



GAHC010122622012



**IN THE GAUHATI HIGH COURT**  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

**WRITPETITION (C) No. 5287/2012**

**Sri Surendra Nath Barman,**

Son of Late Nalit Chandra Barman, a resident of  
Village- Nadala, P.O. Gamarimuri, District-Nalbari,  
PIN-781306, Assam

**.....Petitioner**

**-Versus-**

**1. THE ASSAM GRAMIN VIKASH BANK**

HAVING ITS HEAD OFFICE AT G.S. ROAD, BHANGAGHAR,  
GUWAHATI, DIST- KAMRUPM, PIN-781005, ASSAM AS  
REPRESENTED BY ITS CHAIRMAN

**2. THE CHAIRMAN ASSAM GRAMIN VIKASH BANK**  
HEAD OFFICE G.S. ROAD BHANGAGHAR GUWAHATI  
DIST- KAMRUPM PIN-781005 ASSAM

**3. THE GENERAL MANAGER ASSAM GRAMIN**  
**VIKASH BANK** HEAD OFFICE G.S. ROAD BHANGAGHAR  
GUWAHATI DIST- KAMRUPM PIN-781005 ASSAM

**4. THE MANAGER REGIONAL OFFICE ASSAM**  
**GRAMIN VIKASH BANK** COLLEGE ROAD NALBARI  
DIST- NALBARI PIN-781335 ASSAM

**5. THE BRANCH MANAGER KAITHALKUCHI**  
**BRANCH ASSAM GRAMIN VIKASH BANK** P.O.  
KAITHALKUCHI DIST- NALBARI PIN-781370 ASSAM



6. **THE BRANCH MANAGER KALAIGAON BRANCH ASSAM GRAMIN VIKASH BANK P.O. KALAIGAON DIST- UDALGURI PIN-784525 ASSAM**

7. **SRI BANKIM SARMA BRANCH MANAGER BARNIBARI BRANCH ASSAM GRAMIN VIKASH BANK DIST- NALBARI PIN-781304 ASSAM**

8. **SRI RABINDRA NATH SARMAH OFFICER INSPECTION DEPARTMENT ASSAM GRAMIN VIKASH BANK HEAD OFFICE G.S. ROAD BHANGAGHAR GUWAHATI DIST- KAMRUPM PIN-781005 ASSAM**

**.....Respondents**

**:: BEFORE::**

**HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

For the Petitioner : Mr. G.Z. Ahmed, Advocate

For the Respondents : S. Dutta, Sr. Counsel assisted by Ms. S. Muchahary, Advocate

Date of Hearing : **18.11.2023**

Date of Judgment : **21.02.2024**

**JUDGMENT & ORDER (CAV)**

The writ petition has been filed by the petitioner challenging the Show Cause Notice dated 27.08.2008, Charge-sheet dated 30.06.2010, Enquiry Report dated 16.06.2011, Orders dated 07.10.2011, 02.12.2011 and 31.12.2011. The petitioner was employed as an Messenger under the Assam Gramin Vikash Bank and was posted in the Kaithalkuchi Branch of the Bank. During the course of his service an allegation was made against the petitioner with regard to opening of Re-investment Plan Certificate



Account (RIPC account). The allegation made against the petitioner was that the said account amounting to Rs 50,000 (Rupees Fifty Thousand) was opened without depositing any amount in the said account. The further allegation was that the petitioner personally wrote the receipt bearing number 034923 and had personally made entries in the account opening register and the ledger. Accordingly, Show Cause notice was issued to the petitioner to which he replied and thereafter, on the basis of the enquiry report submitted, the authorities passed the impugned order dated 02.11.2011 whereby the petitioner was imposed a major penalty of removal from service "which shall not be a disqualification for future employment". The petitioner preferred an appeal before the appellate authority which also came to be dismissed on the ground that there is no merit for consideration of the appeal.

**2.** The pleaded case of the petitioner before this Court is that the petitioner during his service and while being posted in the Kaithalkuchi Branch of the Pragjyotish Gaolia Bank in his capacity as the Messenger of the bank, he has been discharging his duties to the best of his abilities and capacity without any qualms or blemish from any quarter. It is the pleaded case of the petitioner that the then Manager of the Kaithalkuchi Branch where the petitioner was posted, taking advantage of the faulty



