IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE Shekhar B. Saraf

WPA 5066 of 2020

With

CAN 1 of 2021

SRI UTTAM KUMAR DAS

VERSUS

BANGIYA GRAMIN VIKASH BANK & ORS.

For the Petitioner: Mr. Aninda Lahiri
Mr. Prasad Bagchi

For the Respondents: Md. Mokaram Hossain

Last Heard On: August 31, 2023

Judgement On: September 12, 2023

Shekhar B. Saraf, J.:

1. The petitioner was appointed as an Officer [Junior Management Grade (Scale-I)] at Raniganj Branch on February 8th, 2014, of the respondent bank being Bangiya Gramin Vikash Bank (hereafter referred to as respondent). Before his demotion which resulted from a punishment order dated October 1st, 2018, (hereinafter referred to as 'punishment

order') in connection to a charge sheet dated August 30th, 2016, he was working in the capacity of a Branch Manager. The current writ petition has been filed seeking to quash charge sheet dated August 30th, 2016, the enquiry report dated May 28th, 2018, (hereinafter referred to as 'enquiry report'), the punishment order dated October 1st, 2018, and the order passed by the Appellate Authority dated November 1st, 2019, where the petitioner was found guilty of misconduct and his pay scale was reduced accordingly; and to instruct the respondent to fix the pay scale according to Circular No. BGVB/HO/P&A/48/2015 dated August 29th, 2015.

2. In a letter dated July 14th, 2016, the bank alleged that the petitioner had refinanced certain accounts which were beyond his authority. Regarding loans given under The Prime Minister Employment Generation Programme scheme (hereinafter referred to as "PMEGP"), the respondent accused the petitioner of failing to ensure the end use of such accounts, resulting in such loans accounts becoming irregular and causing loss to the bank. The petitioner was directed to submit his written explanation which he did vide an undated letter.

3. In the letter, the petitioner stated that there were certain overdue loans that were affecting the NPA figures of the branch. With the little experience he had as a bank clerk, he believed he could reduce the NPA figures of the branch by contacting the loanee members with a compromise. However, many did not accede to his proposal and wished

to continue with their loans. Thus, the petitioner suggested that if the loanees paid off their loans in full, they would be issued new loans that would satisfy the purposes of their business. Some members agreed to this proposal. He argued there was no mala fide intention and he carried out this task with full cooperation of a second officer. He also argued that one of the impugned loans was sanctioned by the predecessor of his position and all the other loans were sanctioned with the discretionary powers given to a Scale-I Branch Manager. Regarding the loans given under the PMGEP scheme, he confessed that there was a lot of pressure from local management and government officials to sanction such loans. Thus, he disbursed the initial portion of the composite loan and subsequently on the recommendation of a second officer, cash credit loans were given. The petitioner highlighted that he did not extend cash credit loans in three of the accounts as the second officer did not recommend it. He further argued that he was unable to ensure the end use of such accounts as he was severely injured from a motor bike accident on July 8th, 2015, and was bed ridden for three months.

4. On August 30th, 2016, the respondent issued a charge sheet where they alleged that they had received no reply and accordingly proceeded with disciplinary proceedings. The petitioner was accused of acting in contravention of Regulations 18 & 20 of Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 read with (Amendment) 2013 and the following charges were i) ARTICLE-I

Sanctioning/Re-financing and disbursing of loans violating Rules, Norms and Lending Recovery Policy of the Bank; ii) ARTICLE-II Committing acts detrimental to the interest of the Bank; iii) ARTICLE-III Lead to loss to the Bank; iv) ARTICLE IV Undue favour to PMEGP Borrowers and v) ARTICLE V- Committing breach of trust. Furthermore, they accused him of influencing the second officer of the branch to obtain his signature, considering the second officer was a novice and lacked skills.

