

**2023 LiveLaw (SC) 719 : 2023 INSC 766**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
J.K. MAHESHWARI; J., K.V. VISWANATHAN; J.  
CIVIL APPEAL NO. 11196 OF 2011; August 24, 2023  
State Bank of India *versus* A.G.D. Reddy**

**Service Law - In a disciplinary proceeding, the question of burden of proof would depend upon the nature of the charge and the nature of the explanation put forward by the employee. In a given case, the burden may be shifted to the employee depending upon the explanation. (Para 23)**

**Service Law - Scope of judicial review against a departmental enquiry proceeding is very limited. It is not in the nature of an appeal and a review on merits of the decision is not permissible. The scope of the enquiry is to examine whether the decision-making process is legitimate and to ensure that the findings are not bereft of any evidence. If the records reveal that the findings are based on some evidence, it is not the function of the court in a judicial review to re-appreciate the same and arrive at an independent finding on the evidence. (Para 36)**

**Service Law - If in a disciplinary proceeding, the order of penalty can be imposed on the charges proved and the punishment imposed is lawfully sustainable on those charges, it is not for the Court to consider whether those grounds alone would have weighed with the authority in imposing the punishment. Unless punishment imposed is only co-relatable to any of those charges found not proved, the penalty cannot be set aside. (Para 39)**

**Service Law - The penalty imposed in this case is “reduction in basic pay to the lowest stage in Scale-I” as envisaged under Rule 49 (e) of the State Bank of India (Supervising Staff) Service Rules and further, to treat the period spent by the delinquent officer under suspension from 18.08.1990 till the date of his reinstatement as suspension only. Since the charge of not conducting periodical inspection and the failure to complete the formalities for creating equitable mortgage are supported by evidence, we do not think that the penalty as imposed is disproportionate so as to shock the conscience of the Court. (Para 40)**

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*For Respondent(s) Mr. Tarun Kumar Thakur, Adv. Mr. D. P. Chaturvedi, Adv. Ms. Parvati Bhat, Adv. Ms. Anuradha Mutatkar, AOR*

**J U D G M E N T**

**K.V. Viswanathan, J.**

**1.** The present appeal by the State Bank of India (for short “the Bank”), calls in question the correctness of the judgment of the Division Bench of the High Court of Karnataka at Bangalore dated 20.10.2010 in Writ Appeal No. 8085 of 2003. By the said judgment, the Division Bench had dismissed the Appeal of the Bank and confirmed the judgment and order of the learned Single Judge dated 12.11.2003. The learned Single Judge had allowed the Writ Petition No. 29547 of 1997 filed by the respondent and quashed the order passed by the Appointing Authority and granted consequential benefits to the respondent. The Appointing Authority had, by its order of 31.01.1995, imposed a punishment of

“reduction in basic pay to the lowest stage in Scale-I” as envisaged under Rule 49 (e) of the State Bank of India (Supervising Staff) Service Rules and further, has treated the period spent by the delinquent officer under suspension from 18.08.1990 till the date of his reinstatement as suspension only.

2. Being aggrieved, the Bank has filed the present Appeal. Shri Sanjay Kapur, learned counsel for the Bank, contends that the courts below have transgressed the limits of Judicial Review. According to the learned counsel, the courts below have erred in characterizing the orders of the Disciplinary authorities as perverse.

3. On the contrary, the respondent represented by Shri S.N. Bhat, learned Senior Counsel, vehemently defends the orders impugned. Learned Senior Counsel contends that the present was a case of “no evidence” and the enquiry officer without any evidence on record and based only on his personal purported knowledge has recorded the findings of guilt. Learned Senior Counsel further contends that the courts below have rightly set aside the order of the Disciplinary Authorities and that the case did not call for any interference.