management policies of the bank, misappropriated depositors' money and the petitioner was made a scapegoat in order to save the bank's image. The petitioner had applied before the Branch Manager for sanctioning loans in his favor for house repairing and other personal purposes on 02.02.2006 and 25.03.2006 respectively. The said loan was sanctioned by loan sanction letter bearing No. AGVB/KTCH/COD/03/06 dated 17.06.2006 sanctioning a loan amount of Rs. 1,30,000/- (Rupees One Lakh Thirty Thousand only) in favour of the petitioner for Clean Over Draft (COD). Thereafter, by Sanction Letter bearing No. AGVB/KTCH/HR/02/06 dated 20.06.2006, the second loan amounting to Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) in favour of the petitioner for house repairing was also sanctioned. The petitioner on 20.11.2006 requested the then Branch Manager of the Branch to transfer an amount to Rs.50,000/- (Fifty Thousand only) from his COD account maintained in the said Branch to a RIPC Account, which would fetch the petitioner an amount of Rs. 1,02,116/- (Rupees One Lakh Two Thousand One Hundred Sixteen Only) upon maturity over a period of eight years three months. Accordingly, RIPC bearing No. AGVB/RIPC:034923 against Account No. 1833 dated 20.11.2006 came to be issued in favor of the petitioner by the Branch Manager after transferring the requested amount. Since the petitioner was



facing acute financial crisis, he was constrained to prematurely withdraw the aforesaid RIPC after a lapse of more than a year on 14.12.2007 upon which he received an amount of Rs. 53,593/- (Rupees Fifty Three Thousand Five Hundred Ninety Three only). It is the pleaded case of the petitioner that after the withdrawal of the RIPC amount of Rs. 53,593/- (Fifty Three Thousand Five Hundred Ninety Three only), it was subsequently found out by the bank that the initial investment of Rs. 50,000/- (Rupees Fifty Thousand only) was not transferred to the RIPC account bearing No, 1833 in the name of the petitioner. The said fact came to be informed to the petitioner by another Senior Officer of the Bank. The said Officer advised the petitioner to prefer a representation before the Office-in-charge, AGVB Nalbari for refunding the amount which was mistakenly withdrawn by him. The petitioner genuinely believed in that the amount of Rs. 50,000/- (Rupees Fifty Thousand only) has been laundered by the then Branch Manager and in the process caused loss to the bank, agreed to the proposition. Accordingly, the petitioner preferred a representation dated 07.05.2008 before the Office-in-charge highlighting the anomaly and expressed his willingness to refund the amount withdrawn by him. However, the Bank authorities did not accept the request made by the petitioner and instead issued Show-cause notice



bearing Memo No. AGVB/I&V/159/02/2008-09 dated 27.08.2008 alleging interalia that the petitioner during his tenure as a Messenger of Kaithalkuchi Branch committed serious irregularities by opening the RIPC account bearing No. 1833 in his name in the branch on 20.11.2006 for Rs. 50,000/- (Rupees Fifty Thousand only). The said Show Cause dated 27.08.2008 alleged that the petitioner without depositing any amount against the said RIPC account had written a Receipt bearing No. 034923 and it was subsequently signed by the then Branch Manager one Shri Bankim Sarma against the sad RIPC account after making entry in the account opening register and ledger. The Show-cause further alleged that the petitioner had personally made the entries in the ledger and in the RIPC account and that the account was prematurely closed by the petitioner on 14.12.2007 and a sum of Rs. 53,593/- (Rupees Fifty Three Thousand Five Hundred Ninety Three Only) was credited to the COD account of the account No. 3 of the petitioner maintained in the branch. As per the Show Cause notice, it was alleged that upon verification, it was found that on the day of opening of the RIPC account, i.e.,20.11.2006, the petitioner did not deposit any amount for the said RIPC as the amount is neither entered in a cash book or cash scroll register of the Branch. It was alleged that the petitioner had defrauded the bank by Rs. 53,593/- (Rupees



Fifty Three Thousand Five Hundred Ninety Three only) for personal gain and advised the petitioner to explain his conduct and to show cause as to why appropriate disciplinary action will not be initiated against the petitioner. Thereafter, by communication bearing Ref No. AGVB/KCI/71/08/2008 dated 30.08.2008, petitioner was intimated that with regard to the withdrawal from RIPC No. 1833 for Rs. 53,593/- (Rupees Fifty Three Thousand Five Hundred Ninety Three Only) on 14.12.2007, the bank shall calculate the interest from the date of the said account with effect from 20.11.2006. The said communication further informed that the RIPC had been adjusted with another RIPC account number 1803 maintained by the petitioner and that after the said adjustment, an amount of Rs. 5,660/- was required to be refunded by the petitioner to the Bank. The said amount was requested to be refunded to the Kaithalkuchi branch. Thereafter, the petitioner refunded the outstanding amount of Rs. 5,660/- as per instructions given in the communication dated 30.06.2008.

**3.** In response to the said Show-cause notice, the petitioner submitted his reply dated 10.10.2008 before the General Manager, Head Office, Guwahati denying the allegations levelled against him vide Show-cause dated 27.08.2008 explaining that the amount of Rs.50,000/- (Rupees Fifty



Thousand Only) was not transferred to his RIPC No. 1833 dated 20.11.2006 due to mistake. The petitioner denied the allegations that he had issued the RIPC in his favor without depositing the money in the RIPC account as the same was totally false and incorrect. The petitioner stated that because of the lapses of the then Branch Manager in not transferring the amount in time and not maintaining the said account as per procedure, the petitioner can not be held responsible.