5. The petitioner replied to the charge sheet vide letter dated September 23rd, 2016, where he submitted that he received the letter of explanation dated July 14th, 2016 on August 2nd, 2016, and his reply has been received by the respondents on August 6th, 2016. He also submitted that he received the charge sheet dated 30th August 2016 on 5th September 2016 and has prayed for extension of time accordingly. He argued that there is only a difference of 4 months and 7 days in seniority between the second officer and him in terms of experience thus it was improper to adjudge him as experienced and the second officer as a novice. He further argued that the loans he had sanctioned were not guided by the Lending Policy of the bank for the Financial Year 2014-2015. He further argued that the Lending Policy stated that existing non-performing borrowers shall not be allowed any fresh exposure, however, the borrowers he has refinanced had re paid their loans before any fresh exposure was made. With regards to the loans given under the PMEGP scheme; he argued that the branch had little to

do with the selection process of prospective borrowers and selection was done by a District Level Task Force Committee. Out of the contended loans, one was sanctioned by the regional manager and the rest were sanctioned by him on the support of the concerned Government Agency. Steps were taken to track how the loans were being utilized and accordingly the residual portion of the loan was released. In cases of derelict or defiant cases, the loans were stopped. Regarding giving undue favour to the borrowers under the scheme, he argued that linking subsidy with the loan account gives no undue favour as the fund is locked for three years. Furthermore, considering the task of physically verifying such borrowers is done by the Government Agency and as he received no negative report of such borrowers, he did not hesitate in linking such borrowers to the subsidy.

6. The respondent vide letter dated September 23rd, 2016, stated that they have not received a written statement of defence and thus they shall hold a departmental enquiry against him in respect of the charges levelled against him. The departmental hearings were held on November 17th, 2016, March 16th, 2017, September 4th, 2017, and September 5th, 2017; and the report was submitted on May 28th, 2018. The Enquiry Officer held that pertinent documents were placed that were sufficient to prove the charges against the petitioner and the petitioner could neither logically deny his lapses, nor cite any defence exhibits in his favour. It was held that the petitioner had committed misconduct by failing to discharge his duties sincerely and faithfully.

Regarding the loans approved under the PMEGP scheme, the General Manager, DIC, Malda found clear anomalies during their branch visit. Furthermore, such loans were disbursed without ensuring proper end use of bank finances and the Enquiry Officer rejected the contentions of the petitioner that such allegations were based on a manufactured certificate as the petitioner was unable to give valid reasons for such claims. Regarding the rest of the loans given outside the scheme; the Enquiry Officer held that the petitioner had chosen to give loans to defaulters whose integrity are not beyond doubt. However, regarding the allegations pertaining to the second officer, the Enquiry Officer held there was no evidence to show that the petitioner had influenced him to obtain his signature. On May 30th, 2018, the respondents sent the findings of the Enquiry Officer to the petitioner, asking for the written submission within 15 days.

7. The petitioner replied to the report of the Enquiry Officer vide letter dated June 30th, 2018, where he alleged that the Enquiry Officer was unable to prove the article of charges placed against him.

8. On October 1st, 2018, the respondents issued punishment order No. 10/2018 against the petitioner upholding the findings of the Enquiry Officer and imposing the penalty of Reduction of Basic Pay from the post of [Junior Management Grade (Scale-I)]. The petitioner appealed the punishment order vide letter dated November 18th, 2018, and the Appellate Authority vide a reasoned order dated November 1st, 2019,

upheld the punishment order. They held that in 11 cases there was an absence of due diligence in sanctioning and disbursing the loans by the petitioner and such loans were extended without appraising the essential parameters. Regarding the loans extended under the PMEGP scheme it was found that the Management Exhibitions relied on by the Presenting Officer was sufficient enough to prove the charges against him and that the petitioner aided fresh finances under the PMEGP scheme in a manner not recommended by bank's lending policy, principles and law-abiding practices.

Contentions

9. The petitioner contended that the charges levelled against him were committed by both the petitioner and the second officer in question, yet the second officer has been spared. According to Circular no. CREDIT/238/2009 dated September 22nd, 2009, the second officer shares duties in credit management and ensuring correct end use of the fund under sanction and by failing to consider the importance of the work performed by the second officer, the Enquiry Officer has failed to act fairly. The Enquiry Officer also overlooked the arguments made by the petitioner; and the Disciplinary Authority has acted in a mechanical manner by relying on the faulty findings of the Enquiry Officer. The Disciplinary Authority also failed to issue a second charge sheet before releasing the punishment order. The petitioner also argued that the nature of the punishment is not in conformity with the officer's

pay scale given in Circular No. BGVB/HO/P&A/48/2015 dated August 29th, 2015, as he has been affixed to a pay scale which is lower that the position he has been demoted to and it was enforced with immediate effect. By affixing this arbitrary punishment, the Disciplinary Authority has acted in a mechanical manner. With regards to the order passed by the Appellate Authority, the petitioner argued that the authority has failed to apply their mind to the order as they ignored the argument of the petitioner with regards to fixation of pay scale and reverted him to a wrong pay scale. Furthermore, the petitioners cited ***Council of the Institute of Chartered Accountants of India v. Somnath Basu*** reported in ***AIR 2007 Cal 29*** to hold that failure to rise to the expected level of efficiency in discharging professional duties cannot be regarded as misconduct and misconduct arises from ill-motive. Mere acts of negligence, innocent mistake or errors of judgement do not constitute misconduct.

