

V.Ravichandra Vs. Indian Bank, Rep.by Ts General Manager

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Court : Andhra Pradesh

Decided On : Feb-03-2014

Judge : Dama Seshadrinaidu

Appellant : V.Ravichandra

Respondent : Indian Bank, Rep.by Ts General Manager

Judgement :

THE HON'BLE SRI JUSTICE DAMA SESHADRI NAIDU W.P.No.9070 of 2008 03-02-2014 V.Ravichandra..... PETITIONER Indian Bank, rep. by its General Manager/Appellate Authority for Award Staff,HRM Department, H.O.66, Rajaji Salai,Chennai - 600 001 and others.....RESPONDENTS Counsel for the petitioner: Sri V.Ravichandra, Party in person Counsel for respondents: Sri Ambadipudi Satyanarayana : ?.Cases referred:

1. (1986) 3 SCC4542. AIR 1993 SC11973. (1991) 3 SCC2194. (1995) 6 SCC7495. (2006) 5 SCC886. (2006) 4 SCC7137. AIR 1993 SC11978. (2011) 7 SCC3259. (2010) 5 SCC77510. AIR 2009 SC16111. (2005) 10 SCC8412. (2000) 1 SCC41613. AIR 2007 SC19914. (2006) 2 SCC255HON'BLE SRI JUSTICE DAMA SESHADRI NAIDU WRIT PETITION No.9070 of 2008

ORDER

: The petitioner, an employee of the respondent Bank, having been removed from service on an allegation of misconduct, laid challenge against the said dismissal in

the present writ petition. The facts in brief are as follows: The petitioner, when working as a Clerk/Shroff in one of the branches of the respondent bank in Chittoor District, was alleged to have committed certain irregularities, as a result of which, he was charge sheeted on 18.01.2003 by the Circle Head and Disciplinary Authority, Circle Office, Chittoor. The core of the charge is that on 04.06.2001, an entry for Rs.10,000/- under token No.6 was made in the name of a fictitious person, and the money said to have been paid by the petitioner in the cash counter under the said token was misappropriated by himself, since the very transaction was fictitious. Not satisfied with the explanation submitted by the petitioner to the articles of charges framed against him, the respondent bank went ahead with the departmental enquiry, which resulted in an order of removal dated 28.08.2006 passed by the disciplinary authority, the 2nd respondent. Later, though an intra-departmental appeal was filed by the petitioner, it, too, was dismissed through an order dated 15.02.2008. Aggrieved thereby, the petitioner filed the present writ petition. Before advertng to the submissions of the respective counsel, the course of departmental proceedings may be put in perspective. The transaction of payment of Rs.10,000/- in the name of fictitious person involved three persons. The branch in which the petitioner was working at the material point of time being a rural branch, it had a skeletal staff of three members - Manager, Clerk/Shroff (the petitioner) and the sub-staff (Attender). The Version of the Respondent Bank: On 04.06.2001, an entry of Rs.10,000/- was made in the token register by the sub-staff and was initialled by the Manager under token serial No.6, the transaction being a loan against a deposit purportedly to have been availed by one Sri G.Gopal. The transaction was not supported by any debit voucher or document. On the strength of this entry made in the token register in the name of Sri G.Gopal, believed to be non-existent, the petitioner, in his position as the cashier, took advantage of the situation and reflected an entry in the cash register as if it had been paid to the said person and misappropriated the amount. The petitioner, being the only clerk in the branch, was also assigned the task of writing the day book. To cover up the payment so made, he altered the debit side figure under the head of loans from Rs.10,535/- to Rs.20,535/- without any supporting debit voucher for Rs.10,000/-. When eventually the deficit in the cash balance came to light, the petitioner displayed posters written in vernacular (Telugu) in and

around the villages of the branch, without taking leave from the authorities, appealing to the public to return the money to the branch if by oversight somebody had withdrawn the money. Presto, the money was found lying in a packet at the branch couple of days later when the staff came over to open the branch.

