GAHC010114812016

2026:GAU-AS:7680

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

Case No. : WP(C)/4102/2016

ANUPAM KANTI CHAKRABORTY
S/O SHRI ARUN KANTI CHAKRABORTY, R/O W/NO.17, KATHAL ROAD, SILCHAR-5, ASSAM

VERSUS

UNION BANK OF INDIA and 3 ORS
REP. BY ITS CHAIRMAN, HAVING ITS OFFICE AT UNION BANK BHAVAN, 239, VIDHAN BHAVAN MARG, NARIMAN POINT, MUMBAI-21

2:GENERAL MANAGER P
UNION BANK OF INDIA
HRM DEPTT.
UNION BANK BHAVAN
239
VIDHAN BHAWAN MARG
NARIMAN POINT
MUMBAI-21

3:ASSTT. GENERAL MANAGER
HRM DEPTT.
UNION BANK OF INDIA
REGIONAL OFFICE
G.N.B. ROAD
CHANDMARI
GHY-3

4:CHIEF MANAGER
UNION BANK OF INDIA
GUWAHATI MAIN BRANCH
FANCY BAZAR
GHY-

Advocate for the Petitioner : MS.S ROY, MS.U DUTTA,MR.S DUTTA

Advocate for the Respondent : MR.R THAKURIA R- 1-4, MR R KALITA(R-4),MR. M SHARMA(R-4),MR.L P SHARMA(R- 1-4)

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. S. Dutta, Sr. Advocate.
Mr. I. Das, Advocate.

For the Respondents : Mr. M. Sarma, Advocate.

Date on which judgment is reserved : **24.02.2026**

Date of pronouncement of judgment : **29.05.2026**

Whether the pronouncement is of the operative part of the judgment ? : NA

Whether the full judgment has been pronounced ? : Yes

<u>Judgment and Order (CAV)</u>

Heard Mr. S. Dutta, learned Senior Counsel, assisted by Mr. I. Das, learned counsel, appearing for the petitioner. Also heard Mr. M. Sarma, learned counsel, appearing for the respondents.

2. The challenge in the present writ petition by the petitioner is to an order dated 27.02.2015, passed by the Disciplinary Authorities, imposing penalty of dismissal from service upon the petitioner on conclusion of a Departmental proceedings instituted against the petitioner. The petitioner has also assailed an Enquiry Report submitted in the matter by the Enquiry Officer.

3. The facts in brief requisite for the purpose of adjudication of the issue arising in the present writ petition is noticed, as under;

The petitioner while functioning as the Branch Manager of Latakandi Branch of the respondent no.1 Bank, was issued with a communication dated 13.07.2013, requiring him to submit explanation with regard to the allegation as leveled against him, therein. The petitioner submitted his reply to the said communication. Thereafter, vide Memorandum dated 09.09.2013, the petitioner was required to show-cause as to why appropriate disciplinary action against him would not be initiated for the misconduct committed by him highlighted in the said Memorandum. The petitioner responded to the said Memorandum vide his reply dated 17.09.2013. Thereafter, the explanation submitted by the petitioner not being found to be satisfactory, a Memorandum of Charge, came to be issued to the petitioner on 28.02.2014. The allegation leveled against the petitioner basing on the charges so framed against him was set out in the "Statement of Allegation" annexed to the said Memorandum of Charge. The petitioner submitted his written statement of defence against the Memorandum of Charge dated 28.02.2014 on 05.04.2014. The clarification and explanation set out by the petitioner in his reply, not being found to be satisfactory, the Disciplinary Authority of the petitioner, proceeded to direct for conduct of an enquiry into the allegation leveled against the petitioner vide the Memorandum of Charge dated 28.02.2014, and for the purpose, appointed a Enquiry Officer as well as a Presenting Officer.

The Enquiry Officer on conclusion of the enquiry proceeded to submit his Enquiry Report and therein, held the charges/allegations leveled against the petitioner in the Memorandum of Charge dated 28.02.2014 to have been established. Thereafter, the said Enquiry Report was forwarded to the petitioner by the Disciplinary Authority and the petitioner on 18.11.2014 submitted his submissions against the same.

