P. Government Servant Conduct Rules, 1956.

(III) Case No. 37 of 1998 has been instituted for adjudication between Indian Coal Suppliers v. Government of U.P. The case has been decided on 5-1-2000 according to which demand for Rs 26,00,000 along with interest has been made by the firm concerned from the Department. The fact has been in your knowledge that the option of appeal in the aforesaid case has been rejected by the Government. In such situation you had not prepared the defence regarding validity of the agreement during framing of issues in proper manner. The case has been dismissed only on the ground of deficient court fees. You have deliberately appointed special advocate without the permission of the Government, had not paid court fees and had colluded with M/s Indian Cola Suppliers to cause loss of Rs 26,00,000 to the Government by presenting weak case before the court in order to cause benefit to the contractor. The aforesaid act is violation of Paras 9.01, 9.02 and 9.03 of the Financial Handbook and Para 3 of the U.P. Government Servant Conduct Rules, 1956.”

25. *A bare perusal of the aforesaid charges shows that the three charges were based on official documents/official communications. We have earlier noticed the relentless efforts made by the respondent to secure copies of the documents,*

which was sought to be relied upon, to prove the charges. These were denied by the Department in flagrant disregard of the mandate of Rule 7 sub-rule (v). Therefore the inquiry proceedings are clearly vitiated having been held in breach of the mandatory sub-rule (v) of Rule 7 of the 1999 Rules.

26. *The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:*

“7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.”

27. *A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.*

28. *An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*

29. *Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.*

30. *When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a*

closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. 31. *In Shaughnessy v. United States [97 L Ed 956 : 345 US 206 (1952)] (Jackson, J.), a Judge of the United States Supreme Court has said: (L Ed p. 969)*

“... Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.”

32. 32. *The affect of non-disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, 5th Edn., p. 442 as follows:*

“If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked.”

In our opinion the aforesaid maxim is fully applicable in the facts and circumstances of this case.

33. *As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.*

34. *This Court in Kashinath Dikshita v. Union of India [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176] , had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a government servant. In that case the enquiry proceedings had been challenged on the ground that non-supply of the statements of the witnesses and copies of the documents had resulted in the*

breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.

35. 35. *In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows: (Kashinath Dikshita case [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176] , SCC pp. 234-35, para 10)*

“10. ... When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: ‘What is the harm in making available the material?’ and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it.”

36. 36. *On an examination of the facts in that case, the submission on behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations: (Kashinath Dikshita case [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176] , SCC p. 236, para 12)*

“12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we

have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself.”

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.”

g) Jai Prakash Saini (Supra):

“17. From the decisions of this Court in *Sur Enamel (supra)* and *Kharak Singh (supra)*, followed in *Chamoli District Cooperative (supra)*, which deals with similar service rules as are applicable here, it is now settled that unless the charged employee accepts his guilt in clear terms, an enquiry on the charges drawn against him would have to be held. In the enquiry, the employer /department would have to take steps first to lead evidence against the workmen / delinquent charged and give an opportunity to him to cross examine those witnesses. Only thereafter, the workmen / delinquent shall be asked whether he wants to lead any evidence and/ or submit an explanation about the evidence led against him. Even in a case based solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove those documents and when so examined, the witness would have to be tendered for cross-examination.

18. In the instant case, we find that the department had not produced any witness in the enquiry even though the charges levelled upon the appellant were denied by him. Therefore, in our view, the enquiry stood vitiated. Once the enquiry stood vitiated, the consequential order of punishment/ recovery cannot be sustained. We therefore allow this appeal. The impugned judgment and order of the High Court is set aside. The writ petition of the appellant stands allowed to the extent indicated below. The order of dismissal and consequential recovery is set aside. The Federation is, however, at liberty to hold a *de novo* enquiry, if it so desires, within a period of six months from the date of this order. If the Federation does not hold *de novo* enquiry as permitted above, the appellant shall be entitled to reinstatement with benefit of continuity in service including arrears of salary after adjusting suspension allowance, if any, paid already. In case the Federation chooses to hold an enquiry, it shall reinstate the appellant and place him under suspension till completion of the enquiry and during this period pay suspension allowance as may be payable in accordance with law. In case *de novo* enquiry is held, other service benefits including arrears of salary as well as benefits of continuity in service shall depend on the outcome of the enquiry.”

h) Ramesh Mishra Versus Punjab National Bank (Supra):

“From the perusal material on records and the enquiry report in particular, it is clear that the inquiry was concluded on the basis of the submissions made by the Inquiry Officer as well as

by the petitioner, there is no mention of any evidence being adduced to substantiate the documentary evidence, which was proposed to be relied upon against the petitioner, as such, the procedure as adopted by the Bank is contrary to the mandate of Rule 12 of the said Bipartite Settlement as well as the same is in violation of the principles of natural justice.

Thus, on limited ground of there being violation of principle of natural justice, the impugned orders dated 30.05.2012 and 26.12.2013 are set aside. The writ petition is allowed. The matter is remanded giving liberty to the Bank to conclude the procedure *denovo* from the stage of filing reply by the petitioner to the charge-sheet in accordance with the provision of Bipartite Settlement. The same should be concluded with all expedition.”

I) Vijay Singh Yadav (Supra):

“17. From the impugned order, nowhere it reflects that the Disciplinary Authority has applied his own mind and has given any reason as to why the reply to the charges submitted by the petitioner is not sufficient and as such charges are found proved and the opinion of Enquiry Officer is also proper.

Thus, it is clear that the order passed by the Disciplinary Authority inflicting the major penalty upon the petitioner is a non-speaking order and also without application of mind as it is fully based upon the report of enquiry. Thus, in absence of assigning any reason by the Disciplinary Authority as to why the punishment of dismissal is proper to be imposed makes it clear that the said authority has not examined the charge and its gravity. In my opinion, such type of opportunity, as has been given to the petitioner, is nothing but an eyewash.

Applying the principles of natural justice does not mean that for the sake of satisfaction of the employee it is provided, but it is provided so as to reach to a logical conclusion after taking into account the stand taken by the delinquent and assigning reason as to why as per the Disciplinary Authority the said stand is not proper.

18. The High Court in case of Dinesh Bilthare (supra) has considered the aforesaid aspect and observed as under:-

“9. The doctrine of proportionality exists in India from time immemorial. This doctrine is applied by Courts in criminal cases on regular basis. The principle is that one cannot be visited with an extreme order / punishment which is not commensurate to the conduct / misconduct /offence. It is noteworthy that first separate rock edict of emperor Ashoka at Dholi shows that Ashoka expressed his anxiety that undeserved and harsh punishment should not be imposed.