**4.** Pursuant to the reply furnished, the Chairman and the Disciplinary Authority, AGVB finding the reply unsatisfactory, appointed an Enquiry Officer to enquiry into the charges levelled against the petitioner. A Presenting Officer was also appointed to present the bank's case. The petitioner was further informed that he is entitled to take assistance of a defense representative in the enquiry. In response to the request made, another employee of the bank was appointed as defense representative. The enquiry was conducted and thereafter the Enquiry Officer submitted his enquiry report on 16.06.2011 before the Chairman and disciplinary authority, AGVB. The Enquiry Officer in his report held that the charges levelled against the petitioner have been proved. The copy of the Enquiry Report was also furnished to the petitioner with a liberty to the petitioner to tender his written submissions on the findings arrived at by the Enquiry





Officer. Stop. The written submissions were to be tendered within a period of 15 days from the date of the letter, which is 12.07.2011. The petitioner preferred a representation before the Chairman and Disciplinary Authority expressing his inability to tender his written submissions inasmuch as he had received the aforesaid order dated 27.06.2011 only on 09.07.2011 and prayed for extension of a time for 15 days. Subsequently, the petitioner tendered his written submissions on the Enquiry report on 16.06.2011 as directed vide order dated 27.06.2011. Pursuant thereto, the disciplinary authority imposed the major penalty of "removal from service which shall not be a disqualification for future employment". The petitioner was also afforded an opportunity of personal hearing prior to imposition of the penalty order. The petitioner duly appeared before the disciplinary authority and pleaded for his innocence. However, the disciplinary authority ignored his pleas and imposed the penalty order. Against the order imposing penalty, the petitioner also preferred an appeal before the Chairman and disciplinary authority praying for cancellation of the office Order dated 02.11.2011 and reinstatement of the petitioner in service. The said appeal was considered by the 36th Board of Directors meeting held on 27.12.2011. However, the Board rejected the appeal holding that there was no merit and upheld the decision of the Disciplinary authority.



Thereafter, the petitioner was removed from service in terms of the order passed by the disciplinary authority.

**5.** The learned counsel for the petitioner submits that the petitioner has been made a scapegoat for the mishaps which were committed by the then Branch Manager, namely Sri Bankim Sarma. It is submitted that the allegations against the petitioner are false and concocted and are a means to cover up the shortcomings of the then Branch Manager. The petitioner has been made a scapegoat for the losses caused by the Senior Officers. The learned counsel for the petitioner has referred to the findings of the Enquiry Report enclosed to the writ petition to submit that there was no Enquiry conducted which can be accepted to be an Enquiry in the eye of law. The Enquiry Officer merely recorded whatever was presented by the Presenting Officer and on that basis arrived at the conclusion in the Enquiry Report. He submits that the allegations against the petitioner were not proved by either documents or by witnesses. That apart, his witnesses were not allowed to be cross-examined by the petitioner during the Enquiry. Under such circumstances, it was incumbent on the disciplinary authority to examine the Enquiry Report submitted and upon careful examination, he could not have arrived at a conclusion to concur with the findings arrived at by the Enquiry Officer. Consequently, the order of penalty of removal from



service imposed on the petitioner by the disciplinary authority being not based on any evidence and supported by proper records is liable to be interfered with. The appellate order passed by the appellate authority upholding the order of imposition of punishment on the petitioner is bad in law. Although the learned counsel for the petitioner initially questioned the regulation governing the service conditions of the employees of the bank as not being properly framed in terms of Section 30 of the Regional Rural Banks Act 1976. Subsequently, however, he did not press the said argument.

**5.** The learned counsel for the petitioner placing reliance on the judgment of the Apex Court rendered in *Anil Kumar Vs. Presiding Officer & Ors, reported in (1985) 3 SCC 378* submits that a disciplinary enquiry has to be a quasi-judicial enquiry held accordingly the principles of natural justice. The Enquiry Officer has a duty to act judicially where the disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The learned counsel for the petitioner submits that there is no reason recorded in the enquiry report as to the basis on which the Enquiry officer has held these charges to be proved against the petitioner. In that view of the



matter, the proceedings initiated against the petitioner and the consequential charges, are bad in law and should therefore be set aside and quashed along with the consequential orders of imposition of major penalty.

He also refers to the judgment of the Apex Court rendered in *Roop Singh Negi Vs. Punjab National Bank & Ors*, reported in (2009) 2 SCC 570.

The learned counsel for the petitioner submits that the Apex court has held that mere confession by itself is not sufficient. Some evidence ought to have been brought on record that the person was involved in stealing. The learned counsel for the petitioner submits that the entire disciplinary proceeding was conducted on the basis of evidence which was never proved and even the material exhibits which were produced before the Enquiry officer were not in original but were copies thereof. The learned counsel relying on this judgment submits that suspicion, however high, cannot be the basis of any legal proof.