The Disciplinary Authority thereafter, on examination of the materials coming on record in the enquiry as well as the enquiry report submitted by the Enquiry Officer in the light of the submission made, thereon, by the petitioner proceeded vide order dated 27.02.2015, to concur with the conclusions reached by the Enquiry Officer. On concurring with the conclusions reached by the Enquiry Officer, the Disciplinary Authority of the petitioner proceeded to impose upon the petitioner penalty of dismissal from service with immediate effect.

The petitioner thereafter, preferred an appeal against the order dated 27.02.2015. The Appellate Authority vide order dated 05.06.2015, on consideration of the contentions raised by the petitioner in his appeal proceeded to reject the same, thereby affirming the order passed by the Disciplinary Authority.

A Review Petition is also found to have been preferred by the petitioner in the matter which was also rejected by the Reviewing Authority.

Being aggrieved the petitioner has instituted the present writ petition.

4. Mr. S. Dutta, learned Senior Counsel, appearing for the petitioner by reiterating the facts, noticed, hereinabove, has submitted that the allegations leveled against the petitioner pertains to the manner in which he had disbursed loans during his tenure as the Branch Manager of Latakandi Branch. He submits that there was a further allegation that the powers delegated upon him for disbursement of loans was suspended by the Regional Office vide a communication dated 07.03.2013, and inspite of the said position, the petitioner had proceeded to sanction, inasmuch as, further 61 (sixty one) loans aggregating to Rs.69.53 lakhs.

Mr. S. Dutta, submits that while the Departmental Authorities had emphasized in the Departmental proceedings initiated against the petitioner on the aspect of the petitioner proceeding to sanction loans, although the powers delegated to him in his connection was suspended however, the Departmental Authorities failed to appreciate the contentions of the petitioner that after suspension of his power to sanction loans, the respondent authorities themselves had set a target for the petitioner to achieve with regard to disbursement of loans vide a Memorandum dated 06.05.2013, for the financial year 2013-2014. He submits that it is only on account of the said Memorandum dated 06.05.2013, that the petitioner had proceeded to disburse the loans which is now held against him.

5. Mr. S. Dutta, further submits that during the enquiry there was no direct evidence to prove the allegation leveled against the petitioner. He submits that a perusal of the allegation leveled against the petitioner would reveal that the commission of misconduct by the petitioner is not borne out therefrom, and accordingly institution of a Disciplinary proceeding in the matter against the petitioner was not called for.

Mr. Dutta, further submits that from the materials brought on record it is clear that there was no *mens rea* attributed to the petitioner for the loans he had so sanctioned and that the loans so sanctioned had no adverse consequence on the interest of the Bank. It is submitted that the sanction of the said loans by the petitioner had increased the business of the Bank manifold. He submits that the non maintenance of the loan portfolios by the petitioner can at best be treated as an act of negligence, but the same would not be permissible to be elevated to that of an act of misconduct committed by the petitioner. He submits that the conclusions reached by the Enquiry Officer which was accepted by the Disciplinary Authority, suffers from perversity, inasmuch as, the conclusions were not so drawn basing on materials coming on record in the enquiry. With regard to the allegations of amounts being deposited in the account of the petitioner, Mr. Dutta submits that the petitioner had during the enquiry clarified the said aspect of the matter, however, inspite of demonstrating that the amounts involved were so deposited by his family members, the Enquiry Officer proceeded to ignore the stand taken by the petitioner and held that for such deposit made in the accounts of the petitioner, there was no justification put forth. Accordingly, he submits that the penalty as imposed upon the petitioner being so based on the conclusion reached by the Enquiry Officer, without there being materials on record to support such conclusion, would not be maintainable and would mandate an interference from this Court.