Sequence of Events: On 20.07.2001 (two weeks later), the branch manager informs the circle office about the incident; soon thereafter, on 23.07.2001 vigilance officer visited the branch and investigated the incident; and on 27.07.2001 the manager informed the circle officer that the money was recovered. On 03.09.2001 the disciplinary authority issued a show cause notice to all the three staff members of the branch. On or about 22nd of the same month all the three submitted their replies, based on which the sub-staff was exonerated. On 05.10.2002, as the disciplinary authority was not satisfied with the reply submitted by the petitioner, he issued a second show cause notice to the petitioner. When the petitioner, through his letter dated 20.11.2002, sought copies of documents supporting the allegations set out in the second show cause notice so as to enable him to give a reply, it was not acceded to by the authorities. On 18.01.2003, the disciplinary authorities issued a charge sheet containing seven charges and enquiry was ordered by appointing an enquiry officer, whose details were provided in the charge sheet itself. The departmental enquiry, having commenced on 23.03.2003, ended on 23.10.2003. On 05.02.2004, the enquiry officer submitted his findings to the disciplinary authority, who, in turn, submitted his recommendations to the Chief Vigilance Officer on 13.07.2004 proposing a punishment of lowering three increments. Treating it as 'second stage advice' from the CVO, the Vigilance Department sought the entire material concerning the enquiry to be placed before the CVO. At that juncture, on 05.05.2005, the petitioner was transferred from Chittoor Circle to Hyderabad Circle. On 23.09.2005, the Vigilance Department informed the Disciplinary Authority, Chittoor to impose punishment of removal from service. In any event, on 23.11.2005, the enquiry file of the petitioner was transferred to the disciplinary authority, Hyderabad Circle from that of Chittoor Circle Office. On 02.12.2005, the disciplinary authority, Chittoor requested his counterpart at Hyderabad to implement the punishment he initially proposed to be inflicted on the petitioner, i.e., lowering the pay scale of the petitioner by three increments. In response

thereto, on 19.01.2006, the disciplinary authority, Hyderabad sought review against the orders of strict penalty recommended by CVO, Chennai. Through its communication dated 04.03.2006, the Vigilance Department, Chennai, however insisted on imposing the major punishment of removal. In the backdrop of insistence of the Vigilance Department to impose the major penalty of removal from service, on 28.03.2006, the disciplinary authority, Hyderabad, supplied the enquiry officer's findings to the petitioner seeking his explanation on the said findings. While the petitioner submitted his explanation on the enquiry officer's findings through his letter dated 12.05.2006, on 27.05.2006, the disciplinary authority send final show cause notice to the petitioner proposing removal from service as the punishment to be awarded to the petitioner. On 12.06.2006, the petitioner requested for copies of the departmental proceedings of the other charged officers involved in the same incident, but he was denied the information. At that stage, the petitioner filed W.P.No.13153 of 2006, which came to be disposed of on 07.08.2006, observing that pending the writ petition, through communication, dt.15.07.2006, the petitioner was furnished copies of the charge sheet, enquiry report and final orders, passed against the then Branch Manager. Insofar as the request of the petitioner for furnishing the copies of the proceedings in respect of Sub-staff, it was informed that no charge sheet was issued to him, and as such, there was nothing to be furnished. Accordingly, the writ petition was closed. In the light of the information provided on 15.07.2006 by the management in response to the petitioner's approaching this Court, immediately thereafter the petitioner submitted his explanation to the final show cause notice. Having provided personal hearing to the petitioner on 03.08.2006 regarding the proposed punishment, the disciplinary authority once again, through letter, dated 09.08.2006, sought second stage advice from CVO, since the Disciplinary Authority was not inclined to implement the major punishment of removal from service, as had been suggested by the CVO earlier. In turn, through communication dated 23.08.2006, the CVO once again asked the disciplinary authority to implement his earlier decision of removal from service. Eventually, the capital punishment of removal from service was inflicted on the petitioner by the disciplinary authority through his proceedings dated 28.08.2006. On 13.09.2006, the petitioner sent a notice under Right to Information Act (RTI) seeking copies of

the correspondence between the CVO and the disciplinary authority. On 06.10.2006 the information was provided. Again on 16.10.2006, the petitioner sought information on certain aspects concerning the so-called advice of the CVO and it was as well provided. On 03.01.2007, the petitioner filed an appeal and sought the leave of the appellate authority to provide him a personal hearing and further to permit him to have the defence assistant. In response to its communication dated 09.10.2007 seeking defence assistance, the appellate authority on 15.10.2007 denied leave but provided personal hearing to the petitioner on 18.10.2007 as well as on 28.10.2007. Finally on 15.02.2008, the appellate authority, confirming the order of the disciplinary authority, dismissed the appeal. Charges: The disciplinary authority has framed as many as seven charges: ".1. On 04.06.2001, an entry of Rs.10,000/- was made in the token register by sub-staff Shri.S.Muskin Sahib and initialled by the Manager Shri A.S.Aswathanarayana, under token serial No.6, under LAOD purportedly to have obtained by one G.Gopal without any supporting debit voucher and documents. On the pretext of this entry made in the token register in the name of a fictitious person G.Gopal, he had misappropriated an amount of Rs.10,000/- allegedly claiming to have made payment to the said person resulting in a financial loss to the Bank. ...