Dharmakosa contains a Shloka :

अपराधानुरूपं च दण्डं दण्डयेषु दापयेत् ।

सम्यग्दण्डप्रणयनं कुर्यात् ।

द्वितीयमपराधं न कस्यचित् क्षमेत ।

Let the king inflict punishments upon the guilty (i) corresponding to the nature (gravity) of the offence (ii) according to justice and (iii) not pardon anyone who has committed the offence for the second time.

11. If the impugned order dated 27.11.2020 (Annexure P6) is minutely examined, it will be clear like cloudless sky that there is no iota of reason assigned in the entire order as to why the punishment of 'removal' from service was found to be adequate for committing the offence under Section 324 of IPC. The disciplinary authority was required to examine the gravity of conduct which led to conviction on the principles of proportionality. There is no finding that the conduct which led to conviction was so grave that no such other punishment would be commensurate to the offence / conduct. Thus, the order dated 27.11.2010 is set aside. The District Education Officer, Chhatarpur is directed to re-consider the punishment on the anvil of doctrine of proportionality and pass a fresh order in accordance with law within 30 days from the date of production of copy of this order.”

In case of K.C. Khandelwal (*supra*) also the High Court has considered the proportionality of punishment and observed as under:-

“11. In the above backdrop, it is to be seen whether the punishment imposed on the petitioner is disproportionate. The imposition of adequate punishment commensurate to misconduct is essential and became cause of concern for our society from time immemorial.”

In the above case, the High Court has also considered the scope of interference in the matter of enquiry and observed as under:-

Substitution of penalty:

19. The ancillary question is whether this Court itself should modify the punishment or relegate the matter back to the disciplinary authority.

20. Shri Ghildiyal, learned Senior Counsel although cited the judgments of Supreme court wherein while holding that punishment as excessive, the Supreme Court itself substituted the punishment. A careful reading of the said judgments in the factual backdrop of the case shows that Supreme Court in order to do complete justice between the parties exercised its power under Article 142 of the Constitution. The question whether this court should substitute the punishment while interfering with the punishment is no more *res Integra*. The Apex Court after taking stock of its previous judgments in (2017) 2 SCC 528 (Chief Executive Officer, Krishna District Cooperative Central Bank Ltd. v. K. Hanumantha Rao) opined asunder:—

“7.3 The impugned order is also faulted for the reason that it is not the function of the High Court to impose a particular punishment even in those cases where it was found that penalty awarded by the employer is shockingly disproportionate. In such a case, the matter could, at the best, be remanded to the disciplinary authority for imposition of lesser punishment leaving it to such authority to consider as to which lesser penalty needs to be inflicted upon the delinquent employee. No doubt, the administrative authority has to exercise its powers reasonably. However, the doctrine that powers must be exercised reasonably has to be reconciled with

the doctrine that the Court must not usurp the discretion of the public authority. The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choice. In Lucknow Kshetriya Gramin Bank v. Rajendra Singh [Lucknow Kshetriya Gramin Bank v. Rajendra Singh,

(2013) 12 SCC 372 : (2013) 3 SCC (L&S) 159], this principle is formulated in the following manner : (SCC pp. 380-81, paras 13-14).

“13. Indubitably, the well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the disciplinary authority. In *Apparel Export Promotion Council v. A.K. Chopra* [Apparel Export Promotion Council v.

A.K. Chopra, (1999) 1 SCC 759 : 1999 SCC (L&S) 405] this principle was explained in the following manner : (SCC p. 773, para 22)

‘22.... The High Court in our opinion fell in error in interfering [Apparel Export Promotion Council v. A.K. Chopra, 1997 SCC OnLine Del 973 : (1997) 77 FLR 918] with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct.... The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone.’

14. Yet again, in *State of Meghalaya v. Mecken Singh N. Marak* [State of Meghalaya v. Mecken Singh N. Marak, (2008) 7 SCC 580 : (2008) 2 SCC (L&S) 431], this Court reiterated the law by stating : (SCC pp. 584-85, paras 14 and 17)

‘14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion

of the appellate authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226.

Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."

(Emphasis Supplied)

21. Since the respondents used a sledge hammer to kill a fly, the punishment order dated 28.05.2012 and appellate order dated 23.06.2012 and order dated 17.9.2012 (Annexure P/5) are set aside. The matter is remitted back to the disciplinary authority to take afresh decision on the question of punishment. The disciplinary authority shall take a fresh decision within 60 days from the date of communication of this order by taking into account the findings of this order."

19. In case of B. Karunakar (supra), the Supreme Court has also observed that getting copy of enquiry report is a right of the delinquent so that he may get an opportunity to meet out the opinion of the Enquiry Officer, but, here in the case at hand, neither enquiry report was supplied to the petitioner nor any reason was given as to why the enquiry report was not required to be supplied.

The Supreme Court has very categorically observed that when Enquiry Officer is the authority other than the Disciplinary Authority then it is essential to supply copy of the enquiry report to the delinquent because it is a right of the delinquent to get a reasonable opportunity to represent against the finding of Enquiry Officer. The Supreme Court has observed as under:

"28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him".

The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations.

What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope.

Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding

upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Fortysecond Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30. Hence the incidental questions raised above may be answered as follows:

[i] Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid.

The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

[ii] The relevant portion of Article 311(2) of the Constitution is as follows:

“(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.”

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry

before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

[iii] Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or nonGovernment, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

20. Thus, it is clear that it a case of violation of principles of natural justice and to deprive the petitioner to defend himself properly.

21. The Supreme Court further in case of *P. Gunasekaran* (supra) has also observed the scope of interference in a matter of disciplinary enquiry and observed that if the enquiry is conducted in accordance with the procedure established by law and principle of natural justice is followed then interference is not required but if the finding of Enquiry Officer is based upon no evidence and his conclusion is such that no reasonable man could ever arrive at, the same can be interfered with. The Supreme Court observed as under:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

22. In view of the aforesaid enunciation of law and considering the report of enquiry, the order of Disciplinary Authority and also the order passed by the Appellate Authority, it can be easily inferred that the punishment inflicted upon the petitioner is without following any procedure established by law and it is in complete violation of principles of natural justice. It is a case of no evidence and everything is based upon the report of Enquiry Officer, who has considered the charges levelled and the reply of the charge sheet submitted by the delinquent and arrived at a conclusion by his own that the major punishment be imposed upon the delinquent. The Enquiry Officer has not followed the procedure, which is required to conduct the enquiry.”