6. Mr. S. Dutta, has submitted that from the materials brought on record what is forthcoming is that there was only an apprehension of loss occasioning to the Bank, however actual loss, if any, caused to the bank was not ascertained. Accordingly, he submits that the allegations leveled against the petitioner can at best be held to be, basing on the materials coming on record, to be negligent acts on his part and the same cannot be permitted to be held to be a misconduct committed by the petitioner. He further submits that even of the allegations leveled against the petitioner is held to be established, the penalty of dismissal from service is clearly disproportionate, cannot be held to be proportionate to the charges framed against the petitioner.

7. Mr. S Dutta, in support of his submission has relied on the following decisions of the Hon'ble Supreme Court ;

(i) **Union of India -Vs- J. Ahmed** reported in **(1979) 2 SCC 286.**

(ii) **A.L. Kalra -Vs- Project and Equipment Corporation of India Ltd.,** reported in **(1984) 3 SCC 316.**

(iii) **Rajasthan State Transport Corporation –Vs- Shri Ram Yadav,** reported in **1995 Lab IC 2133**

(iv) **Inspector Prem Chand -Vs- Government of NCT, Delhi,** reported in **(2007) 4 SCC 566.**

8. Per contra Mr. M. Sarma, learned counsel, appearing for the respondents has submitted that the petitioner having been instructed not to exercise his delegated authority for disbursement of loans till further instructions, the petitioner was found to have violated such instruction by proceeding to sanction loans. It was found that the petitioner although had sanctioned loans, the said loans sanctioned was never brought to the notice of the higher authorities of the Bank.

9. Mr. M. Sarma, by taking this Court through the proceedings of the enquiry has submitted that the petitioner was given all due opportunities to defend the charges framed against him and the petitioner has not highlighted any prejudice being caused to him, during the in conduct of the Disciplinary proceeding against him.

10. Mr. M. Sarma, by further taking this Court through the Enquiry Report has submitted that the conclusions reached by the Enquiry Officer, therein, was solely based on the evidences coming on record in the enquiry and the evidences being admissible evidences, the conclusions drawn by the Enquiry Officer in the Enquiry Report would not mandate an interference from this Court, more so, when there is no perversity highlighted with regard to the conclusions drawn by the Enquiry Officer in the Enquiry Report.

11. Mr. M. Sarma, has submitted that this Court while exercising judicial review in the matter would be pleased not to re-appreciate the evidences. The petitioner having not demonstrated any perversity in the conclusions drawn by the Enquiry Officer, this Court would be pleased not to interfere with such conclusions as well as the penalty imposed upon the petitioner, basing thereon.

12. In the above premises, Mr. M. Sarma, submits that this Court would be pleased not to interfere with the penalty imposed upon the petitioner.

13. I have heard the learned counsel for the parties and also perused the materials available on record.

14. At the outset this Court notices that while exercising jurisdiction under Article 226 of the Constitution of India, it would be permissible for this Court to interfere with a penalty imposed upon a delinquent in pursuance to a Disciplinary proceedings only in the event, it is demonstrated that the proceeding was held in violation of the principles of natural justice and/or in violation of the statutory regulations prescribing the procedure for holding such Disciplinary proceeding. This Court cannot also lose sight of the fact that the Departmental Authority is the sole judge of the fact in the event, a Departmental proceeding is duly conducted. Further if there is an admissible legal evidence coming on record in the Enquiry, then the finding based thereon, would also not be permissible to be questioned by this Court basing on the adequacy of such evidence.