### **Relevant Facts**

4. The facts, insofar as they are necessary for the adjudication of this Appeal, are set out hereinbelow:

a) Disciplinary proceedings were initiated against the respondent for certain acts of misconduct allegedly committed by him when he was working as Field Officer of the Mahadevapura Branch of the Bank. Broadly stated, the charges in the Charge Sheet dated 13.02.1992 were:

i) That he recommended and obtained sanction from the Branch Manager, credit limits to various units as detailed therein and permitted excess drawings on an on-going basis; that he did not report to the controlling office the excess drawings permitted; that he did not conduct periodical inspections as per the extant instructions; that loan sanctions were given and credit limit extended to entities operating in the premises of another entity;

ii) That credit limit was recommended and sanction obtained for M/s Saraswathi Fabricators even though the unit was located away from the area of operation; sanction of the advance was not reported to the Controlling Office; and formalities for creating equitable mortgage over immovable property offered as collateral security were not completed;

iii) That the respondent recommended and obtained sanction of advance to M/s ACE Photo Reprographers and M/s Sangeetha Refreshments both from Shivajinagar, even though the units were non-existent and the particulars furnished were fictitious as another firm M/s All Arts Company was operating from the same premises; that the sanction of these advances were not reported to the controlling office and periodical inspection of the units were not conducted.

iv) That the respondent had recommended and obtained sanction on 20.05.1987 cash credit limit to M/s. Rajeswari Enterprises and the respondent did not submit control return; that periodical inspections were not carried out and formalities for creation of equitable mortgage over immovable property stipulated as pre-condition for sanction of limit were not completed. Certain other charges set out, which are not directly relevant for the adjudication of the Appeal, have not been highlighted hereinabove.

v) It was alleged in the charge memo that by the acts committed, the respondent failed to comply with the extant instructions with regard to sanction and follow-up of advances and failed to take all possible steps to ensure and protect the interest of the Bank and did not discharge his duties with utmost diligence and integrity and thereby violated the service rules.

b) As part of the charge, it was further alleged that he purchased agricultural land in October 1987 ad-measuring 21.36 acres and got it registered in his name for a nominal amount, using the influence of one Shri Ramamurthy of M/s Bindu Enterprises who are enjoying credit facilities with the branch and he failed to declare to the Bank the purchase of immovable property as per the extant instructions. It was alleged that by the above acts, he placed himself under pecuniary obligations to the party.

c) The statement of imputations were also furnished.

### **Findings of the Enquiry Officer**

5) The respondent filed his detailed reply denying the allegations. An Enquiry Officer was appointed. Before the Enquiry Officer, the Bank examined seven witnesses and marked twenty four documents. The delinquent employee did not examine any witness but had produced thirty documents. The Enquiry Officer, after completion of the enquiry proceedings, analyzed all the oral and documentary evidence and found the respondent guilty for some of the charges levelled and absolved the respondent with regard to a few other charges. The presenting Officer did not pursue the following charges contained in the chargesheet.

“(a) Recommendation of the loan by charged official in respect of M/s. Fotografiks.

(b) Charge vii (b) - The unit had borrowing from Central Bank of India, Avenue Road, Bangalore.

(c) Charge II - The influence of Shri Ramamurthy of M/s. Bindu Enterprises towards purchase and registration of 21.36 acres of lands.”

The following charges were held not proved:

I. Charge No. (ii) (a) pertaining to M/s. Farooq Tanning Control forms in respect of these units were submitted.

II. Non reporting of excess drawings permitted in the case of M/s Fotografiks.

III. M/s Ace Photo Reprographers

The charge that the unit is not functioning is not proved.”

The remaining charges were held proved.

6) With these findings, the Enquiry Officer submitted his report dated 23.08.1993 and the records of the enquiry to the Disciplinary Authority. The Disciplinary Authority issued a second show cause notice along with the copy of the Enquiry report to which the respondent filed a detailed reply. Thereafter, the Disciplinary Authority also issued a notice dated 04.10.1993 setting out the points of disagreement with regard to the Enquiry Officer's findings to which again the respondent furnished a reply.