Judgments relied upon by learned counsel for the respondent - Bank:

a) State Bank of India Vs. Bela Baghi (Supra):

“15. 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 : 1996 SCC (L&S) 1194] , it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation 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. That being so, the plea about absence of loss is also sans substance.”

b) Disciplinary Authority cum Regional Manager (Supra):

“7. It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the bank 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. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is ‘misconduct’ within the meaning of Regulation 24. The findings of the Inquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a bank — for that matter, in the case of any other organisation — every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of

acting beyond authority — that too a course of conduct spread over a sufficiently long period and involving innumerable instances — is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organisation and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdrawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit — huge profit, as the High Court characterises it — they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class I Officer was not aware of the limits of his authority or of his powers. Indeed, Charge 9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Inquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge 8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit “Control Returns” to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24.

8. We must mention that Shri V.A. Mohta, the learned counsel for the respondent, stated fairly before us that it is not possible for him to sustain the reasoning and approach of the High Court in this case. His only submission was that having regard to the age of the respondent (37 years) and the facts and circumstances of the case, this Court may substitute the punishment awarded to the respondent by a lesser punishment. The learned counsel suggested that any punishment other than dismissal may be imposed by this Court. We considered this request with the care it deserves, but we regret that we are unable to accede to it. The learned counsel for the Bank, Shri V.R. Reddy, Additional Solicitor General, also stated, on instructions of the Bank, that it is not possible for the Bank to accommodate the respondent in its service in view of his conduct.”

c) A.P.S.R.T.C. Vs. Raghuda Shiva Shankar Prasad (Supra):

“15. We have carefully considered the rival submissions and perused the orders passed by the Labour Court and of the High Court and other annexures. In our opinion, the High Court has failed to appreciate that the delinquent employee categorically admitted that he had stolen the property of the Corporation. The Labour Court, on a careful perusal of the evidence, rightly ordered removal of the respondent from service. When the delinquent employee admitted his guilt before the enquiry officer that he had handed over the alternator from pan shop to the police authorities and further deposed that he had handed over the stolen property and requested the Labour Court to excuse him since it was his first offence, the Tribunal rightly set aside the request by taking into consideration the entire factual circumstances on record and after careful examination of the same and held that the delinquent employee does not deserve any sympathy and therefore he ordered removal from service.

17. Likewise, the learned Judges of the Division Bench also failed to appreciate that once the Labour Court in its award held removal from service by taking into consideration the entire facts and circumstances of the case, it does not deserve interference and that the High Court in its extraordinary jurisdiction under Article 226 of the Constitution could not have interfered with the said orders of the removal.”

18. The enquiry reports also clearly reveal that the departmental enquiry was conducted after giving fair and reasonable opportunity to the delinquent official, after following the procedure and as per the Regulations.

19. The learned Single Judge considered the past conduct of the delinquent employee as one of the grounds in taking a lenient view. In our view, past conduct of workman is not relevant in departmental proceedings. Likewise, the learned Single Judge has erred in holding that the workman did not involve in any misconduct of theft during his past services and on that ground, granted reinstatement with continuity of service.

20. The learned Judges of the High Court have also failed to appreciate that once an employee has lost the confidence of the employer, it would not be safe and in the interest of the Corporation to continue the employee in the service. The punishment, imposed by the management in the facts and circumstances of the case, is not disproportionate and that the punishment of removal from service is just and reasonable and proportionate to the proved misconduct.

21. 21. In our view, the theft committed by the respondent amounts to misconduct and, therefore, we have no hesitation to set aside the orders passed by the learned Single Judge and also of the Division Bench and restore the order of removal of the respondent from service. When the Labour Court has proved the charges, no interference by the learned Single Judge or by the Division Bench of the High Court was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised judiciously and fairly. In our opinion, the conclusion arrived at by the High

Court in ordering reinstatement, continuity of service was shockingly disproportionate to the nature of charges already proved which is in the nature of theft.

22. It is also not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

23. Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment.”

d) T.N.C.S. Corporation Vs. Meera Bai (Supra):

“28. The other contentions made by Mr Francis are in respect of procedural irregularity which, according to him, cannot be termed to be negligence on the part of the respondent. We have already held that both the disciplinary authority and the Appellate Authority have given ample reasons for arriving at their conclusions. This Court has held in a catena of decisions that interference is not permissible unless the orders passed by the quasi-judicial authorities are clearly unreasonable or perverse or manifestly illegal or grossly unjust.

29. Mr Francis also submitted that a sum of Rs 34,436.85 being 5% of the total loss of Rs 6,88,737.12 is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, the

respondent employee is found guilty of misappropriating the Corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by the disciplinary and Appellate Authority.

35. *In the instant case, the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning and, therefore, in our opinion, the matter should be dealt with firmly with firm hands and not leniently. In the instant case, the respondent deals with public money and is engaged in financial transactions or acts in a fiduciary capacity and, therefore, highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, the conclusion of the learned Single Judge as affirmed by the Division Bench of the High Court do not appear to be proper. We have no hesitation to set aside the same and restore the order passed by the disciplinary authorities upholding the order of dismissal.”*

e) A. Sudhakar Vs. Post Master General (Supra):

“27. Contention of Dr. Pillai relating to the quantum of punishment cannot be accepted, having regard to the fact that temporary defalcation of any amount itself was sufficient for the disciplinary authority to impose the punishment of compulsory retirement upon the appellant and in that view of the matter, the question that the third charge had been partially proved takes a back seat.

28. In Hombe Gowda Educational Trust v. State of Karnataka [(2006) 1 SCC 430 : 2006 SCC (L&S) 133] this Bench opined: (SCC pp. 436-37, paras 17-20)

“17. The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

18. This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment.

19. Assaulting a superior at a workplace amounts to an act of gross indiscipline. The respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault

him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as to shock one's conscience.

20. A person, when dismissed from service, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court.”

(See also *State of U.P. v. Sheo Shanker Lal Srivastava* [(2006) 3 SCC 276 : JT (2006) 3 SC 48] , *Workmen v. Bhurkunda Colliery of Central Coalfields Ltd.* [(2006) 3 SCC 297 : JT (2006) 2 SC 1] , *Syndicate Bank v. Venkatesh Gururao Kurati* [(2006) 3 SCC 150 : JT (2006) 2 SC 73] , *L.K. Verma v. H.M.T. Ltd.* [(2006) 2 SCC 269 : 2006 SCC (L&S) 278 : JT (2006) 2 SC 99] and *Commr. of Police v. Syed Hussain* [(2006) 3 SCC 173 : JT (2006) 2 SC 332] .)

29. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.”

f) Dy. Registrar Cooperative Societies (Supra):

“2. Briefly stated, the facts of the case are as follows:

The respondent was appointed as a Cooperative Supervisor in the Uttar Pradesh Cooperative Federal Authority. He was placed under suspension in contemplation of departmental proceedings initiated against him under Section 68 of the Uttar Pradesh Cooperative Societies Act (hereinafter referred to as “the Act”). After the inquiry officer submitted his report, a resolution was passed on 21-12-1993, to dispense with the services of the respondent and to recover the amount from him under Section 68 of the Act. Thereafter, by the impugned order dated 20-1-1994, his services were terminated, preceded by a notice on the proposed punishment. Aggrieved thereby, the respondent filed a writ petition in the High Court of Judicature at Allahabad. The learned Single Judge, after threadbare consideration of the submissions made by the respondent, dismissed the writ petition. We may mention here that the only contention raised in the writ petition was the violation of principles of natural justice inasmuch as no notice was purported to have been given to him affording an opportunity to explain his case. This contention was repelled by the learned Single Judge that sufficient notices were sent to him by registered post by the appellant but he failed to appear before the disciplinary authority. The learned Single Judge also noticed that on 10-7-1993 the respondent did not appear. Notices were also published in *Dainik Jagran* newspaper on 2-10-1993, 9-10-1993 and 28-11-1993. The respondent also moved as many as three applications on

13-7-1993, 2-10-1993 and 28-11-1993. From the finding recorded by the learned Single Judge, it appears that sufficient opportunity has been afforded to the respondent. Having failed to avail the opportunity, the respondent now is not permitted to turn back to say that no opportunity has been afforded to him.

3. 3. The Division Bench of the High Court upset the order passed by the learned Single Judge mainly on two grounds. Firstly, no notice of proposed punishment has been given to the respondent. This finding is demolished by notice dated 13-7-1993. From the aforesaid notice, it is clear that the respondent was put to notice as to why he should not be dismissed from service. It appears that the respondent did not give a reply to the aforesaid notice. Therefore, the first ground on which the Division Bench upset the order of the learned Single Judge is erroneous. The second ground on which the Division Bench upset the order of the learned Single Judge is that, under Section 68 of the Act, there is no provision to order dismissal or removal of the respondent. While it is true that under Section 68 of the Act, there is no such provision but the learned counsel appearing for the appellant contended that, in fact, the order of dismissal was passed under Regulation 68 and not under Section 68 of the Act. The learned counsel has also taken us to the provisions of Regulation 68 of the Cooperative Federal Authority (Business) Regulations, 1976. A reading of Regulation 68, which is annexed to the additional affidavit filed by the appellant, would clearly show that it empowers the authority to impose major punishment like dismissal, removal or reduction in rank. It appears from the facts and circumstances of this case that the authority was confused between Section 68 of the Act and Regulation 68. Be that as it may, a reading of the notice on proposed punishment dated 13-7-1993 clearly shows that the proposed punishment on the respondent appears to have been passed under Regulation 68 and not under Section 68 of the Act, although the impugned order mentions Section 68 of the Act.”

g) State of U.P. Vs. Raj Kishore (Supra):

“4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a writ petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but an error of judgment. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action

of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed. As already noticed, the charges are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the enquiry report and the order of the disciplinary authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the disciplinary authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the disciplinary authority ordering dismissal of the respondent herein from service. It is ordered accordingly. The civil appeal stands allowed.”

h) V. Ramana Vs. A.P.S.R.T.C. (Supra):

“4. In support of the appeal learned counsel for the appellant submitted that the High Court should have considered the question of quantum of punishment by applying the principles of Section 11-A of the Industrial Disputes Act, 1947 (in short “the Act”). It was further submitted there were minor lapses and smallness of the amount has not been considered in the proper perspective and order of termination of service should not have been passed. Learned counsel for the respondent Corporation supported the order of the Tribunal and judgment of the High Court. In Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469 : JT (2001) 2 SC 72] , it was held that misconduct in such cases where the bus conductor either had not issued tickets to a large number of passengers or had issued tickets of lower denomination, punishment of removal is proper. It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The factual position shows that the appellant's conduct in collecting fare at the designated place and not collecting fare from persons who had already travelled were in violation of various regulations contained in the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (in short “the Regulations”). In Karnataka State Road Transport case [(2001) 2 SCC 574 : 2001 SCC (L&S) 469 : JT (2001) 2 SC 72] it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It was finally held that the order of dismissal

should not have been set aside. The view was reiterated by a three-Judge Bench in Regional Manager, RSRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714 : (2002) 1 LLJ 234] , where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and bus conductors who by their actions or inactions cause financial loss to the Corporation are not fit to be retained in service.

6. *The scope of interference with quantum of punishment has been the subject-matter of various decisions of this Court. Such interference cannot be a routine matter.*

11. *The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.*

12. *To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”*

I) Ganesh Shanta Ram Sirur Vs. S.B.I. (Supra):

“14. In regard to the second contention that the consideration of the charge which had not been proved by the appellate authority, Mr Ramamoorthy submitted that the appellate authority had considered the charges which were not proved while enhancing the punishment. According to Mr Ramamoorthy, the appellate authority was merely concerned with Charge 5 regarding disbursement of loan to the wife of the appellant in violation of Rule 34(3)(1) of the Service Rules and that the order of the appellate authority does not in any manner disclose that the same was passed by considering the circumstances germane to the charge against the appellant which had been proved. Even accepting the contention of Mr Ramamoorthy on Charge 1, the appellant cannot come out of Charge 5, which is more serious and grave in nature. However, we observe that the observations made by the appellate authority on Charge 1 while considering Charge 5, should be treated only as a passing observation

and at the same time we cannot ignore or close our eyes in regard to the finding of the appellate authority on Charge 5 which is more serious and grave in nature. The appellate authority had enhanced the punishment imposed by following the procedure laid down in the Service Rules and we see no reason to interfere with the same. As already noticed, the appellant had himself admitted his misconduct and therefore, there is no reason why the appellate authority's finding on Charge 5 should not be accepted.