2. While writing the daybook on that day i.e., 04.06.2001 he had altered the debit side figure of LAOD from Rs.10,535/- to Rs.20,535/- without any supporting debit voucher for Rs.10,000/- and also failed to bring the same to the Manager's notice before altering the figures in the day book and shown the day book as tallied/adjusted on that day. ...

3. He has displayed posters written in local language in Ghattu and surrounding villages informing the members of public about the loss of Rs.10,000/- by the Bank without informing and obtaining permission from the management. This act of his, which is not only detrimental/prejudicial to the interest of the bank but also evoked several adverse comments from the public damaging the reputation and tarnishing the image of the Bank. ...

4. It is alleged that being key holding shroff of the branch, he had come to the branch at 11.00 a.m. on 07.03.2001 and refused to open Cash Safe. Further he had left the branch at about 11.50 a.m. along with cash and jewel safe keys without heeding the advice of the then Branch Manager to open the safe and work for the day. Branch had faced inconvenience in running the business on 07.03.2001 and 08.03.2001 due to non-availability of Safe Keys. This act of the CSE affected customer service at the branch and caused damage to the reputation of the Bank. ...

5. It is also alleged that he had handed over the cover containing Cash and Jewel Safe Keys to the Post Master of Ghattu village, a third party for handing over the same to the Branch Manager without ensuring proper safety and security as per HO: guidelines. ... [All the above charges are said to be instances of Gross Misconduct in terms of clause No.5(j) of MOS dated 10.04.2002 and punishable under clause No.6.].

6. It is further alleged that he was on unauthorised absence for duty from 07.03.2001 to 13.03.2001 and caused disruption in smooth functioning of the branch. ...a Minor Misconduct in terms of clause No.7(a) of MOS dated 10.04.2002.

7. It is also alleged that he was unpunctual and irregular in attending the branch, which affected the smooth routine functioning of the branch and hampered customer service. ...a Minor Misconduct in terms of clause No.7(b) of MOS dated 10.04.2002.". During the course of departmental enquiry, the Manager marked 21 documents - MEX-1 to MEX-21, whereas the defence has marked five documents - DEX-1 to DEX-5. The management examined three witnesses (MW-1 to MW-3), viz., the Branch Manager, Sub-staff and the Post Master of the village; whereas the petitioner, none. Appearing in person, the petitioner not having any advocate on record, reported to the Court that he would be making his submissions in person. Submissions of the Petitioner: In the above factual backdrop, the petitioner has contended that the enquiry proceedings initiated against him have been vitiated both procedurally and substantively. Even the appellate authority failed to take into consideration the material on record, especially the admission made by

the sub-staff. He has contended that initially it is the Manager who prepared the alleged voucher and it was later entered in the token register by the sub-staff and finally came to the petitioner. Thus, the act of payment effected by the petitioner being the last in a series of acts initiated by the Branch Manager, there is no justification for the management to victimise the petitioner. He has further contended that he has only made the payments in terms of the vouchers sent by the Manager and the tokens issued by the sub-staff. There was no occasion for the petitioner to know whether the payee is one Mr.G.Gopal or somebody else or whether the person whose name was reflected in the voucher was real or fictitious. The petitioner has contended that though all the three employees, the Manager, the Sub-staff and the petitioner himself, were charge sheeted, the management has deliberately not conducted a joint enquiry through common proceedings, and that later the Attender was let off without any enquiry, whereas the Manager was awarded punishment of lowering salary by one stage of pay scale, reserving the major punishment of removal from service to be inflicted on the petitioner. Thus, the petitioner has strenuously contended that the management has refused to conduct common enquiry with a mala fide intention, and that under a charade of an enquiry treated the other two persons with kid gloves. The petitioner has also brought to the notice of the Court that despite his repeated requests, the enquiry officer has not provided him access to the necessary documents, and as such, he was compelled to take recourse to the provisions of Right to Information Act, 2005 (RTI) to obtain some. Illustratively, the petitioner has stated that the credit voucher upon which the whole charges centred was not given to the petitioner. That apart, though chapter No.12(2) of the Manual allows the delinquent to avail himself of the services of defence representative, the petitioner was denied even that facility. It is the specific contention of the petitioner that the report of the enquiry officer was made available to him on 28.03.2006, whereas the quantum of punishment had already been decided in 2004 itself. Despite the absence of any charge concerning the alleged moral turpitude anywhere, the disciplinary authority was pressurised by the CVO through his letter dated 23.08.2006 to include it as one of the grounds of punishment. It is further contended that initially there was no mention in the enumerated list of misconducts regarding moral turpitude. Later by way of an amendment effected in