### **Findings of the Disciplinary Authority and Imposition of Penalty**

7) The Disciplinary Authority, by his order of 28.12.1994, elaborately considered the matter. He agreed with all the findings of the enquiry officer and even on the aspects where

the enquiry officer held that the charges were not proved, the disciplinary proceeding differed with the enquiry officer on some of those aspects and held the charges to be proved. For example, in the case of a unit - ACE Foto Reprographers not functioning in the premises, while the enquiry officer held the charge not proved, the Disciplinary Authority held the charge to be proved.

8) These aspects need not detain the Court any further. As it will be clear from the discussion below, ultimately the charges with regard to not conducting periodical inspections of the units mentioned in the charge and the non-completion of the formalities for creating equitable mortgage over immovable property offered as collateral security, in the case of M/s Saraswathi Fabricators are the primary aspects that has engaged the attention of this Court. As will be clear from the discussion in the later part of this judgment, it is those two charges which have ultimately been found to be proved that have been elaborated herein below.

9. Pursuant to the above, the Appointing Authority passed an order on 31.01.1995 imposing the penalty of "reduction in basic pay to the lowest stage in Scale-I" as provided under Rule No. 49(e) of the State Bank of India (Supervising Staff) Service Rules and further to treat the period under suspension from 18.08.1990 till the order of his reinstatement as suspension only.

10. The Appellate Authority to whom the respondent approached confirmed the orders.

11. Challenging the order of the Disciplinary Authorities and the Appellate Authority, the petitioner moved a writ petition, which has now resulted in the orders of the learned Single Judge and that of the Division Bench.

12. The learned Single Judge classified the common heads under Charge I as was also done by the Enquiry Officer as being

- i) Conduct of periodical inspection;
- ii) Non-submission of control forms; and
- iii) Area of operation

13. We will deal with the first limb, after we consider the second and third limbs, for the sake of convenience.

#### **Charge regarding non-submission of control forms and area of operation**

14. On the aspect of non-submission of the control forms, the learned Single Judge records that the burden was wrongly shifted on the respondent when the Enquiry Officer held that the delinquent had not proved the submission of the control forms. The learned Single Judge held that when the respondent denied the charge, the onus was on the Disciplinary Authority to prove the charge alleged against the delinquent employee by producing relevant material and the material must be such that it amounts to proving the guilt of the employee in respect of the charge against him with some degree of definiteness.

15. We have perused the Enquiry Report on this issue and we are satisfied that the learned Single Judge is right on this score. The following findings in the Enquiry Report fortify that conclusion: -

"However, in respect of other units listed in the charge sheet regarding non-submission of control form the charges are proved. Although, it is likely that the Bank's files may be missing due to shifting of the branch, no attempt has been made by the defence to bring the control forms from

the controlling authority. It only clearly indicates that the control forms have not been submitted. This is a failure on the part of the charged official.”

**16.** Equally with regard to the third limb, namely, transgression of the area of operation, the learned Single Judge rightly found that in a number of instances loans had been sanctioned outside the area of operation and, as such, it could not be held that there was any transgression by the delinquent respondent. This view is independently fortified when we peruse the Enquiry Report.

**17.** In the preliminary paragraphs under the head “Area of operation”, while dealing with the relative instructions of the Bank, the following is set out:

“ii) Where there are clusters of eligible units, whether SSI or Small business, situated outside the respective operational area, assistance could be rendered to them, provided the place is accessible throughout the year and is connected by the public transport. Even in such cases, the location of units should not be far beyond the operational area and the number of units should reasonably large. (sic.) Recommendations in this regard should be first got approved from the controlling authority.

iii) Lending to SSI and small business units could also be affected in adopted villages with the prior approval of the controlling authority.

iv) Care, should however, be taken that the flexible approach does not lead to scattered lending. Approach should preferably be financing of clusters of units/growth centres.”

Nowhere in the Enquiry Report or in the evidence had it been brought out that any of these above conditions in the excepted categories were breached.