10. The argument of the respondents is that the loans were granted and sanctioned without following procedures and rules. Despite having a history of old NPA and overdue loan accounts, the petitioner refinanced such loanees without appreciating certain essential parameters when refinancing such loans, thus violating guideline and rules of the lending policy of the bank. The respondents cited ***State Bank of India and Ors v. S.N Goyal*** reported in ***AIR 2008 SC 2594*** and argued that the position of a bank manager is a matter of great trust and any misappropriation, even temporary, constitutes a serious misconduct,

inviting serious punishment. The respondents further cited ***Ram Pratap Sonkar v. Chairman and Managing Director, Allahabad*** reported in ***(2001) 1 LLN 727*** where the Allahabad High Court relying on Supreme Court judgements held that the bank operated on public confidence and that even if no loss is proved, if misconduct is found then the punishment order is justified. Furthermore, he was given ample opportunity to present his case in his reply to the charge sheet, his reply to the enquiry report and the appeal to the order of the Disciplinary Authority. With regards to the punishment of reduced pay scale, the respondent argued that the post of Branch Manager is not a promotional post, and the petitioner cannot be promoted from Scale-I officer to Scale-II officer with less than 8 years of experience as a Scale-I officer. Thus, the petitioner was at a pay scale of a Scale-I officer and his pay scale has been reduced accordingly, and such reduction is in cognizance with Circular No. BGVB/HO/P&A/48/2015 dated August 29th, 2015. The respondents cited ***Apparel Export Promotion Council v. A.K Chopra*** reported in ***1999 (1) SCC 759*** where the Supreme Court held that it is a settled position of law that the Disciplinary Authority and the Appellate Authority are the sole judge of facts and unless there are certain circumstances, the High Court cannot interfere with the factual findings.

Analysis and Conclusion

11. The current petition is with regard to the charge sheet dated August 30th 2016, the enquiry report dated May 28th 2018, the punishment

order dated October 1st, 2018 and the order passed by the Appellate Authority dated November 1st, 2019 where the petitioner has alleged that relevant factors have not been considered, that is, the involvement of a second officer in sanctioning the loans had not been considered by the authorities when deciding the admission of guilt of the petitioner. He also alleged that a second charge sheet had not been released before releasing the punishment order. The petitioner also argued that the nature of the punishment is arbitrary as his pay has been reduced to a pay scale he never belonged to, and the punishment was enforced with immediate effect.

12. It is clear from a prima facie perusal of the issue that the petitioner has refinanced wilful defaulters and such loan disbursal is against the general policy of the bank, thus constituting misconduct. While the petitioner has questioned whether such accounts were actually NPA's and whether such accounts can be considered wilful defaulter under the bank lending policy, this Court is not inclined to peruse the matter as it does not have the jurisdiction to do so.

13. In ***Apparel Export Promotion Council (supra)***, the respondent had challenged his dismissal from service on the grounds of sexual harassment before the department could even release their order. While his appeal was allowed by the High Court of Delhi, the decision of the High Court was overruled by a Division Bench of the Supreme Court who instructed the department to finish their enquiry. The department

terminated the services of the respondent who then challenged his removal of service to the High Court of Delhi where the learned Single Judge once again allowed his appeal, however, ordered that he should be posted in any other office outside Delhi. The respondent appealed the judgement of the Single Judge Bench to the Division Bench of the High Court to claim back wages and appropriate posting. However, the previous employees of the respondent, agitated by his return to work filed an application seeking intervention in the then pending appeal. The Division Bench upheld the decision of the Single Judge Bench and dismissed the application of employees. The aggrieved employees filed a special leave petition to the Supreme Court where the appeal was allowed. The Supreme Court held the Disciplinary Authority, and the Appellate Authority are the sole judges of facts and unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable, the High Court cannot interfere with the factual findings. The relevant paragraphs are extracted and quoted below:

> "***16.*** *The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly*

perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141 HL] observed:

> *'The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.'*

17. *Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.*

18. *It is useful to note the following observations of this Court in Union of India v. Sardar Bahadur [(1972) 4 SCC 618]: (SCC p. 623, para 15)*

> *'Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court, exercising its jurisdiction under Article 226, to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.'"*

14. According to the law settled above, it is not within the purview of this Court to call for records and see whether their decision was correct or not. This Court shall not look into the Bank Lending Policy and the nature of the accounts in order to adjudicate whether the punishment was truly deserved or not. The only time the court can interfere is when the Bank acts in an arbitrary manner as discussed in ***Om Kumar v.***

Union of India reported in ***(2001) 2 SCC 386***. The relevant paragraphs have been reproduced below:

> *"**66**. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.*
>
> ***67**. But where an administrative action is challenged as 'arbitrary' under Article 14 on the basis of Royappa (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he had acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary……."*

15. To understand whether the Wednesbury Principle or the Principle of Proportionality should be invoked, one is required to refer to the Apex Court judgement in ***Anil Kumar Upadhyay v. The Director General, SSB and Others*** reported in ***2022 SCC OnLine SC 478.*** In this case two officers were charge sheeted with equal charges yet one was

removed from service and the other was given the penalty of forfeiture of two years seniority in the rank of constable and forfeiture of two years' service for the purpose of promotion. The appellant approached the court stating that given the facts of the case, his punishment was discriminatory and disproportionate. The court laid down the scope of judicial review in such cases that is delineated below:

> *"**22**. On the judicial review and interference of the courts in the matter of disciplinary proceedings and on the test of proportionality, few decisions of this Court are required to be referred to:*
>
> > *i) In the case of Om Kumar (supra), this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as 'Wednesbury principles'.*
> >
> > *In the Wednesbury case, [1948] 1 K.B. 223, it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.*
> >
> > *ii) In the case of B.C. Chaturvedi (supra), in paragraph 18, this Court observed and held as under:*

'18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.'

iii) In the case of Lucknow Kshetriya Gramin Bank (supra), in paragraph 19, it is observed and held as under:

'19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical, or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.'"

16. The court further held that a punishment cannot be held to be disproportionate merely on the grounds that another employee has been given a lesser punishment. The relevant paragraph is provided below:

*"**25**. Even otherwise, merely because one of the employees was inflicted with a lesser punishment cannot be a ground to hold the punishment imposed on another employee as disproportionate, if in case of another employee higher punishment is warranted and inflicted by the disciplinary authority after due application of mind. There cannot be any negative discrimination. The punishment/penalty to be imposed on a particular employee depends upon various factors, like the position of the employee in the department, role attributed to him and the nature of allegations against him.…"*

17. As per the Circular dated September 22nd, 2009, there is a difference between the position of a Branch Manager and a Credit Manager, and it cannot be said that both the positions are in parity with one another. The position of the Branch Manager and the second officer cannot be considered to be identical and as per the law laid down in the abovementioned cases; this Court is confined only to a secondary role of review to see if the authorities have acted in cognisance with the Wednesbury Principle.

18. In the case of ***Associated Provincial Picture Houses Limited v. Wednesbury Corporation*** reported in ***(1948) 1 KB 223*** the Kings Bench held that under the Wednesbury Test, the courts could interfere with administrative decisions if (i) the order was contrary to law (ii) or relevant factors were not considered, or (iii) irrelevant factors were considered or, (iv) or the decision was such that no other authority under similar circumstances would have come to this conclusion.

19. The Wednesbury Principle also finds its place in Indian jurisprudence and has been used by the Apex Court in various cases to understand whether the actions of the state are arbitrary in nature. The principles laid down in ***Associated Provincial Picture Houses Limited v. Wednesbury Corporation (supra)*** were echoed by the Apex Court in ***Union of India v. G. Ganayutham,*** reported in ***(1997) 7 SCC 463.*** The relevant paragraph has been reproduced below:

> *"**31.** To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test."*

20. If we look at the contentions of the petitioner, that is (i) procedural failure of the authorities to issue a second charge sheet; (ii) the failure of the authorities to consider the importance of the role of the second officer in the disciplinary proceedings and (iii) the nature of the punishment being arbitrary, three out of four factors in the Wednesbury Principle are being tested; those being (i) the order was

contrary to law (ii) relevant factors were not considered and (iii) the decision was such that no other authority under similar circumstances would have come to this conclusion. I shall deal with each of these contentions one by one in seriatim.