April, 2002 to the Manual of Disciplinary Proceedings, it was made part of the enumerated misconducts, and it was *expost facto* applied to the incident alleged to have taken place on 04.02.2001. Taking this Court through the entire material on record, the petitioner has strenuously contended that the disciplinary authority has not acted independently while imposing the punishment but was totally controlled by the vigilance authorities who dictated to the disciplinary authorities what punishment should be imposed on the petitioner even before the petitioner could be served with the final cause notice, and his response given in reply thereto was considered. In this regard, the petitioner has stated that based on the enquiry report, initially the disciplinary authority felt it appropriate to inflict a punishment of lowering three annual increments. To sustain the allegation that the disciplinary authority has not acted independently, the petitioner obtained from the management copies of the correspondence between the disciplinary authority and CVO. With specific reference to them, the petitioner has stated that it is a clear case of abdication of statutory responsibility imposed on the disciplinary authority, who chose to obey the dictates of the CVO, his superior. In support of his submission, the petitioner placed reliance on the following judgments:

1. *Sawai Singh v. State of Rajasthan*¹.
- 2) *State Bank of India and others v. D.C. Aggarwal and another*².
- 3) *Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal and another*³.
- 4) *B.C. Chaturvedi v. Union of India and others*⁴.
- 5) *M.V. Bijlani v. Union of India and others*⁵.
- 6) *Narinder Mohan Arya v. United India Insurance Co. Ltd. and others*⁶.
- 7) *State Bank of India and others v. D.C. Aggarwal and another*⁷. Submissions of the Respondent Bank: Per contra, the learned Standing Counsel for the respondent bank, in tune with the averments made in the counter affidavit filed by the respondent bank, has submitted that during the course of enquiry, the respondent bank has followed the principles of natural justice, as well as the

departmental regulations governing the enquiry, meticulously throughout the proceedings. The petitioner was also provided a copy of the enquiry officer's findings, on which he was asked to give his explanation, and eventually after the personal hearing on the proposed punishment, the disciplinary authority has imposed the punishment. Referring to the allegation that the management has deliberately denied the advantage of the common enquiry to the petitioner, the learned Standing Counsel has stated that the charges against each employee are different. Even the scope of enquiry being different, the management has advisedly conducted separate domestic enquiries. It is submitted that the punishment was imposed on the delinquents considering the gravity of charges framed and proved against each of them. The learned Standing Counsel has also stated that the petitioner was supplied with every material document relied on by the management, apart from giving access to him to peruse the rest of the documents on record. He has reminded the Court that the disciplinary authority and subsequently the appellate authority have kept in mind the gravity of the charges faced by the petitioner since they are related to misappropriation of money and manipulation of accounts, as well as doubtful integrity. Vehemently denying the allegation that the CVO has pressurised the disciplinary authority to impose major punishment, the learned Standing Counsel has stated that even as per the Vigilance Manual adopted by the respondent bank, a Vigilance Officer can always advise a disciplinary authority concerning the quantum of punishment and it is for the disciplinary authority either to act on it or reject it. Adverting to the allegation that the other two delinquents were let off very leniently, the learned Standing Counsel has stated that the Manager has been charged with the misconduct of negligence, whereas the petitioner, with misappropriation of funds and manipulation of records. As such, the petitioner cannot compare himself with the other charged officer. Though the petitioner obtained the correspondence between the disciplinary authority and CVO concerning the departmental enquiry and placed much reliance on it, the learned Standing Counsel has sought to repel the allegations of the petitioner by saying that it is internal correspondence between two authorities of the bank and that what matters is the final outcome, i.e., punishment imposed on the delinquent after a properly held enquiry. Elaborating on the aspect of moral turpitude, the learned Standing Counsel has

stated that the main charges against the petitioner are of misappropriation and manipulation of records, which clearly exhibit the moral turpitude on the part of the petitioner. Further referring to clause