### **Charge regarding conduct of periodical inspections**

**18.** However, we find that the learned Single Judge and the Division Bench, which confirmed the order of the learned Single Judge, erred in recording the following finding with regard to the first limb, namely, about the respondent not conducting the periodical inspections as required under the extant instructions:-

“In so far as the first component of the charge is concerned, it can safely be said that none of the witnesses examined by the Bank before the enquiry officer have spoken about the truth or otherwise of the allegations made in the charge memo. However, the enquiry officer in his lengthy report based on his personal knowledge about the instructions and guidelines issued by the Head Office of the bank for conduct of inspection by Field Officers of the bank, observes that it is the duty of the Field Officer, to conduct periodical inspection and maintain proper records of those inspections. To arrive at the conclusion that the delinquent officer is guilty of this charge, he merely states in his report that Sri Krishna Murthy Urala - PW 4 has deposed that the charged official has not conducted any periodical inspection. This conclusion of the enquiry officer is based on the mis-reading of the evidence of PW-4 by the enquiry officer. In fact, PW 4 in his lengthy deposition before the enquiry officer has stated that the periodical inspections of units were carried out by the petitioner sometimes independently and some time with the Branch Manager and the relevant records were not available at the Branch. It has also come in the evidence that the Branch was shifted to new building some time in the year 1989 and during shifting, books used for recording of the inspection of units might have been misplaced and they are bit traceable. So, in my opinion picking out one stray sentence here and there in the deposition of P.W. 4 and importing his personal knowledge about the so called instructions and guidelines issued by the Bank, in my view, the enquiry officer could not have come to the conclusion that the Petitioner failed to conduct periodical inspection and therefore that part of the charge in the charge memo is proved against him.”



19. To satisfy ourselves on this aspect, we examined the enquiry report. The rationale for the inspection is set out in the preliminary portion of the report. It is stated as follows:-

“Follow up and supervision for term loans:

Term lending particularly to small scale units, is subject to various risks due to the long period of loan and the fact that the small scale units being financially vulnerably are likely to be affected by even minor adverse changes in their fortunes, where mortgage of immovable properties are obtained, we are in a relatively better position although the process of realization in the event of default may prove to be cumbrous. Where, however, the security comprises machinery in leased, rented premises, the risks are much greater; movable machinery, particularly, being liable to felonious removal. Further, the tenancy in rented premises may sought to be terminated by the owner although the law generally protects the tenancy against unfair ejection.

Having regard to the foregoing consideration, it is needles to add the proper selection of clients is one matter to which considerable thought should be given. The only means of forestalling and avoiding possible loss would lie in the vigilant follow up of loans after they have been granted.”

Thereafter, some guidelines have been set out. Dealing with the charge, the Enquiry Officer records the following:-

“From the above instructions it may be observed that it is the duty of Field Officer to conduct periodical inspection and maintain proper records of those inspections.

The defence merely contested the charge on the plea that inspection register has not been produced for evidence. The I is not only supposed to maintain the inspection register but also report the observations made by his (sic.) during the inspection by means of separate report. None of such reports have been produced by the defence to prove that inspections have been conducted by him.

In this connection it is pertinent to bring the following instructions of the Bank in regard to report to be submitted by the field Officer.

Accounts with borrowings of Rs.2 lacs and over should be followed up by I on the basis of a proforma marked follow up form for I (STF6). The objective underlying the form is to relate outstanding to the activity level on a continuing basis i.e. every month, and to relate the activity level to earlier projections (as indicated in the scheme or estimates based on past performance). A systematic follow-up through this form will reveal any tendency towards irregularity in an account and the probable reasons if any irregularity does occur. In either case, the situation is brought to the attention of the Manager SIB or BM, who even otherwise will be expected to check these statements every month. The abnormalities indication (sic.) in item 6 of the Notes on Form SIF 6 are illustrative. There could be other abnormalities which could be inferred on the basis of this form. Sri Krishnamurthy Urala - PW4 deposed on page 10,11 of the proceedings that the charged official has not conducted any periodical inspection.