He further refers to the judgment of the Allahabad High Court rendered in *Swatantra Kumar Singh Vs Gorakpur Kshetriya Gramin Bank*, reported in [2000] 0 Supreme (AII) 703 and *Ashok Kumar Srivastava Vs. Rae Bareilly Kshetriya Gramin Bank, Rae Bareilly*, reported in [2006] 0 Supreme (AII) 2004 to buttress his submissions. Both the judgments of the



Allahabad High Court were pressed into the service initially by the petitioner in support of his arguments that the regulations under which the Enquiry had proceeded, namely the Officers and Employee Service Regulations 2006, was never notified as is required Section 30 of the Regional Rural Bank Act, 1976 However, subsequently the learned counsel of the petitioner submitted on instructions that these regulations were duly notified and therefore he did not seek to press these contentions any further.

**6.** The learned counsel for the petitioner submits that since there was no evidence adduced to prove the charges against the petitioner and also the relevant employees or officers of the bank who were involved in that transaction at the relevant point in time, were also not made material witnesses during the enquiry proceedings. The charges against the petitioner cannot be held to have been proved. Under such circumstances, there was no scope for the Enquiry Officer to conclude that there were evidences in support of the charges brought against the petitioner and the same had been proved by adducing adequate evidence. Under such circumstances also could not have agreed with the Enquiry officer to accept his findings in the Enquiry report and thereafter proceed to impose the penalty of removal from service on the petitioner. It is clear from the



impugned order of the disciplinary authority that there was no independent application of mind before imposing the penalty of removal from service on the petitioner. The appellate authority also did not consider the relevant materials before passing orders rejecting the appeal filed by the petitioner. Under such circumstances, the entire disciplinary proceeding initiated against the petitioner is violative of the principles of natural justice, and the same has been based entirely on conjectures and surmises of the enquiry Officer without there being any relevant evidences to support the charges sought to be brought against the petitioner. The disciplinary authority also failed to independently apply its mind and ought not to have accepted the findings of the Enquiry Officer in its present form. The appellate authority had also failed to apply its mind independently and without taking into account the circumstances under which the order of removal from service was passed by the disciplinary authority, the appeal preferred by the petitioner was dismissed/ defective. Under such circumstances, the learned counsel to the petitioner strenuously urges before this Court that the findings of the enquiry officer, the impugned order of the disciplinary authority accepting the conclusions of the Enquiry officer and imposition of the penalty of removal from service is bad in law without any basis and should therefore be interfered with, set aside and quashed and the petitioner



be directed to be reinstated in service with all back wages and other financial entitlements.

**7.** Per contra, the learned Senior counsel for the respondent submits that the enquiry was conducted in compliance with the regulations and the procedure prescribed. It is submitted that the petitioner was given all adequate opportunities in the eye of law to prove his innocence. Proper Enquiry Officer along with Presenting Officer was appointed by the bank authorities and the petitioner was given every opportunity of having access to defense assistance and which he had availed of. The enquiry proceedings were conducted in the presence of the petitioner and he duly participated in the enquiry proceedings. The learned Senior counsel for the bank submits that the document enclosed to the writ petition is not the enquiry report but a summary of the charges and the findings of the Enquiry Officer. The learned senior counsel submits that the original records of the enquiry are available with him and he sought liberty to place the same before the Court during the course of the hearing. The learned Senior counsel submits that as the enquiry conducted was as per the procedure prescribed and adequate opportunities of due participation having being provided to the petitioner, there is no infirmity with the enquiry proceedings conducted nor was there any violation of any of the



principles of natural justice. The conclusions arrived at during the enquiry proceedings and concurred by the disciplinary authority are ordinarily not within the scope of judicial review. It is only process of decision making which is amenable to judicial review and in the facts and circumstances of the case, no such occasion has arisen to interfere with the disciplinary proceedings conducted, the conclusions of the enquiry Officer and the decision of the disciplinary authority concurring with the findings of the Enquiry Officer and imposition of the penalty of removal as well as the appellate order upholding the order of the disciplinary authority. It is submitted that the law in respect of judicial review in disciplinary proceedings is well defined and it is only on very limited grounds that the constitutional Court would ordinarily interfere with any enquiry proceedings.

**8.** The learned Senior counsel for the respondents in support of his contentions to the Judgment of the Apex Court rendered in *Uttar Pradesh Power Corporation Ltd. Vs. National Thermal Power Corporation and Ors.*, reported in (2009) 6 SCC 235 to submit that the elaborate procedure prescribed under the Procedural Code, namely the Civil Procedure Code or the Evidence Act, are not applicable in cases of these departmental enquiries. The delinquent is only required to be informed of the charges





and to defend himself against the said allegations and the delinquent will be given due opportunities.