(2) of Memorandum of Settlement on Disciplinary Action and Procedure, dated 10.04.2002, the learned Standing Counsel has submitted that gross misconduct was also enumerated therein. Since the charge sheet was issued on 18.01.2003, considering the aspect of moral turpitude, which was made part of the regulations by amendment prior to the date of charge sheet, cannot be found fault with. Referring to the order of the appellate authority, who chose to confirm the punishment awarded by the disciplinary authority, the learned Standing Counsel has stated that the appellate authority has dealt with the appeal meticulously and rendered exhaustive reasoning as to why the appellate authority was not inclined to interfere with the punishment imposed by the disciplinary authority. The learned Standing Counsel has stated that time and again the Courts have held that in financial institutions, such as banks, dealing with money, trust plays a vital role. A fortiori, any charge involving misappropriation, manipulation of record and moral turpitude would be required to be viewed very strictly and the punishment should always be exemplary. The acts attributed to the petitioner are nothing but abuse of the trust reposed on the petitioner in a fiduciary capacity. In fact, the learned Standing Counsel has submitted that, for whatever reason if the Court is of the view that punishment imposed on the petitioner cannot be sustained, the matter is required to be remanded to the disciplinary authority, and in such an event, the enquiry proceedings shall continue from stage where it stood before the alleged vulnerability surfaced. In support thereof, he has placed reliance on Union of India v. Y.S. Sadhu, Ex-Inspector, as reported in AIR 2009 SC161. Summing up his submissions, the learned Standing Counsel has urged this Court not to interfere with the punishment imposed by the disciplinary authority as was confirmed by the appellate authority. In support of his contentions, he relied upon the following judgments:

1. State Bank of Mysore and others v. M.C.Krishnappa⁸.
- 2) Administrator, Union Territory of Dadra and Nagar Haveli v. Gulabhia M. Lad⁹.
- 3) Union of India v. Y.S.Sandhu, Ex-Inspector¹⁰.
- 4) Damoh Panna Sagar Rural Regional Bank and

another v. Munna Lal Jain¹¹. 5) High Court of Judicature at Bombay, through its Registrar v. Shashikant S. Patil and another¹². 6) Suresh Pathrella v. Oriental Bank of Commerce¹³. 7) T.N.C.S.Corp'n. Ltd. and others v. K.Meerabai¹⁴. Issues: The substantial issues that emerge from the above pleadings and submissions of the respective parties are as follows:

1. Whether it has been established in the departmental enquiry that the petitioner is guilty of misappropriation?.
 2. Whether the petitioner is guilty of altering the bank records, such as sectional day book, etc?.
 3. Whether the Vigilance Manual of the respondent bank permits the Disciplinary Authority to seek 'second stage advice' from the Chief Vigilance Officer (CVO) at all?.
 4. If the Manual permits, whether the communication of the CVO can be called a piece of advice and whether the Disciplinary Authority has applied his own mind while imposing the punishment, without compelled by the 'advice' of the CVO?.
- And
5. Whether the punishment imposed on the petitioner is shockingly disproportionate?.
- Consideration by the Court: The matter on hand requires consideration twofold: Substantive shortcomings and procedural infractions. In Re. Issue No.1. It is an admitted fact that the branch of the respondent bank is a rural one with only three persons working, and all three have played their roles in the transaction, which gave rise to the disciplinary proceedings. Firstly the petitioner had no role to play, and rather ignorant about the very transaction, until the credit voucher along with the token register came to him in the cash cabin. The pivotal role was played by the sub-staff, who made entries in the token register twice on the pretext that first he entered token number 5 to one loan transaction evidenced by a credit voucher bearing the name of one Sri G. Papanna. He has further stated that when the same voucher was sent back to him once again by the manager, he entered that one more time in the token register with another token number - No.6, mistaking the name as 'G. Gopal' instead of 'G. Papanna', though the names are