21. The petitioner argued that the order was not incognizance with law as a second charge sheet was not released before releasing the punishment order. The petitioner has not placed any rules under the Bangiya Gramin Vikash Bank (Officer and Employees) Service Regulations, 2010 read with the subsequent Amendment, 2013 to prove that issuing a second charge sheet is envisaged in the rules of the Bank. On the other hand, the petitioner has been given a chance to reply to his charge sheet, the Enquiry Officers report and appeal the decision of the disciplinary authority to the appellate authority. Thus, the petitioner has been given the opportunity to present his case in front of the authorities.

22. Regarding whether the authorities in question have failed to consider relevant factors as the second officer was spared, the Apex Court in ***Union of India v. G. Ganayutham (supra)*** held that the court does not have jurisdiction to go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Furthermore, in ***Punjab and Sind Bank v. Daya Singh*** reported in ***(2010) 11 SCC 233,*** a report of the Enquiry Officer was set aside by the High Court on the grounds that the Enquiry officer merely stated in

his report that certain documents were in support of each of the charges and the reply of the petitioner was not tenable. The High Court further held that the documents produced were neither detailed, nor their nature was explained. There was no discussion and much less any analysis of the evidence presented, thus the absence of good reason was held to be a breach of the principles of natural justice. The Supreme Court set aside the order of the High Court on the grounds that once the charges were found to have been established, the High Court had no reason to interfere in the decision unless the findings were perverse; which is a finding based on no evidence or one that no reasonable person would arrive at. The relevant paragraphs have been reproduced below:

> *"**23.** We are rather amazed at the manner in which the High Court has dealt with the material on record. The enquiry officer is an officer of a Bank. He was considering the material which was placed before him and thereafter, he has come to the conclusion that the misconduct is established. He was concerned with a serious charge of unexplained withdrawals of huge amounts by a Branch Manager in the name of fictitious persons. Once the necessary material was placed on record and when the charge-sheeted officer had no explanation to offer, the enquiry officer could not have taken any other view. The order of a bank officer may not be written in the manner in which a judicial officer would write. Yet what one has to see is whether the order is sufficiently clear and contains the reasons in justification for the conclusion arrived at. The High Court has ignored this aspect.*
>
> ***24.** Absence of reasons in a disciplinary order would amount to denial of natural justice to the charge-sheeted employee. But the*

present case was certainly not one of that category. Once the charges were found to have been established, the High Court had no reason to interfere in the decision. Even though there was sufficient documentary evidence on record, the High Court has chosen to hold that the findings of the enquiry officer were perverse. A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665]. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in Arulvelu v. State [(2009) 10 SCC 206]. The decision of the High Court cannot therefore be sustained.

25. *As held in T.N.C.S. Corpn. Ltd. v. K. Meerabai [(2006) 2 SCC 255] the scope of judicial review for the High Court in departmental disciplinary matters is limited. The observations of this Court in Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762] are quite instructive: (SCC pp. 768-69, para 11)*

> *'11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived*

at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel [AIR 1964 SC 364] the Constitution Bench has held: (AIR p. 370, para 23)'

> *'23. … 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.'*

26. *In a number of cases including SBI v. Bela Bagchi [(2005) 7 SCC 435] this Court has held that a bank employee has to exercise a higher degree of honesty and integrity. He is concerned with the deposits of the customers of the bank and he cannot permit the deposits to be tinkered with in any manner."*

23. The Enquiry Officer in his report dated May 28th, 2018, had taken cognisance of the allegation where it had been argued that the petitioner had influenced the second officer and held there was no evidence to show that the petitioner had influenced him to obtain his signature. The actions of the Enquiry Officer cannot be said to be arbitrary enough to sanction the interference of this Court. Furthermore, the Enquiry Officer noted that the petitioner had been given reasonable opportunities for comfortably verifying all the

documents exhibited by the Presenting Officer, had verified all the concerned documents and had compared the documents with the original during the enquiry proceedings. The Enquiry Officer also held that the petitioner could not show evidence to disprove the irregularities he was charged for when the documentary evidence was being shown to him. He was found extending undue favour to borrowers without taking into consideration their past track record considering; and financing accounts under the PMEGP scheme without undertaking post lending inspection. While the petitioner has highlighted the importance of the role of the second officer, I fail to see how issuing charge sheet to the second officer would absolve the petitioner of his own guilt.