15. Having noticed the above position, this Court would now proceed to consider the issue arising in the present proceeding. It is an admitted position that the delegation of power for sanction of loans as granted to the petitioner was suspended vide a communication dated 07.03.2013, issued by the Regional Office of the Bank. From the Memorandum of Charge dated 28.02.2014, it is found that the loans involved were so sanctioned by the petitioner after his power for sanctioning of such loans was suspended. The projection made by the petitioner is that vide a Memorandum dated 06.05.2013, the respondent Bank had set a target of sanctioning advances for the region and the petitioner was directed to extend necessary support, guidance and directions in order to facilitate his branch to achieve the target. While the said contentions has been made by the petitioner, it is found that in the replies submitted by the petitioner to the allegation leveled against him, the petitioner had not brought on record any material to show that he had approached his superiors seeking clarification with regard to the said Memorandum dated 06.05.2013, rather the petitioner had admitted that there was infact a suspension of the delegated authority given to him in the matter. The petitioner had also contended that on account of the long working hours he was not able to devote extra time resulting in many loan documents lying unfilled. He has also projected that his subordinates had also not co-operated with him in the matter. Accordingly in the communication dated 17.09.2013, the petitioner had sought forgiveness for the irresponsible foolish act on his part and had undertaken that he would rectify his mistakes provided considerable time is granted to him to complete the unfinished works.

16. From the Enquiry Report, this Court finds that basing on the materials coming on record, the Enquiry Officer had drawn conclusion to the effect that unless the suspension of the delegated authority was restored in writing, the Officer concerned could not have proceed to sanction loans, by projecting that the same was only to cover up the target so assigned.

17. With regard to the loans sanctioned by the petitioner, the Enquiry Officer from the materials coming on record had demonstrated in his Enquiry Report that the said loans were not so sanctioned ensuring the interest of the Bank is protected and/or by following the procedure mandated for the purpose. It was also found that amongst the loans that were sanctioned, there were also loans which were so sanctioned without execution of security documents and also loans were sanctioned to customers whose accounts were overdue. It was further brought on record that in the said Enquiry Report the monitoring of the sanctioned loans was also poor. With regard to the allegation leveled against the petitioner of deposits made in his account, the Enquiry Officer had concluded that the contentions raised by the petitioner, that the amounts were deposited in his accounts by his relatives, to be not acceptable, as the petitioner during the enquiry had not established the said aspect of the matter by adducing cogent and material evidences.

18. Basing on the said conclusion, the Enquiry Officer had proceeded to hold all the allegations leveled against the petitioner in the Memorandum of Charge 28.02.2014, to have been established. The petitioner on being forwarded with a copy of the said Enquiry Report had made his submissions on the findings recorded therein, by the Enquiry Officer vide his representation dated 18.11.2014. Thereafter, the Disciplinary Authority proceeded to examine the materials coming on record of the enquiry, the Enquiry Report submitted by the Enquiry Officer in the light of the submissions made by the petitioner thereto. On a consideration of the matter, the Disciplinary Authority proceeded to concur with the findings recorded by the Enquiry Officer and vide order dated 27.02.2015, proceeded to impose the penalty of dismissal from service.

19. This Court on a perusal of the conclusions reached by the Enquiry Officer in the Enquiry Report finds that the said findings were so recorded basing on the materials coming on record by the Enquiry Officer and no perversity is found to exist, therein. Accordingly, the conclusions and findings recorded by the Enquiry Officer in the considered view of this Court would not mandate an interference.

20. This Court having concluded that the Enquiry Officer had arrived at his conclusions basing on admissible evidences coming on record in the Enquiry and the petitioner having not demonstrated any perversity with regard to such conclusions drawn by the Enquiry Officer, this Court would not re-evaluate the same by assuming the role of an Appellate Authority.

21. The learned counsel for the petitioner during the course of hearing of the present proceedings has also not highlighted any inconsistency in the conclusions so drawn by the Enquiry Officer in his Enquiry Report, as well as by the Disciplinary Authority in the impugned order dated 27.02.2015. Accordingly, this Court is of the considered view that the Enquiry Report as well as the impugned order dated 27.02.2015 would not mandate any interference.

22. The petitioner, herein, was a responsible Officer of the respondent Bank. It is to be noticed and emphasized that in Banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every Bank employee and if this is not observed, the confidence of the public/depositors would be impaired.