not even chalk and cheese to be confused. And such a person was exonerated by the management without an enquiry, leave alone a charge memo. The initial notice issued to the said award staff on 05-10-2002 is to the following effect: ".On 04-06-2001, you made a fictitious entry of Rs. 10,000 in the token register under token serial No.6, under LAOD, purportedly to have obtained by one G.Gopal without any supporting debit voucher. Due to this act of yours, an amount of Rs. 10,000 was misappropriated, resulting in a financial loss to the bank.". On the same day even the manager was served with articles of charge stating that he authorised the loan payment of Rs.10,000/- in the name of fictitious person without any supporting debit voucher and documents by authenticating the entry made in the token register. In the same charge the dispute authority concluded that this act of the manager gave an opportunity to the petitioner to defraud the bank to the extent of Rs.10,000/-. In fact, this presumption was sought to be sustained by the authorities throughout vis--vis the petitioner. The branch manager was also charged on another count that he did not check the sectional day books and daybook dated 04-06-2001 thoroughly and carefully on the same day itself. Had it been done, the alteration of the figures on the debit side of the ledger would have come to light immediately. Interestingly there is a grave charge slapped on the branch manager, which requires to be extracted, given its importance: ".As a custodian of bank property, you have failed in preserving and protecting the bank records from tampering. A deliberate attempt was made to damage the token register by pouring stamp pad ink on it and attempted to destroy the material evidence. You ave not brought the incident of attempted tampering of records immediately on its occurrence, to the notice of the undersigned, until it is found and reported by the investigating officer on 23-07-2001. Thus being manager of the branch, you have failed to discharge your duties effectively.". What cannot escape attention is that the petitioner is not the author of the token register. Had it been a case of destroying the sectional daybook or the main daybook, the needle of suspicion would have been towards the petitioner, since he was the person who faced the allegation that he had tampered with and corrected the entries. As it is the very foundation of the defence set up by the petitioner that he made payments absolutely in accordance with the token register, which was not maintained by him, much less filled in by him, he would not be gaining anything by destroying it.

Rather the very source available to him to prove his supposed innocence was sought to be destroyed. The needle of suspicion ought to have been towards someone else. But this vital piece of information was ignored by the Disciplinary Authority, as well as the appellate authority. To confound things, the branch manager was let off with a minor punishment. Thus it is a case of omitting to take into account a vital piece of evidence having bearing on the proceedings. When the award staff was examined as MW No.2 in the Department enquiry concerning the branch manager he deposed that initially he entered the name of Mr. Papanna in the token register against token No.5, that after some time he found one debit voucher for the same amount lying at the petitioner's tray, and that the petitioner asked him to write it in the token register, that, thinking it as another LAD voucher, in a hurry he made a second entry in the token register misspelling the name as ".Gopal".. Can anybody call 'Gopal' a misspelling of 'Papanna'? It is the case of the petitioner that there were two credit vouchers with two token numbers sent to him along with Token Register and that acting on those vouchers, supported by the entries in the Token Register, the petitioner made payments to two persons, Rs.10,000/- each. Until the vouchers and the Token Register came to cash cabin, he had no idea about the whole transaction. The vouchers were prepared by the Manager and the tokens were issued by the sub- staff after entering the details in the Token Register. He has contended that Token No.5 was given against Voucher containing presumably the name of Mr. G. Gopal, whereas voucher containing Token No.6 is related to one Mr. G. Pappana. On the contrary, the Management has contended that token No.5 belonged to Mr. G.Pappanna and token No.6 belonged to Mr. G. Gopal, a non-existent person, and that first token was in order and the money of the second token was misappropriation by the petitioner in the name of a non-existent person. The obliteration of the name against token No.5 in the Token Register has already been addressed supra. Having held that the petitioner has not stood to gain by tampering with the Token Register, and that it was, in fact, his life line to establish his innocence, it is meat to examine the opinion of the Disciplinary Authority on the veracity of the statements made by the Management witnesses during the course of enquiry. In his Communication dated 19.01.2006 addressed to the Chief Vigilance Officer, the Disciplinary Authority has elaborately discussed the statement of MW.2, the sub staff in the enquiry. He has