Reliance is placed on *Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and Anr., reported in (1996) 2 SCC 12* to submit that where there is an admission and that too in writing, the charges against the delinquent are required to be held to be proved. The learned Senior counsel for the respondents submits that it is evident from the records that the petitioner had preferred a written representation seeking his apology for the mistake committed in opening the RIPC account in his name without making the deposit with a request to condone his mistake. Under such circumstances, this is a clear admission by the petitioner in respect of the charges levelled against him.

The learned Senior counsel for the respondents also refers to the judgment of the apex court in *State Bank of India Vs. S.N. Goyal, reported in (2008) 8 SCC 92;*

In support of his contentions that in a "banking sector employment trust" is the basis of relationship between the bank and its clients or customers. Where the trust reposed on any employee is completely misplaced, then such an employee tarnishes the image of the bank and



therefore, by way of the enquiry proceedings conducted, the petitioner was rightly awarded the penalty of removal of dismissal from service.

The learned Senior counsel for the respondents also refers to the judgment of the Apex court rendered in *Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao*, reported in (2012) 1 SCC 442 to buttress his submissions that in a case of grave misconduct like the one committed by the petitioner, no punishment other than dismissal can be considered to be appropriate.

In *Narendra Nath Bhalla Vs. State of Uttar Pradesh and ors.*, reported in (2007) 15 SCC 775, which is also relied on by the learned counsel for the petitioner, it is submitted that mere repayment of money would not absolve him of the serious charges proved. Punishment of dismissal under such nature of charges cannot be held to be disproportionate.

Reliance is also placed on the judgment of the Apex Court rendered in *Canara Bank Vs. V.K. Awasthy*, reported in (2005) 6 SCC 321 to submit that interference with the quantum of punishment cannot be a routine matter. On the facts of that case, Apex Court held that where the charges have been proved, clearly establishing that the delinquent employee failed to discharge his duties with utmost integrity, honesty, devotion and



diligence his acts were prejudicial to the interest of the bank, therefore, the punishment of dismissal was proportionate to the misconducts found to be proved.

The learned Senior counsel for the respondents also relies upon the judgment of the Apex court rendered in *Disciplinary Authority-cum-Regional Manager and Ors. Vs Nikunja Bihari Patnaik, reported in (1996) 9 SCC 69* submits that where a bank employee acts beyond his authority that itself is a breach of discipline and it therefore constitutes misconduct. No further proof of loss is really necessary and under such circumstances, dismissal or removal from service is considered to be an appropriate punishment where the charges have been held to be proved clearly.

**9.** In submission the learned senior counsel submits that the petitioner was given sufficient notice and opportunity of participating in the Enquiry proceedings and he was given the defense representative at his request. All charges were duly explained to him. List of documents and witnesses were furnished to him. He was given opportunity to present his defense witnesses which however were not presented by the petitioner. The primary charges that the RIPC account number 1833 was opened by the petitioner without deposit of the amount of Rs. 50,000/- as required, was held to be clearly proved in view of the evidences adduced during the



Enquiry proceedings. Under such circumstances, the disciplinary authority, having accepted the Enquiry report and held the charges to be proved, imposed penalty of removal from service as per the procedure prescribed under the regulations. The learned counsel for the petitioner also accepted that these regulations were duly notified by the bank and therefore there was no infirmity in these regulations and such challenge made to the regulations had already been abandoned by the counsel for the petitioner. The appeal filed by the petitioner has also been rightly rejected by the appellate authority. Under such circumstances, the learned Sr. counsel for the respondents submits that there is no merit in the petition and the same should therefore be dismissed as being without merit.

**10.** The learned counsel for the parties have been heard. Pleadings on record been carefully perused. The Court has also perused the original records placed before the Court regarding the departmental proceedings against the petitioner.

**11.** The Show-cause Notice dated 27.08.2008 issued on the petitioner required the petitioner to show cause in respect of the following allegations:

**"Article of Charges:-**

*During the tenure of your service as Messenger of Assam Gramin Vikash Bank, Kaithalkuchi branch, you failed to take all possible steps to ensure*



*and protect the interest of the Bank and discharge your duty with utmost integrity, honesty, devotion and diligence in as much as:-*

**1.** *On 20.11.2006, you opened a RIPC A/C bearing No. 1800 in your own name for Rs. 50000/- (Rupees fifty thousand). You deposited no amount against the said RIPC Account. A receipt bearing No 034923 was written by you and subsequently it was signed/ issued by the Branch Manager against the said account. All the entries were made by you in the ledger sheet and RIPC Account opening Register, which were duly authenticated by the Branch Manager. The said RIPC A/C was prematurely closed by you on 14.12.2007 and a sum of Rs 53593/- (Rupees fifty three thousand five hundred ninety three) was credited to your own COD A/C No 3 maintained with the branch. Thus, you defrauded the Bank's money to the extent of Rs 53593/- (Rupees fifty three thousand five hundred ninety three) in connivance with the Branch Manager.*

*However on detection of the fact you refunded the amount with interest amounting to Rs 62116/- in two installments (Rs 56456/- on 29.08.2008 and Rs. 5660/- on 01.09.2008)*