23. In this connection, this Court would refer to the decision of the Hon'ble Supreme Court rendered in the case of ***Chairman-cum-Managing Director, United Commercial Bank & Ors. Vs. P. C. Kakkar,*** reported in ***(2003) 4 SCC 364***, wherein, it was noted that a Bank Officer/employee is required to exercise higher standard of honesty and integrity. The Hon'ble Supreme Court in this connection had proceeded to draw the following conclusions:

> "*14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik(1996 (9) SCC 69). It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.*"

24. In the case on hand; from the manner in which the petitioner had discharged his duties as evident from the allegations so established against him in the Enquiry; it is seen that the Bank had lost confidence on him and the materials that had come on record in the enquiry as well as the findings of the Enquiry Officer and the Disciplinary Authority in the matter had affirmed such loss of confidence upon him. In this connection; a reference is made to the decision of the Hon'ble Supreme Court in the case of ***Divisional Controller, Karnataka State Road Transport Corporation v. M. G. Vittal Rao***, reported in ***(2012) 1 SCC 442***.

The conclusions in this connection pertaining to loss of confidence by the employee and the employer, is extracted hereinbelow:

"***Loss of confidence.***

25. Once the employer has lost the confidence in the employee and the bonafide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.

26. In Kanhaiyalal Agrawal Vs. Gwalior Sugar Co. Ltd. 32, this Court laid down the test for loss of confidence to find out as to whether there was bona- fide loss of confidence in the employee, observing that, (SCC p. 614, para 9)

(i) the workman is holding the position of trust and confidence;

(ii) by abusing such position, he commits an act which results in forfeiting the same; and

(iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved.

27. In SBI v. Bela Bagchi this Court repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence. While deciding the said case, reliance has been placed upon its earlier judgment in Disciplinary Authority-cum-

Regional Manager v. Nikunja Bihari Patnaik.

28. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two.

29. In Indian Airlines Ltd. v. Prabha D. Kanan, while dealing with the similar issue this Court held that: (SCC p. 90, para 56)

> ***"56. ...loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved."***

30. In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee. (Vide A.P. SRTC v. Raghuda Siva Sankar Prasad 43.)

31. The instant case requires to be examined in the light of the aforesaid settled legal proposition and keeping in view that judicial review is concerned primarily with the decision-making process and not the decision itself. More so, it is a settled legal proposition that in a case of misconduct of grave nature like corruption or theft, no punishment other than the dismissal may be appropriate."

25. It is also required to take notice of a decision of the Division Bench of this Court in the case of ***Bijoy Rajkhowa v. State Bank of India & ors.***, reported in ***(2013) 2 GLR 6*** wherein, in a matter pertaining to a misconduct committed by a Bank employee, this Court had recorded the following conclusion:

> "***24. Conduct of a Bank employee must be above board. He is required to maintain absolute integrity, which is of paramount consideration. On his conduct rests the confidence of the customers of the Bank. Compromise with doubtful integrity will not***

only erode the faith of the people using the Bank's facilities but also in the functioning of the Bank itself. In such matters, quantum of misappropriation is immaterial the factum of misappropriation itself would justify the disciplinary action taken. Considering the above, in the present case, we do not find any good and sufficient ground to interfere with the punishment imposed."

26. In view of the position of law as brought to light by the decisions of the Hon'ble Supreme Court and of this Court as noticed, hereinabove; it has to be held that the petitioner had lost the confidence of his employer on account of the misconduct as committed by him in the matter and accordingly, the penalty of dismissal from service as imposed upon the petitioner, would not warrant any interference.

27. Having drawn the above conclusions, this Court would now deal with the contention raised by the learned counsel for the petitioner that the penalty of dismissal from service as imposed upon the petitioner, is grossly disproportionate to the allegations as leveled against him and accordingly, the same requires to be interfered with.