24. The petitioner also argued that the punishment order dated October 1st, 2018, was unreasonable. In ***CCSU v Minister for the Civil Service*** reported in ***(1985) AC 374,*** Lord Diplock held that for a decision to be unreasonable under the Wednesbury Test, it must be so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. It was also held in ***B.C. Chaturvedi v. Union of India*** reported in ***AIR 1996 SC 484*** that a decision must shock the conscience of the High Court in order for the petitioner to avail appropriate relief.

25. To support their case, the petitioner cited ***Council of Institute of Chartered Accountants of India v. Somnath Basu (supra),*** however, this case is of no persuasive value to the court as the punishment was to remove the respondent from the registry of membership from the Institute of Chartered Accountants of India as they failed to report any irregularities and submitted a clean audit report. In the current case the respondent has had his pay scale reduced as he had reached out to owners of NPA accounts to refinance them and have wrongly disbursed bank funds under the PMEGP scheme. The nature of the misconduct alleged is completely different.

26. The petitioner argued he was getting paid Rs. 44,640/- (Forty-Four Thousand Six Hundred and Forty Only) as a Branch Manager and his initial pay was Rs. 24,100/- (Twenty-Four Thousand One Hundred Only) as an Assistant Manager. His pay should be Rs. 39,400/- (Thirty-Nine Thousand Four Hundred Only) as per the Circular No. BGVB/HO/P&A/48/2015 dated August 29th, 2015, yet his pay was fixed to Rs. 23,700/- (Twenty-Three Thousand Seven Hundred Only). He argued that his pay should be reduced to Rs. 39,400/- (Thirty-Nine Thousand Four Hundred Only) and not Rs. 23,700/- (Twenty-Three Thousand Seven Hundred Only). The petitioner has only provided his promotion letter from Office Assistant (Multipurpose), Group B to Officer [Junior Management Grade (Scale-I)], Group A to show he was promoted. The respondent argued that officers in the bank are

promoted by scale, for example Scale-I to Scale-II. Branch Manager is not a promotional post and is merely a post given out of the business and his position was always that of an Officer [Junior Management Grade (Scale-I)] before the punishment order. By the law set down in the precedents mentioned before, this Court does not have jurisdiction to interfere with punishments that do not shock the conscience of the court. Considering there is prima facie proof of misconduct on behalf of the petitioner, demotion in salary pay scale does not shock the conscience of this Court and I am not inclined to interfere with the punishment order.

27. It is apparent from the law set down by the judgements given above that the following principles emerge:

A. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority

B. Where an administrative action is challenged as arbitrary under Article 14, the question will be whether the administrative order is rational or reasonable and the test then is the Wednesbury Test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he had acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary.

C. According to the test of the Wednesbury Principle, the courts can only interfere with the judgement if (i) the order was contrary to law (ii) or relevant factors were not considered, or (iii) irrelevant factors were considered or, (iv) or the decision was such that no other authority under similar circumstances would have come to this conclusion.

D. For a decision to be unreasonable under the Wednesbury Test, it must be so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the issue could have come to this conclusion.

E. The only exception to the abovementioned principle is that when the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct are identical. However, there must be a complete parity between the

two. Merely because one of the employees was inflicted with a lesser punishment cannot be a ground to hold the punishment was disproportionate especially if the higher punishment is warranted and inflicted by the disciplinary authority after due application of mind.

28. Based on the above principles, it is patently clear that in the present case, the petitioner has been unable to show that the punishment order dated October 1st, 2018, is in violation of any law, based on non-appreciation of relevant facts and on consideration of irrelevant facts or that the judgement was completely irrational. Ergo, the petitioner could not adequately prove that this Court should exercise its discretionary powers and interfere under Article 226 of the Constitution of India.

29. Thus, this Court is of the opinion that charge sheet dated August 30th, 2016, the enquiry report dated May 28th, 2018, the punishment order dated October 1st, 2018, and the order passed by the Appellate Authority dated November 1st, 2019, does not warrant any interference by this Court.

30. Accordingly, this Writ Petition being WPA 5066 of 2020 is dismissed. There shall be no order as to the costs.

31. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

(Shekhar B. Saraf, J.)

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