16. *It is true that the appellate authority has proposed to enhance the punishment and imposed the penalty of dismissal on the appellant. However, the appellate authority was convinced with regard to the explanation submitted by the appellant and reduced the penalty further considering the adverse family circumstances, which could be seen from the following observation in the appellate order:*

“I, therefore, direct that the earlier penalty of reduction in basic pay by one stage imposed on him by the appointing authority be enhanced to removal from service in terms of Rule 67(g) of the State Bank of India Officers Service Rules. The tentative decision taken while serving the show-cause notice was to dismiss Shri Sirur from service. Although, considering the acts of misdemeanour of the appellant, this was the appropriate penalty, I have taken a lenient view of the matter because of his adverse family circumstances. Removal from service would enable him to draw higher terminal benefits as compared to dismissal. The removal will take effect from the date of communication of this order and the intervening period will be treated as under suspension. I order accordingly.”

31. *Mr Salve invited our attention to para 17 of the judgment in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] which deals with the opinion of the House of Lords in the United Kingdom. He also drew our attention to S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379] and Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] in SCC paras 25, 26 and 28. The decisions relied on and cited above make one thing clear, namely, principles of natural justice cannot be reduced to any hard-and-fast formulae and as said in Russell v. Duke of Norfolk [(1949) 1 All ER 109 (CA)] , these principles cannot be put in a straitjacket. Their applicability depends upon the context and the facts and circumstances of each case. The objective is to ensure a fair hearing, a fair deal to a person whose rights are going to be affected. In our opinion, the approach and test adopted in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing, no notice, no opportunity and no hearing but one of not affording a proper hearing that is adequate or a full hearing or violation of a procedural rule or requirement governing the enquiry.*

34. 34. The bank manager/officer and employees of any bank, nationalised/or non-nationalised, are expected to act and discharge their functions in accordance with the rules and regulations of the bank. Acting beyond one's authority is by itself a breach of discipline and trust and a misconduct. In the instant case Charge 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant Rule which prohibits the bank manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant did not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realised the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decision. Rule 34(3)(1) is a rule of integrity and, therefore, as rightly pointed out by Mr Salve, the respondent Bank cannot afford to have the appellant as bank manager. The punishment of removal awarded by the appellate authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment *Regional Manager, U.P. SRTC v. Hoti Lal* [(2003) 3 SCC 605 : 2003 SCC (L&S) 363] wherein this Court has held as under: (SCC p. 614, para 10)

“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. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.”

36. 36. We have, therefore, no hesitation in dismissing the appeal filed by the appellant and confirming the order passed by the Division Bench of the High Court. However, we make it clear that in the peculiar facts and circumstances of the case the appellant will be entitled to full pension and gratuity irrespective of his total period of service. No costs.”

j) Government of A.P. Vs. Mohd. Nasrullah Khan (Supra):

“8. At this stage, we may point out that there is no allegation of violation of principles of natural justice, or that the inquiry was conducted without following the procedures or rules and regulations. The only case put up before us by the respondent is that the theft or removal of lens by the respondent was not proved in the course of inquiry. This contention need not detain us any longer because going through the report of the inquiry, the inquiry officer, after examining PWs 1, 2, 3 and 4 and after

affording adequate opportunity to the respondent, has come to the conclusion that the charge levelled against the respondent stands proved.

11. *By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.*

15. *This takes us to the last submission of the counsel for the respondent. Learned counsel for the respondent contended that the offence, said to have been committed, being minor in nature and no loss being caused to the owner of the property, inasmuch as the same had been recovered on the spot, lenient punishment may be awarded in place of dismissal from service. We are unable to countenance this submission. The gravity of the offence must necessarily be measured with the nature of the offence. The respondent was a member of a disciplined force holding the rank of Head Constable. The duty assigned to him was a “bandobast” duty during the visit of the then President Bill Clinton, who ran a security risk of the highest grade. His misconduct could have led to serious security lapse resulting in fatal consequences. But, because of timely detection by the electrician, PW 4, the lens was recovered and immediately restored. We entirely agree with the inquiry officer that the charges are serious in nature, being committed by a member of a disciplined force, who deserved stringent punishment. To instil the confidence of the public in the establishment, the only appropriate punishment in such cases is dismissal from service, which has been correctly awarded.*

16. *It is stated that the respondent was reinstated on 19-6-2004, pursuant to the order passed by the High Court and has been working since then and pay and allowances have been paid from 19-6-2004. Since he has been paid for the period he has worked, the salary and allowances already paid to him shall not be disturbed. The respondent, however, shall not get his back wages.*

17. *In the premises aforestated, we are clearly of the view that the High Court has committed patent error of law which has resulted in miscarriage of justice. The order of the High Court is, accordingly, quashed. The appeal is allowed. Consequently, the writ petition filed by the respondent stands dismissed. Parties are asked to bear their own costs.”*

131. Having considered the pleadings of the parties, the material available on record, the enquiry proceedings, the findings recorded by the Enquiry Officer, the order passed by the Disciplinary Authority, the appellate order, the earlier proceedings between the parties and the rival submissions advanced by

learned counsel for the petitioner as well as learned counsel appearing for the respondent-Bank, I am of the considered opinion that the controversy in the present writ petition cannot be resolved merely by invoking the settled principle that the scope of judicial review over disciplinary proceedings is limited.

132. There can be no quarrel with the proposition that this Court, while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, does not ordinarily sit as an appellate authority over the findings recorded by the Enquiry Officer and is not expected to re-appreciate the evidence as if exercising appellate jurisdiction. Equally well settled is the principle that where a disciplinary enquiry has been conducted in accordance with the applicable rules, principles of natural justice have been duly observed and the findings are supported by some legally relevant evidence, the writ court ordinarily would not substitute its own view for that of the disciplinary authority.

133. At the same time, the aforesaid limitation upon the exercise of judicial review cannot be stretched to the extent of immunising an enquiry which is fundamentally contrary to the requirements of natural justice or findings which are based upon no evidence, irrelevant material, conjectures or assumptions. The jurisdiction of this Court necessarily extends to examining whether the decision-making process was fair, whether the delinquent employee was afforded a meaningful opportunity of defence, whether the conclusions have a rational nexus with the evidence brought on record and whether the findings are such as could reasonably have been arrived at by a duly constituted disciplinary authority.

134. The judgment in the case of *P. Gunasekaran (supra)*, relied upon in the proceedings, itself recognises that although the High Court cannot re-appreciate evidence as a second court of first appeal, interference is permissible within the recognised parameters of judicial review, including where the enquiry has not been conducted in accordance with law or principles of natural justice, where the findings are based upon no evidence, or

where the conclusion is one which no reasonable person could arrive at on the material available.