28. This Court, in this context, would like to again refer to the decision of the Hon'ble Supreme Court in the case of ***P. C. Kakkar*** (supra) wherein in this connection, the following conclusions were drawn by the Court:

"***15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union [1971 (1) All E.R. 1148] observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give***

reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

29. The allegations as leveled against the petitioner on being established in the enquiry held and the same having demonstrated a misconduct being committed in the matter by the petitioner who admittedly was a responsible employee of the respondent Bank; it is to be noted that the petitioner cannot, in any manner, be extended with any sympathy. The allegations leveled against the petitioner having been held to have been established and the misconduct as committed by him, being apparent, the penalty as imposed upon him, cannot be stated to be disproportionate to the proved misconduct. It is a settled position of law that the penalty that is to be imposed upon the petitioner is the discretion of the Disciplinary Authority. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of the charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. A host of factors go into the decision making process while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the establishment where he so works, as well as extenuating circumstances, if any. Accordingly, the penalty as imposed upon the petitioner in the case in hand, in the considered view of this Court; is proportionate to the allegations leveled against him and established in the enquiry.

30. It is also a settled position of law that if the Appellate Authority is of the opinion that the case warrants a lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority. Such a power which vests with the Departmental Appellate Authority, is ordinarily not available to this Court. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of the facts. In exercise of power of judicial review, however, this Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of this Court, lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the Departmental Authorities. This Court, in the present proceeding, has not found any mitigating circumstance warranting interference with the penalty as imposed upon the petitioner.

31. It is only when the punishment is found by this Court to be outrageously disproportionate to the nature of the allegations leveled against the delinquent that the principle of proportionality would come into play. It is, however, to be borne in mind that this principle would be attracted, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the Court and the Court is forced to believe that it is totally unreasonable and arbitrary.

32. The principle of proportionality was first propounded by Lord Diplock in ***Council of Civil Service Unions v. Minister*** *for the Civil Service* in the following words:(AC p. 410 D-E)

> "***........ Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has comeabout, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'."***

33. The Hon'ble Supreme Court had approved the aforesaid principle in the case of ***Ranjit Thakur v. Union of India***, reported in ***(1987) 4 SCC 611,*** wherein, the Hon'ble Supreme Court by emphasizing that "all powers have legal limits" invoked the aforesaid doctrine in the following words in paragraph No.25. Paragraph No. 25 of the said judgment being relevant, is extracted

hereinbelow for ready reference: (SCC p. 620, para 25)

> ***"25. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."***

34. In view of the decisions noticed, hereinabove; it is clear that it is not for the writ Court to interfere with the punishment imposed by the disciplinary authority which is a matter within the domain and the jurisdiction of the said authority. If the Bank has lost its confidence on the petitioner, herein, it is within its competence and jurisdiction to impose the penalty as it may consider adequate commensurating to the misconduct attributed and proved. It is not for the writ Court to prescribe another penalty in lieu of the penalty imposed by the disciplinary authority. It will have to be borne in mind that the job entrusted to the petitioner, herein, being of a responsible employee, in a financial institution like a Bank is that of faith and confidence and once it is lost, it is for the Bank to decide what penalty is to be imposed. The petitioner being a Bank employee ought to have maintained utmost integrity, devotion, diligence and honesty, which, he admittedly, has failed to do so.

35. Accordingly, in view of the above discussions and conclusions, this Court is of the considered view that, given the facts and circumstances as existing in the matter; it has to be held that the penalty as imposed upon the petitioner, commensurates to the misconduct as established against him in the matter and the same does not call for any interference from this Court.

36. The decisions relied upon by the learned Senior Counsel for the petitioner, has been duly considered by this Court and this Court in view of the conclusions drawn, hereinabove, finds that the said decisions would not advance the case of the petitioner and accordingly a detailed discussion, thereon, is not made in the present order.

37. In view of the above discussion, this Court is of the considered view that the Enquiry Report submitted by the Enquiry Officer in the matter, the order dated 27.02.2015, passed by the Disciplinary Authority imposing the penalty of dismissal from service and the orders dated 05.06.2015 and 20.11.2015 passed by the Appellate Authority and by the Reviewing Authority respectively, would not mandate any interference.

38. Accordingly, the present writ petition is held to be devoid of any merit and consequently the same stands dismissed. However there shall be no order as to costs.

JUDGE

Comparing Assistant

Ranu
Boro