**Statement of allegations on which the Article of charges are based: -**

*It is alleged that during the tenure of your service as Messenger of Assam Gramin Vikash Bank, Kaithalkuchi branch you committed some serious fraudulent activities and defrauded Bank's money to the extent of Rs 53593/- (Rupees fifty three thousand five hundred ninety three). The nature of fraudulent activities committed by you is given hereunder —*



*(1) On 20.11.2006, you opened a RIPC A/C bearing No 1833 in your own name for Rs 50000/- (Rupees fifty thousand). You deposited no amount against the said RIPC Account. A receipt bearing No 034923 was written by you and subsequently it was signed / issued by the Branch Manager against the said account. All the entries were made by you in the ledger sheet in RIPC Account Opening Register, which were duly authenticated by the Branch Manager. The said RIPC A/C was prematurely closed by you on 14.12.2007 and a sum of Rs 53593/- (Rupees fifty three thousand five hundred ninety three) was credited to your own COD A/C No 3 maintained with the branch. Thus, you defrauded the Bank's money to the extent of Rs 53593/- (Rupees fifty three thousand five hundred ninety three) in connivance with the Branch Manager.*

*However, on detection of the fact, you refunded the amount with interest amounting to Rs 62116/- in two installments (Rs 56456/- on 29.08.2008 and Rs 5660/- on 01.09.2008)*

*Having done so you have grossly violated regulations 17 and 19 of Assam Gramin Vikash Bank (Officers & Employees) Service Regulations, 2006, which attracts penalties under Regulations 38.11 (b) of the said Service Regulations."*

The charge memo also contained the list of documents and the list of witnesses.

**12.** In his reply to the show cause, the petitioner admitted that the amount was withdrawn without initially depositing the same in the RIPC



account. Although certain allegations have been made against the then Branch Manager, the fact remains that there is an admission on record that the petitioner had indeed withdrawn the amount without initially depositing the same. This was adjusted by the bank authorities with another RIPC account held by the petitioner and thereafter an amount of Rs.5660/- was required to be paid by the petitioner and which was not deposited. During the enquiry proceedings one Shri Rabindra Nath Sarma Sharma, Officer (Inspection Department), Assam Gramin Vikash Bank, Head Office, Guwahati (Camp R.O-Nalbari) was examined as Management Witness-1. The Enquiry Officer permitted the petitioner also to submit his list of witnesses and the petitioner however stated that he will submit his list of witnesses later. However, no such witness was presented by the petitioner in support of his case.

**13.** The documents which were exhibited were also proved by the witnesses. The petitioner although provided with a defense assistance did not choose to cross examine the witnesses or dispute the veracity of the documents which were relied upon during the enquiry proceedings in support of the charges against the petition.

**14.** During the enquiry proceedings, the Management Witness adduced evidence in support of the allegations that the Material Exhibit-5 which is



RIPC Account opening form of RIPC Account No. 1833 was filled up by the petitioner in his own name. The Management Witness-1 adduced evidence that the hand writing in the form was that of the petitioner. The amount indicated in the form was Rs. 50,000/- (Rupees Fifty Thousand Only). The date of account opening was 20.11.2006. The introducer of the petitioner was shown to be Shri Surendra Nath Barman who is the petitioner himself. The RIPC receipt available in the record of the Bank was numbered as 034923 and which was produced as Material Exhibit-9. The Presenting Officer also presented the material Exhibit-6 which is the RIPC account opening register for the period covering 20.11.2006. The Management Exhibit-6 is a copy of the RIPC account No. 1833 was recorded to have been opened in the name of the petitioner for Rs. 50,000/- (Rupees Fifty Thousand Only) with receipt No. 034923. The entry in the said register was stated to have been made by the petitioner himself and initialed by the then Branch Manager.

**15.** The Presenting Officer also presented the ledger extract of the RIPC account No. 1833 which was material Exhibit-4 as well as RIPC receipt No. 034923 dated 20.11.2006 for account No. 1833 which was produced as material Exhibit-9. The Material witness-1 adduced evidence in support of the allegations made against the petitioner on the basis of these





documents produced. That apart the cash book containing the entries for the period 20.11.2006 was also produced as Material Exhibit-7 and it reflected that no amount was deposited for RIPC account No. 1833 opened in the name of the petitioner. For the date 20.11.2006, as per the cash book only one amount of Rs. 50,000/- (Rupees Fifty Thousand Only) was recorded and shown to have been deposited on that day by some D Hussain against his SB A/C No. 6010. That apart, the subsidiary cash book was also produced as material Exhibit-8 and the Material Witness-1 adduced evidence explaining the entries made in the subsidiary cash book and material exhibit-8 for the date 20.11.2006 "receipt side". There is no record of deposit of Rs. 50,000/- (Rupees Fifty Thousand Only) was shown to be deposited against SB account No. 6010. No entry or receipt is found in respect of any deposit of Rs. 50,000/- (Rupees Fifty Thousand Only) against RIPC account No. 1833 as on 20.11.2006. The material Exhibit-10 was the credit transfer voucher in respect of account of CODS/03 standing in the name of the petitioner. The evidence was adduced by Material Witness-1 that four RIPC accounts of the petitioner was closed including RIPC account No. 1833 and the amount against the RIPC account No. 1833 was shown to be Rs. 53,593/- (Rupees Fifty Three Thousand Five Hundred Ninety Three Only) and the said amount was credited to CODS account No.