This deposition clearly proves the above charge.

Accordingly, I conclude that the charges levelled against him regarding conduct of periodical inspection has been amply proved.”

(In the summary of findings ‘I’ is recorded as indicating the Field Officer) No doubt, the report records that no such report has been produced by the defence to prove that the “inspections have been conducted by him”. To satisfy ourselves, whether the onus has been wrongly shifted on the employee, we perused the evidence of PW-4 Krishnamurthy Urala to whose deposition, copious references were made both by Mr. Sanjay Kapur, learned Counsel and Mr. S.N. Bhat, learned Senior Counsel.

**20.** In the charge memo, the respondent was specifically charged that the respondent had recommended and obtained sanction from the Branch Manager, credit limits to various units as detailed therein and permitted excess drawings on an on-going basis and the respondent did not report to the controlling office the excess drawings and did not conduct periodical inspections as per the extant instructions. A number of units were mentioned in the charge memo to substantiate the allegation that periodical inspections, as per the extant instructions, were not conducted on them. The following have emerged in the deposition of PW-4 - Shri Krishnamurthy Urala recorded on 17.02.1993:

“PO: Mr. Urala do you by chance know who was the field officer handling this unit between June 86 to 1988.

PW4: Yes. It is Mr. AGD Reddy.

.....

PW4: What is the procedure for conducting inspections to units as per laid down instructions.

PO: The laid down instruction is the unit has to be inspected normally once in a month by FO along with the stock statements to verify whether the disbursal of the funds from the a/cs has been properly utilized.

The field officer should carry branch inspection book to the units and write the observations thereon, and also he has to make the observations in the inspection book kept at the unit.”

.....

PO: Were the inspections conducted for these units.

PW4: No.”

Deposition of PW-4 recorded in the enquiry on 03.03.1993:

“DR: You said certain units have not been inspected by your predecessors. Can you tell us the basis for this allegation.

PW 4: No proper records were maintained.

DR: Did you trace/see the inspection cards relating to the period of 1988, 87 & back.

PW4: Yes.

DR: A submission to EO: We have been told by the branch that the inspection records related to 88,87 & back are not available. Kindly direct the prosecution to make available copies of the records for the defence purpose.

EO: DR to specifically mention the inspection registers in r/o which units you require to enable EO to examine your request.

DR: Inspection cards in r/o units mentioned in the charge sheet.

EO: PO may examine the request of DR and if possible records, if available may be given.

Otherwise a report may be given to EO.”

**21.** It transpires that there was a direction to produce the inspection records relating to units mentioned in the chargesheet. The following is found in the transcript in the enquiry proceeding (dated 04.05.1993):-

“PO: I was requested by DR in the previous sitting to produce two documents viz. Inspection register for the relevant period and list of machinery in r/o M/s. Bindu Enterprises. I am submitting the inspection register & also a list of machineries as requested for perusal of EO & DR.

DR: We will respond after going through the said documents.” (emphasis supplied)

### **Onus of proof**

22. Having considered the above, we are constrained to conclude that the charge of the Bank, that the inspection was not carried, stood established. Then it was for the respondent to show, as undertaken by him, what his response to the allegation was.

23. It is well settled that, in a disciplinary proceeding, the question of burden of proof would depend upon the nature of the charge and the nature of the explanation put forward by the respondent. In a given case, the burden may be shifted to the respondent depending upon the explanation. [See **Orissa Mining Corporation and Another vs. Ananda Chandra Prusty**, (1996) 11 SCC 600, Para 6].