135. Tested on the aforesaid principles, I find that the present case does not involve a mere disagreement with the appreciation of evidence by the departmental authorities. The challenge strikes at the very foundation of the disciplinary proceedings. The material demonstrates denial of relevant documents, failure to produce originals despite specific objection, non-examination of material witnesses, denial of relevant defence evidence, proceeding upon a foundational fact which was not established by the management and failure on the part of the disciplinary and appellate authorities to deal meaningfully with the objections raised by the petitioner.

136. The first issue which assumes significance is the denial of documents. The petitioner had repeatedly demanded documents which, according to him, were necessary for an effective defence. The record placed before this Court shows that the petitioner submitted representations dated 08.05.2002 and 24.06.2002 and furnished a list of 48 documents. The dispute regarding the documents ultimately resulted in Writ Petition No.1324 (S/B) of 2008, wherein this Court, vide judgment and order dated 21.02.2012, directed that relevant documents be supplied and, where supply was not practicable for a valid reason, inspection thereof be permitted.

137. The importance of the said documents cannot be characterised as insignificant. The allegations against the petitioner were founded substantially upon old records, vouchers, ledgers, transaction documents and computer-related records. The petitioner disputed the genuineness of photocopies and specifically sought production and inspection of the originals. The supplied material records that the prejudice pleaded by the petitioner was that, without the primary records, he was deprived of the opportunity to test their authenticity, authorship, signatures and contents.

138. In the considered view, where the management relies upon documentary material as the foundation of a charge and the delinquent employee specifically disputes its authenticity and seeks the originals for the purposes of

his defence, such request cannot be brushed aside as a technicality. The opportunity of defence must be real and effective. It is not sufficient that a delinquent employee is formally permitted to participate in an enquiry if, at the same time, material upon which the management relies is withheld from him.

139. The position becomes still more serious where this Court had already intervened in an earlier proceeding and directed the respondents to supply the relevant documents or permit inspection thereof. Compliance with such a judicial direction was not an optional matter. Once this Court had recognised the relevance of the documents to the petitioner's defence, the disciplinary proceedings were required to proceed consistently with that direction.

140. It is also found that the continued non-availability of relevant documents, coupled with refusal to permit adequate inspection of the originals despite specific dispute, materially impaired the petitioner's right of defence. The resulting prejudice cannot be regarded as speculative or imaginary. It is apparent from the nature of the charges and the manner in which the documentary material was subsequently relied upon.

141. The second issue relates to the foundational allegation that the petitioner was functioning as a System Administrator. The charge-sheet proceeded upon the premise that the alleged lapses had been committed by the petitioner while working as System Administrator at the concerned branches. The petitioner consistently denied that he had ever been appointed or posted as System Administrator. The management did not produce the office order or other contemporaneous documentary material establishing such appointment. The material further records that none of the four Management Witnesses stated that any office order had been issued appointing or recognising the petitioner as System Administrator.

142. The matter does not end there. The Bank itself had instituted Regular Suit No.117/1999 against the petitioner. An issue was framed in that suit as to whether the petitioner had ever been posted as System Administrator. The Civil Court decided the issue against the Bank, holding that the Bank had

failed to establish that the petitioner had ever worked as System Administrator. The appeal preferred by the Bank, being Regular Civil Appeal No.14/2009, was dismissed on 26.07.2013. The supplied material records that the said finding consequently attained finality.

143. This Court is conscious that the technical doctrine of *res judicata* cannot be mechanically imported into every disciplinary proceeding. However, that is not the manner in which the issue is approached. The significance of the civil-court judgment is that the Bank had previously failed to establish, before a competent court, the very foundational fact which subsequently became the premise for attributing duties and lapses to the petitioner in the disciplinary proceedings.

144. The disciplinary authorities were, therefore, required to consider the effect of the said adjudication. They could not simply assume the existence of a fact which was specifically denied by the petitioner, unsupported by an appointment order, inconsistent with the material relied upon by the petitioner and, importantly, had already been the subject matter of an adjudication between the parties.

145. The Bank's own Handbook of Computerization of Branches dated 28.01.1995 also assumes relevance. As recorded in the material, the handbook contemplated appointment of a System Administrator from officers not below Scale-II, whereas the petitioner was admittedly working in Scale-I. The handbook also contemplated issuance of an office order for such appointment. No such office order was produced by the Bank.

146. In these circumstances, the conclusion that the petitioner was functioning as System Administrator could not have been treated as an established fact merely by repeating the allegation in the charge-sheet. The management was required to establish the foundational fact through evidence. The burden could not be shifted upon the petitioner to establish that he was not occupying a post which the management itself had failed to establish that he occupied.

147. This assumes greater significance because several of the charges appear to have been constructed upon the duties allegedly attached to the post of System Administrator. Once the foundational fact itself is not established, the consequential findings attributing to the petitioner lapses associated with that post necessarily require independent evidentiary support. Such independent support has not been demonstrated from the material before this Court.

148. The third issue relates to the nature of the evidence upon which the findings of guilt have been recorded. The petitioner consistently disputed the genuineness of the photocopies and sought production of originals. The documents relied upon by the management were not, in the manner asserted by the petitioner, duly established through their authors or custodians. The supplied material records that the Management Witnesses did not establish the petitioner's connection with several of the disputed transactions in a manner sufficient to cure the deficiencies in the documentary evidence.

149. It is reiterated that departmental proceedings are not criminal trials and strict rules of evidence are not applied with the same rigidity. However, this does not mean that a document, merely because it has been placed on the enquiry record, automatically becomes substantive evidence of the misconduct alleged against the delinquent employee. There must be a reasonable evidentiary nexus between the document, the transaction and the employee against whom the charge is made.

150. The principle relied upon by the petitioner from the case of ***Roop Singh Negi (Supra)*** and ***Narinder Mohan Arya (Supra)*** is attracted on this aspect. The Enquiry Officer performs a quasi-judicial function and is required to arrive at a conclusion on the basis of material having evidentiary value. Suspicion, assumption or conjecture cannot be substituted for evidence. The material placed before us records the principle that the Enquiry Officer cannot fill the gaps in the management's case by shifting the burden upon the delinquent employee.

151. The fourth issue concerns the non-examination of material witnesses. In relation to the allegation concerning receipt of Rs.14,500/-, the person from whom the petitioner was allegedly said to have received the amount was not

examined. The material relied upon also indicated that the amount stood credited in the account of the concerned person and that the computer loan had been sanctioned. In the absence of the testimony of the person allegedly making the payment, the mere existence of the relevant entry could not, without further evidence, establish personal receipt or misappropriation by the petitioner.