03 of the petitioner. The defence representative raised objections in respect of the material Exhibit-5 stating that there are overwriting and no authentication on the form. He also raised objections that the signature of one Shri Suren Barman where the name of petitioner is Suren Ch. Barman. Similar objection was also raised in respect of the Material Exhibit-6 which is RIPC account opening register for the period 20.11.2006. Objections were also raised in respect of Material Exhibit-8 which is the Sub Cash Book for the date 20.11.2006 that authorized Officers and Branch Officer did not sign and as such it is an exhibition of irregular Sub Cash Book. On the basis of this evidence adduced, the Enquiry Officer concluded the enquiry proceedings confirming the allegations against the petitioner.

**16.** The law laid down by the Apex Court as regards Judicial Review of Disciplinary Proceedings is well established by a catena of Judgments rendered. In Pravin Kumar Vs. Union of India and Ors. reported in (2020) 9 SCC 471, the Apex Court while examining the matter pertaining to disciplinary proceedings conducted by the Department in respect of the member of an armed forces namely the CISF, held that criminal proceedings are distinct from civil proceedings. The charges in disciplinary proceedings are required to be established against the delinquent officer by adopting the principle of preponderance of probabilities. The Apex Court



held that there is a distinction in the standard of proof required to be accepted between civil and criminal litigation. The Apex Court held that in a disciplinary enquiry, the strict rules or evidence and procedure of criminal trial is inapplicable. In the said case, the department proceeded against the delinquent officer independently by way of a departmental proceedings against certain allegations which were under investigation by the CBI and during the departmental enquiry, no charge-sheet was filed by the CBI. The Apex Court went onto hold upon examining the entire matter that the appellant therein received fair treatment since he was granted opportunity to seek assistance of other officers, right of representation before each authority and multiple opportunities being granted to lead evidences, cross-examine witnesses, raising of objections and therefore negated the plea of violation of natural justice raised by the appellant therein.

**17.** In Deputy General Manager (Appellate Authority) and ors. vs. Ajai Kumar Srivastava, reported in (2021) 2 SCC 612, the Apex Court while examining the matter pertaining to departmental enquiry summarized the principles relating to exercise of judicial review by Constitutional Courts under Article 226 of the Constitution of India. The Apex Court held as under:



**22.** *The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in State of T.N. v. T.V. Venugopalan [State of T.N. v. T.V. Venugopalan, (1994) 6 SCC 302 : 1994 SCC (L&S) 1385] and later in State of T.N. v. A. Rajapandian [State of T.N. v. A. Rajapandian, (1995) 1 SCC 216 : 1995 SCC (L&S) 292] and further examined by the three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] wherein it has been held as under: (B.C. Chaturvedi case [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80], SCC pp. 759-60, para 13)*

*"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court/tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."*

**24.** *It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the*



*scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

**25.** *When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:*

*(i) whether the enquiry was held by the competent authority;*

*(ii) whether rules of natural justice are complied with;*

*(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.*

**26.** *It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.*

**27.** *It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.*

**28.** *The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except 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 those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.*



**18.** The same view has been reiterated in another Judgment of the Apex Court in State of Karnataka and Anr. Vs. Umesh, reported in (2022) 6 SCC 563. The Apex Court in the said matter held that the Court does not act as an appellate forum over the findings of a disciplinary authority and does not re-appreciate evidence on the basis of which findings of misconduct have been arrived at in the course of disciplinary enquiry. The Apex Court held that the Court while exercising its jurisdiction under Article 226 of the Constitution in exercise of judicial review must restrict its review to determine whether (i) Rules of natural justice have been complied with; (ii) finding of misconduct based on some evidence; (iii) statutory rules governing conduct of disciplinary enquiry were followed; (iv) findings of disciplinary authority suffer from perversity; and (v) penalty disproportionate to proved misconduct.

**19.** In a departmental proceedings, the degree of proof applicable in a criminal proceeding is not required. So long there is some evidence on record in support of the allegations, ordinarily a Court will not interfere. It is only in a clear case of violation of rules of natural justice, the procedure prescribed under the rules, the safeguards required to be taken by the authorities concerned while conducting disciplinary enquiry, are ordinary instances where a writ Court will interfere with. The facts which are urged in the present case



and which is evident from the records available before the Court, do not indicate of any procedural lapses or violation of rules of natural justice, having caused during the enquiry proceedings. Under such circumstances and in view of the law laid down by the Apex Court as discussed above, this Court is not inclined to accept the contentions of the petitioner that the enquiry proceeding is bad in law and that the same ought to be interfered with and set aside and quashed. Such prayer on the facts of this case and in view of the law discussed is rejected.