24. Here the specific charge was with regard to a series of named units, periodical inspections were not carried out. To support the charge, witnesses were examined and on the request through his defence representative, the Enquiry Officer has directed the presenting officer to produce the inspection records. The Enquiry Officer specifically asked the defence representative to mention the inspection registers in respect of the units which are required. The defence representative specifically makes a request for the inspection records in respect of the units mentioned in the charge sheet. The Enquiry Officer directs the presenting officer to examine the request and records, if available, be given. Thereafter, it has come on record that the Presenting Officer produced the inspection register for the relevant period for perusal of the Enquiry Officer and the defence representative. On this, the defence representative stated that they would respond, after going through the documents. In the written submissions filed, a grievance is raised that the records pertaining to inspection were produced at the fag end of the enquiry. We are not impressed with the submission since, it was after the production of the inspection register that the defence representative of the respondent had stated, that they will respond after going through the said documents. No response was forthcoming. Neither from the records nor at the hearing has it been demonstrated as to how the charge of failure to conduct the inspection was countered by the respondent. The records sought being made available, the onus did shift to the respondent to show that the charge was untenable.

25. In view of the above, clearly with regard to the first limb of the first charge, namely, the failure to conduct periodical inspection, it cannot be said that the finding of the Enquiry Officer is on a mis-reading of the evidence or that the records of the inspection of units were part of the records that could be possibly misplaced or that a finding was based on some stray sentence and personal knowledge was imported by the Enquiry Officer *de hors* the record.

### **Charge regarding formalities for creation of equitable mortgage**

26. There is one other aspect which has completely escaped the attention of the learned Single Judge and consequently the Division Bench. One of the charges dealt with by the Enquiry Officer was about not securing the advance to M/s Saraswathi Fabricators by creation of an equitable mortgage even though the equitable mortgage of immovable property was offered by the party. The following findings were recorded by the Enquiry Officer: -

“On page 12 para 7.2 of PEX 9, the borrower has offered equitable mortgage of building at No. 458, Viveknagar, Bangalore, a site measuring 1500 sq. ft. and built in area of 700 sq. ft. belonging to Sri K. V. Srinivasan valued at Rs. 4.5 lacs. The CO by his negligence has not stipulated this in his recommendations to the BM. In the process the advance could not be collaterally secured by



non-creation of equitable mortgage. Hence the charge that equitable mortgage has not been created is proved.”

**27.** To satisfy ourselves, we examined the record of the enquiry proceedings on this issue. In the deposition of PW-4, recorded in the enquiry proceeding on 17.02.1993, the following is found:-

“PO: Looking to PEX page 12 item 7.2 of PEX 9 please tell us the collateral security offered by the unit.

PW4: .... security is a site measuring 1,500 sq. ft. & bldg. area of 700 sq. ft. belonging to Sri KV Srinivasan at Vivek Nagar, Bangalore valued at Rs.4.5 lacs.

PO: Was the formality completed at the time of sanctioning of this loan.

PW4: No.”

Deposition of PW-4 recorded on 03.03.1993:-

“DR: Who puts the stipulations in sanctioning of a loan? At the branch level?

PW4: Field Officer in consultation with the Br. Manager.

DR: Can the Br. manager as sanctioning authority waive any stipulation?

PW4: Depends on the circumstances.

.... ..

DR: Showing PEX9 from pg. 1 to 12 constitute the application. Do you agree?

PW4: It is application cum interview form.

DR: From pg. 13 to 19 forms appraisal memorandum.

PW4: Yes.

DR: The application contains the offers of the applicant and the appraisal contains the conditions of sanction by the sanctioning authority. Do you agree?

PW4: The application cum interview form is containing information regarding the prospective borrower. Based on the information the FO in consultation with BM has to fix the credit limits and stipulations in the appraisal memorandum.

DR: On page 12 para 7. 2 though there is an offer, on pg. 18 para 9.2 there is no stipulation to the effect that the offer of the applicant should be taken as collateral security. Do you see?

PW4: I do not know.

DR: On pg.12 para 7.2 there is a mention of equitable mortgage of certain properties. Do you see?

PW4: Yes.

DR: On pg.18 para 9.2 under the stipulation the stipulation column is vacant. Do you see?

PW4: Yes.