152. The petitioner had also sought examination of members of the balancing team, including Sri Kamal Kant and Sri D.S. Hayanki, whose evidence was stated to be relevant to the transactions and balancing of the Bank. The denial of such defence evidence is material because the petitioner was attempting to establish his defence through persons who had direct connection with the relevant records and balancing process.

153. The right of defence in a disciplinary proceeding necessarily includes the right to present relevant evidence. Such right is not absolute in the sense that every witness suggested by a delinquent employee must invariably be examined. However, where the proposed witnesses have an apparent connection with the very transactions forming the subject matter of the charge, their exclusion requires a justifiable reason. No such satisfactory justification is demonstrated from the material before this Court.

154. The fifth issue concerns the manner in which the enquiry proceeded on certain dates in the absence of the petitioner. The petitioner had raised objections concerning notice, availability of documents and opportunity of defence. The material indicates that Management Witnesses were examined and the petitioner's opportunity to cross-examine them was closed despite these objections.

155. This Court does not hold that every proceeding conducted in the absence of a delinquent employee is necessarily invalid. Where an employee deliberately avoids the enquiry despite proper notice and adequate opportunity, the disciplinary authority is entitled to proceed in accordance with the applicable rules. The present case, however, cannot be examined in isolation from the continuing dispute concerning documents and the

petitioner's ability to effectively defend himself. The denial of opportunity here was cumulative in effect.

156. The sixth issue concerns the specific charges. On a consideration of the material relating to Account No.16488, the chronology itself creates a serious difficulty for the management. The account had been closed on 11.02.1994, whereas the petitioner joined Mahanagar Branch only in October 1994. The petitioner disputed the vouchers and the signatures attributed to him. The evidence of Management Witness No.1, as recorded in the material, did not satisfactorily establish the petitioner's signatures on the disputed documents.

157. Where the basic chronology does not connect the employee with the transaction and the documents relied upon to create that connection are themselves disputed and not satisfactorily established, a finding of guilt cannot be sustained merely by referring to the existence of the account or transaction.

158. Similar considerations arise in relation to the other transactions forming part of the charges. The existence of an irregular entry or transaction in a Bank record is not, by itself, proof that the petitioner personally committed the alleged act. The departmental authorities were required to establish the link between the particular transaction and the particular act or omission of the petitioner.

159. The same principle applies to the allegations concerning the use of the System Administrator's user ID/password. The charge necessarily presupposes that the petitioner was authorised to function as System Administrator and possessed or used the relevant credentials. Once the foundational appointment itself is not established, the allegation of unauthorised use of the corresponding credentials requires independent proof. The material before us does not disclose such proof sufficient to sustain the finding.

160. Similarly, the allegations concerning the alleged payment, withdrawal, misappropriation or removal of Bank records cannot be established merely by

showing that an irregularity occurred. It must further be established that the petitioner was responsible for that irregularity by reason of a particular act or omission attributable to him.

161. This Court, therefore, unable to accept the proposition that the findings recorded by the Enquiry Officer are supported by sufficient evidence merely because certain documents and oral statements were placed on the enquiry record. The issue is not the quantity of material but its quality, relevance and nexus with the charges.

162. This Court also find substance in the petitioner's grievance that the approach adopted during the disciplinary proceedings effectively required him to disprove the allegations rather than requiring the management first to establish them. This approach is reflected particularly in the appellate reasoning, where the petitioner's failure to bring "fresh facts" to disprove the charges was treated as a reason for rejecting the appeal.

163. Such reasoning cannot be sustained. A delinquent employee's defence is required to be considered against the case established by the management. The burden does not shift merely because the employee has denied the allegations. The management must first establish the essential ingredients of the misconduct alleged.

164. This Court now turn to the orders passed by the Disciplinary Authority and the Appellate Authority. The petitioner had submitted a detailed representation challenging the enquiry findings and specifically raising objections regarding non-supply of documents, non-production of originals, absence of evidence, non-examination of witnesses and the foundational issue concerning his alleged status as System Administrator.

165. The Disciplinary Authority was required to consider those objections independently. A disciplinary authority cannot merely reproduce or mechanically adopt the conclusions of the Enquiry Officer without examining whether the objections raised by the delinquent employee affect the

sustainability of the findings. Where the very evidentiary foundation of the enquiry report is questioned, the disciplinary authority must demonstrate application of mind to that challenge.

166. The authority relied upon by the petitioner in the case of ***Vijay Singh Yadav v. Bhopal Development Authority (Supra)*** is relevant in this context. The principle emerging from the material supplied is that an order imposing punishment must disclose application of mind to the delinquent's representation and cannot mechanically adopt the enquiry report without dealing with the grounds raised against it.

167. The appellate order also does not cure these defects. The Appellate Authority was required to examine the grounds of appeal and determine whether the findings and punishment could legally be sustained. Instead, the reasoning substantially proceeds on the premise that the petitioner had failed to disprove the charges by producing fresh material. Such an approach does not constitute a proper consideration of the petitioner's challenge to the legality and evidentiary foundation of the enquiry.

168. This Court is equally unable to accept the Bank's reliance upon authorities laying down the proposition that a High Court should ordinarily refrain from interfering with disciplinary punishment. Those authorities undoubtedly represent settled law. But the proposition operates where the disciplinary process is otherwise lawful and the finding of misconduct is supported by relevant evidence. It cannot be invoked to sustain an enquiry which has itself been found to have proceeded in breach of natural justice or upon an evidentiary foundation which does not establish the alleged misconduct.

169. In particular, the authorities relied upon by learned counsel for the respondent-Bank concerning cases of admitted or clearly established misconduct stand on a materially different footing. As reflected in the supplied material, ***A.P.S.R.T.C. v. Raghuda Shiva Shankar Prasad (Supra)*** involved a case where the delinquent employee had admitted the misconduct and the

enquiry had been conducted in accordance with the applicable Regulations. The present case contains no such admission by the petitioner.

170. Likewise, the authorities concerning the limited interference with punishment, including the case of **V. Ramana (Supra)** and **Ganesh Shanta Ram Sirur (Supra)**, cannot be applied mechanically. The principle that punishment should not ordinarily be interfered with once misconduct is proved is not in dispute. But the present case is anterior to that stage. Here the question is whether the misconduct itself was established through a fair procedure and legally relevant evidence. The issue of proportionality cannot arise in the abstract without a sustainable finding of misconduct.