**20.** Having said that what is also noticed that although initial allegation against the petitioner was in respect of non deposit Rs.50,000/- in his RIPC account, thereafter, the bank authorities adjusted the said amount in respect of another RIPC account bearing and pursuant thereto an amount of Rs. 5660/- was required to be paid back by the petitioner. The petitioner was admittedly employed as a Messenger. The Assam Gramin Vikash Bank (Officers and Employees) Service Regulations, 2006 is concerned, Regulation 3 provides for the classification of officers and employees. Group A consists of Officer Grade. Group B comprises of Clerical Cadre including clerk-cum-typist-cum-stenographer and such other categories as may be specified by the board of the Bank from time to time with prior approval of the Central Government. Group C comprises of the subordinate



cadre and subordinate staff, namely Messenger, Messenger-cum-sweeper, Driver, Driver-cum-Messenger, Part Time Messenger-cum-Sweeper, Security Guard and such other categories as may be specified by the Board from time to time with prior approval of the Central Government. As such, from the Regulations, it appears that the nature of duty of the petitioner was primarily restricted to movement and/or was in the nature of carrying files and papers within the office and outside as and when required. The petitioner was not entrusted with any managerial or supervisory functions or even functions relating to book-keeping and accounts. In other words, the nature of work of the petitioner is comparable to that of a Grade-IV employee ordinarily in a Government Department. No responsibility for administration or management or supervision had been shown to have been entrusted to the petitioner during his period of service. That apart, the amount which was withdrawn and which is stated to have been withdrawn from the RIPC account without the petitioner making the deposit also had initials of the Manager and other Officers. This will go to show that there are other officers entrusted with supervisory, administrative or managerial responsibilities who are supposed to verify and check every transactions which took place in the bank, including deposits and withdrawal of money. There is no material placed before the Court to show that along with the petitioner there are other Officers or Employees of the bank who have also been proceeded with





and/or imposed with penalty. In any view of the matter, the amount which was found to be short paid by the petitioner relates to an RIPC account which was opened in the name of the petitioner himself. It does not belong to any other depositor of the bank. For the aforementioned reasons, in the opinion of this Court, the punishment of "*removal from service without disqualification for future employment*" appears to be harsh as compared to the charges levelled against the petitioner. The Judgments referred to by the petitioner in support of his contention that interference with quantum of punishment cannot be treated to be a regular matter is ordinarily in cases where the employee of the Bank is shown to be given administrative or managerial or financial responsibilities pertaining to the transactions which are conducted in the ordinary course of business between the Bank and its customers. As discussed above, the petitioner was employed as a Messenger, which is a group C post, as shown under the Assam Gramin Vikash Bank (Officers and Employees) Service Regulations, 2006. There is no material placed before the court to suggest that at the relevant point in time the petitioner was given such managerial, administrative or financial responsibilities in respect of the day to day transactions of the bank. The RIPC account relating to which the controversy has arisen was admittedly opened in the name of the petitioner. The shortfall amount had also been adjusted and balanced amount was also repaid by the petitioner.



**21.** Ordinarily, it is in the realm of the employer to decide and impose the adequate punishment. In the event a Court considers the punishment to be harsh the appropriate order ordinarily would be to remand the matter back to the authorities to re-consider the punishment imposed for a lesser punishment. However, this matter has been pending in this Court since the year 2012 and the petitioner was removed from service in the year 2011. As such, remitting the matter back to the department again after so many years to re-consider the punishment imposed and thereafter impose lesser punishment will cause undue hardship to the petitioner as well as to the bank authorities.

**22.** Accordingly, under the powers of the Constitution of India under Article 226, this Court while upholding the departmental proceedings initiated against the petitioner as well as the order with disciplinary authority concurring with the findings of the Enquiry Officer, modifies the punishment imposed which is removal from service "which will not be a disqualification for future employment" to a lesser punishment as is evident under the provision of the Rules. This Court considers that the impugned order of the disciplinary authority be modified for imposing a punishment of compulsory retirement on the petitioner. The impugned order dated 02.11.2011, accordingly stands modified to that extent as also the order



dated 31.12.2011 passed by the appellate authority upholding the order of the disciplinary authority.

**23.** The writ petition accordingly stands disposed of in terms of the above. No order as to cost.

**24.** The respondent authorities will pass appropriate administrative orders if required modifying punishment of removal from service to compulsory retirement.

**25.** Original records are returned back to the learned counsel of the Bank. It is made clear that the imposition of compulsory retirement as have been modified by this Court will be effective from the date of this order only.

**JUDGE**

**Comparing Assistant**