DR: The taking of equitable mortgage of certain securities is not a condition stipulated by the sanctioning authorities i.e. BM at branch level in r/o PEX9, pg. 18, para 9.2 'stipulations'.

PW4: Yes,

DR: Hence the question of completion of the formalities of non-existent stipulation does not arise. Do you see?

PW4: I do not know.”

28. What is significant to note is PEX 9 pertains to the application for working capital in respect of M/s Saraswathi Fabricators together with the appraisal memorandum. It is clear from the deposition that the applicant for the loan had offered collateral security in the form of land and building and that the formality of collateral security was not taken. It is further borne out that it is the Field Officer in consultation with the Branch Manager who has to fix the credit limit and the stipulations. It appears from the records that no stipulation was put with regard to equitable mortgage so mentioned with regard to M/s Saraswathi Fabricators, even though the party had offered equitable collateral security in the form of immovable property.

29. The explanation of the respondent is only that there was no stipulation in the sanction order with regard to the taking of collateral security. The charge is that, with regard to M/s Saraswathi Fabricators, the formalities for creating equitable mortgage over immovable property offered as collateral security were not completed. The evidence of PW-4 is that the stipulation for collateral security is so made by the Field Officer in consultation with the Branch Manager.

30. In the light of the above, the finding of the Enquiry Officer that the respondent, by his negligence, did not stipulate this in his recommendation to the Branch Manager and, as such, the advance could not be collaterally secured by creation of equitable mortgage cannot be said to be perverse or based on no evidence.

31. The answer given by the respondent in the writ petition that personal guarantee was available; that the sanction did not contain any condition regarding equitable mortgage of the property; that documents of title were traced only in September, 1988 after he left the Branch in June, 1988; that as required by the successor of the respondent and the then Branch Manager, the respondent had identified the documents and suggested that they complete the work connected with the creation of equitable mortgage, are not matters on which the view of the Disciplinary Authority can be substituted. In the written submissions filed, the respondent claims that, after the papers were traced, the mortgage was, in fact, effected. Even this would not make any difference to the charges and the findings recorded, which themselves were based on the evidence on record.

### **Scope of judicial review in disciplinary proceedings**

32. From the above discussion, it is clear that it could not be said that the Enquiry Report, the findings of the Disciplinary Authority and the order of the Appointing Authority are based on no evidence or are perverse. Even if we eschew the report insofar as the aspect of non-submission of control form, the transgression of the area of operation and non-declaration of the immovable property and certain other charges are concerned, the order of penalty can be sustained.

33. As has been demonstrated above, the aspects of failure to conduct periodic inspection and the negligence in not stipulating the taking of immovable property as collateral security in the case of M/s Saraswathi Fabricators in spite of the party offering it, constrain us to conclude that there was material on record for the appellant to pass the order of penalty.

34. Mr. S.N. Bhat, learned Senior Counsel, relying upon the judgments of this Court in **Nand Kishore Prasad vs. State of Bihar and Others**, (1978) 3 SCC 366 and **Anil Kumar vs. Presiding Officer and Others**, (1985) 3 SCC 378 contends that the Disciplinary Authority should arrive at its conclusion on the basis of some evidence with some degree

of definiteness pointing to the guilt of the delinquent in respect of the charge against him. He would contend that a suspicion cannot be allowed to take the place of proof and scrupulous care must be taken to see that the innocent are not punished by recording findings merely based on *ipse dixit* of the Enquiry Officer. We are unable to accept the contention that the principles laid down in the above judgments are attracted to the present case. The judgments cited are clearly distinguishable, for the reasons that we have set out hereinabove, while analyzing the facts of the present case.

**35.** Shri Sanjay Kapur, learned counsel for the Bank relies on **State Bank of India vs. Ram Lal Bhaskar and Another**, (2011) 10 SCC 249. In that judgment the scope of judicial review of departmental proceedings was set out and the principle laid down in **State of A.P. vs. S. Sree Rama Rao**, AIR 1963 SC 1723, was reiterated, which reads as follows:-

"This Court has held in State of A.P. and Others v. S. Sree Rama Rao (AIR 1963 SC 1723, para 7):

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has reappreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct."