171. The reliance upon the case of **P. Gunasekaran (Supra)** also does not advance its case beyond the proposition of limited judicial review. That very principle permits interference where the findings are based upon no evidence or the enquiry violates the requirements of natural justice. The present judgment is not founded upon a re-appreciation of evidence but upon the conclusion that the process by which the findings were reached suffered from the very defects recognised as warranting judicial review.

172. The authorities relied upon by the petitioner, particularly those concerning non-supply of relevant documents, evidentiary value of documents, natural justice, the burden of proof and non-application of mind, therefore, have direct relevance to the present controversy. The facts of the present case, as emerging from the record, satisfy the circumstances in which judicial review is warranted.

173. This Court, accordingly, record a categorical finding that the petitioner was not afforded a fair and effective opportunity of defence in the disciplinary proceedings. The denial of relevant documents, failure to make available the originals of disputed documents, failure to examine material witnesses and denial of relevant defence evidence, considered cumulatively, materially prejudiced the petitioner's defence.

174. This Court further records a categorical finding that the foundational fact that the petitioner was appointed or authorised to function as System Administrator was not established by the management through reliable evidence. The disciplinary findings proceeded upon that assumption notwithstanding the petitioner's categorical denial, absence of the relevant appointment order, the material contained in the Bank's own handbook and the civil-court adjudication referred to above.

175. The Court further finds that the findings of guilt cannot be sustained merely by reference to the existence of irregular transactions or documentary entries. The necessary nexus between the alleged irregularities and the petitioner has not been established in the manner required to sustain the disciplinary findings.

176. This Court further finds that the approach of the appellate authority in requiring the petitioner to disprove the charges by producing fresh material reflects an erroneous approach to the burden of proof. The management was required to establish the charges against the petitioner on the material led in the enquiry.

177. The cumulative effect of these findings is that the enquiry report cannot be sustained. This is not a case of a minor procedural irregularity which has caused no prejudice. The defects go to the root of the proceedings and have materially affected the petitioner's ability to defend himself as well as the evidentiary foundation upon which the findings of guilt rest.

178. Once the enquiry report is found to be unsustainable, the order of dismissal founded upon that report cannot survive. The Disciplinary Authority's order does not contain an independent foundation capable of sustaining the punishment after the enquiry findings are set aside.

179. The appellate order, being consequential upon and affirming the disciplinary order without properly addressing the grounds raised by the petitioner, is equally liable to be set aside.

180. We are conscious that in a case where an enquiry is set aside solely on account of a curable procedural defect, the employer may, depending upon the facts and the governing rules, be afforded an opportunity to hold a fresh enquiry. The present case, however, stands on a different footing. The defects are not confined to one procedural lapse. The findings themselves suffer from absence of a satisfactory evidentiary foundation, the proceedings proceeded upon an unestablished foundational fact, relevant documents were not made available, material witnesses were not examined, defence evidence was denied and the statutory/regulatory authorities failed to properly consider the petitioner's objections.

181. Further, the material before the Court demonstrates that the disciplinary proceedings have already remained pending for an exceptionally long period. The petitioner was subjected to disciplinary proceedings over several years and was ultimately dismissed after prolonged litigation concerning the very documents and procedural safeguards necessary for his defence. In these circumstances, remitting the matter for another round of disciplinary proceedings on the same foundational deficiencies would not, in my considered view, advance the ends of justice.

182. This Court, therefore, hold that the petitioner has established a case for interference under Article 226 of the Constitution of India. The impugned disciplinary action cannot be permitted to stand merely on the ground that the jurisdiction of this Court in disciplinary matters is limited. Limited judicial review does not mean absence of judicial review where the fundamental requirements of a fair disciplinary process have not been satisfied.

183. For the reasons recorded hereinabove, the writ petition succeeds and is **allowed**.

184. The impugned order of dismissal dated 01.11.2012/10.11.2012, passed by the Disciplinary Authority against the petitioner, is hereby set aside. The consequential appellate order dated 27.03.2014, passed by the Appellate Authority, is also hereby set aside.

185. The findings recorded against the petitioner in the enquiry report, insofar as they form the basis of the aforesaid punishment, are also set aside. The disciplinary action founded upon the said findings shall consequently stand annulled.

186. The petitioner shall be treated as continuing in service with effect from the date from which the impugned order of dismissal operated, without any break in the continuity of his service. The respondents shall accordingly restore the petitioner's service status and make consequential corrections in his service record.

187. The petitioner shall be entitled to all consequential service benefits flowing from restoration of his service, including continuity of service, fixation of pay, increments, seniority and other attendant benefits in accordance with the applicable service rules and regulations.

188. The respondents shall also determine and pay the monetary benefits legally consequential upon the setting aside of the dismissal, after giving due adjustment for amounts, if any, already paid to the petitioner for the corresponding period. The competent authority shall undertake the necessary calculation strictly in accordance with law.

189. The entire exercise of restoration of service, correction of service records, determination of consequential benefits and payment of admissible monetary benefits shall be completed within a period of three months from the date on which a certified copy of this order is produced before the competent authority.

190. This Court makes it clear that the relief granted to the petitioner is not founded upon sympathy or upon this Court substituting its own assessment of the evidence for that of the disciplinary authority. The relief follows from the categorical findings recorded herein that the disciplinary proceedings suffered from violation of principles of natural justice, denial of effective opportunity of defence, reliance upon an unestablished foundational fact, insufficiency of

the evidentiary nexus connecting the petitioner with the alleged misconduct, and failure of the Disciplinary and Appellate Authorities to properly apply their minds to the petitioner's objections.

191. The judgments relied upon by the respondent-Bank laying down the principle of restraint in matters of disciplinary punishment shall not alter the aforesaid conclusion, as those authorities operate in the context of disciplinary proceedings where the misconduct has been established through a legally sustainable process. They cannot be read as laying down a proposition that a finding based upon no reliable evidence or reached in breach of natural justice is immune from judicial review.

192. On the other hand, the principles emerging from the judgments relied upon by learned counsel for the petitioner concerning reasonable opportunity, supply and proof of relevant documents, evidentiary value, burden of proof, natural justice and application of mind are attracted to the facts of the present case. Those principles, when applied to the material before this Court, compel the conclusion that the impugned disciplinary action cannot be sustained.

193. The writ petition is, accordingly, allowed in the aforesaid terms. All consequential benefits shall follow in accordance with law.

194. There shall be no order as to costs.

(Irshad Ali,J.)

September 18, 2026

Adarsh K Singh