**36.** It is now well settled that the scope of judicial review against a departmental enquiry proceeding is very limited. It is not in the nature of an appeal and a review on merits of the decision is not permissible. The scope of the enquiry is to examine whether the decision-making process is legitimate and to ensure that the findings are not bereft of any evidence. If the records reveal that the findings are based on some evidence, it is not the function of the court in a judicial review to re-appreciate the same and arrive at an independent finding on the evidence. This *lakshman rekha* has been recognized and reiterated in a long line of judgments of this Court.

**37.** In the present case, it could certainly not be said that the report is based on no evidence or that it is perverse. The learned Single Judge transgressed the limits of judicial review in setting aside the enquiry proceedings and the punishment imposed. The Division Bench, in a short order has, after extracting a part of the learned Single Judge's judgment, gone on to hold that having perused the records of the enquiry they do not find that the charges have been dealt with in any manner of specificity. Thereafter they conclude that the learned Single Judge was justified in arriving at its conclusion. We are not able to sustain the orders of the learned Single Judge and the Division Bench.

### **Severability of charges**

38. The question that remains is, in the light of the findings above, does the order of penalty imposed call for any interference?

39. The law is well-settled that if in a disciplinary proceeding, the order of penalty can be imposed on the charges proved and the punishment imposed is lawfully sustainable on those charges, it is not for the Court to consider whether those grounds alone would have weighed with the authority in imposing the punishment. No doubt, on the facts of the present case, on some aspects of the charge, the proof may have been found wanting. However, since the law laid down by this Court is that unless punishment imposed is only co-relatable to any of those charges found not proved, the penalty cannot be set aside. In this case, the punishment can be sustained even if the charges held not proved are severed. [See **State of Orissa vs. Bidyabhushan Mohapatra** [1963] Supp. 1 SCR 648 and **Deputy General Manager (Appellate Authority) and Others. vs. Ajai Kumar Srivastava**, (2021) 2 SCC 612].

40. Then the only question is does the penalty imposed shock the conscience of the Court? In the oral arguments as well as in the written submissions, the respondent contended that there was no charge of financial misappropriation or of causing any financial loss to the Bank. This submission was countered by the appellant by placing reliance on the judgment of this Court in **Disciplinary Authority-cumRegional Manager and Others vs. Nikunja Bihari Patnaik**, (1996) 9 SCC 69, particularly, the holding of the Court in para seven thereof to contend that the test is really not of loss having been resulted or profit having been made. The test is whether the delinquent employee, has observed the prescribed norms of the Bank. The penalty imposed in this case is “*reduction in basic pay to the lowest stage in Scale-I*” as envisaged under Rule 49 (e) of the State Bank of India (Supervising Staff) Service Rules and further, to treat the period spent by the delinquent officer under suspension from 18.08.1990 till the date of his reinstatement as suspension only. Since the charge of not conducting periodical inspection and the failure to complete the formalities for creating equitable mortgage with regard to M/s Saraswathi Fabricators are supported by evidence, we do not think that the penalty as imposed is disproportionate so as to shock the conscience of the Court. We maintain the penalty as imposed in the order of the Appointing Authority dated 31.01.1995 and as confirmed by the Appellate Authority.

41. For the reasons stated above, we have no hesitation in holding that both the learned Single Judge and the Division Bench were in error in allowing the writ petition and interfering with the findings of the Enquiry Officer, the decision of the Disciplinary Authority, the order of the Appointing Authority and the decision of the Appellate Authority. We, therefore, set aside the order of the learned Single Judge and that of the Division Bench and dismiss the Writ Petition No. 29547 of 1997 filed by the respondent.

Accordingly, the Appeal is allowed, with no order as to costs.