pointed that the sub-staff gave a written statement to the Vigilance Officer on 23.07.2001 which was presented in the enquiry as MEX-17. In his statement the sub-staff had stated that on 04.06.2001, Mr. G. Papanna had availed LAD of Rs.10,000/- and that he had 'entered the LAD voucher of Papanna under token No.5 in the register'. Thus, it is evident that he was able to read the name from the voucher correctly as Mr. G. Papanna. The disciplinary authority extracted the statement of the sub-staff, a part of which is as follows: ".Manager gave me the same voucher. Again, I entered under token No.6 in the token register and wrote the name as G. Gopal, since I could not understand the name in the voucher".. Based on the above statement, the disciplinary authority reasoned that if the same voucher was given by the Manager and entered again by the sub-staff under token No.6, then there is no way to believe that he could not understand the name and wrote it as 'G. Gopal' while entering the same voucher under token No.6, though he had no difficulty in reading the name from the voucher while entering the voucher earlier under Token No.5. It is very important to examine the statement of the sub-staff as had been commented upon the disciplinary authority: ".Sri Muskin Saheb in his statement to Vigilance Officer (MEX-17) on 23.07.2001 initially stated that ".Manager had asked to keep the same voucher in token again. I have again written in the token book and sent".. This statement was subsequently modified (though duly authenticated by him with his signature) as ".Manager gave me the same voucher. Again I entered under token No.6 in the token register and wrote the name as G. Gopal, since I could not understand the name in the voucher".. (parenthesis original) But when it came to his own case, in response to the show cause notice issued to him on 03.09.2001 ".for making fictitious entry of Rs.10,000/- in the token register without any supporting voucher".., Sri Muskin Saheb had replied that ".the very fact that the entry has been authenticated by the manager in token book goes to establish that the entries in the token book were duly by voucher".. Again, during the course of enquiry, Sri Muskin Saheb, as MW2, had reversed his stand and stated that he stand by the statement given by him to the Vigilance Officer on 23.07.2001. The above inconsistent/contradictory stands of the MW2 at different times raise doubt about the credibility of evidence. Sri Muskin Saheb while deposing in the enquiry, based on MEX2 (LAD Sectional Day Book), had stated that ".there are two cash payments of Rs.10,000/- and Rs.400"..

But the Sectional Day Book is in single column with no separate columns for ".Cash/Transfer".. Similarly, Sri Aswathanarayana in his deposition, based on the same MEX2, had stated that LAD amount of Rs.10,000/- was given to G. Papanna and amount of Rs.400/- was given to Abdul Khader. But in the Sectional Day Book there were no names or even ledger foils against these two entries. Thus it appears that the evidence by these two witnesses is pre- conceived or pre-determined and not based on the exhibits. Circle Office, Chittor had sought first stage advice, for initiating DP against Sri Muskin Saheb also for ".Gross Misconduct"., alleging collusion with the cashier. But, we understand that no punishment was given to him and further proceedings against him were dropped, although full details of the DP initiated against him are not available with us. Though Sri Aswathanarayana (MW1) and Sri Muskin Saheb (MW2) have stated that there was no LAD voucher in the name of G. Gopal, the fact that MW2 had no difficulty in reading the name of G. Papanna from the voucher while entering in the token register for the 1st time and his statement that he could not understand the name and wrote it as G. Gopal while entering the same voucher for a 2nd time, raise doubts whether same voucher was entered for a 2nd time or was there another voucher in the name of G. Gopal, which could probably be missing after payment. No direct evidence was available to show that the CSE had misappropriated the amount of Rs.10,000/-. The conclusion that he had misappropriated the amount, is based on ".Preponderance of Probability"., which in turn is based on the evidence of the two co-accused/co-suspects in the incident. There was no evidence from any other independent witness, not involved in the incident. As three employees were involved in the incident. We feel the case should be viewed in totality while imposing the punishment to them. MW2, who was believed to be in collusion with the CSE in this case, was not given any punishment whereas it was proposed to impose capital punishment on the CSE".. (emphasis added) In essence, it is the case of the respondent bank that the transaction of token no.5 is true and that token no.6 is false. But, MEX.5 reveals that token no.6 is related to Mr. G. Papanna. Name against token no.5 was smeared or obliterated. The reasoning weighed with the management to condone the lapse on the part of the manager in initialling the token register was that he had done that in the rush of work. In a small rural branch of the bank, on

04.06.2001, there were hardly 14 transactions. One wonders whether it would be called rush or pressure of work?. In Token Register (MEX-1) under S.No.5 no name is visible and a name smeared with indelible ink, it is contended by the petitioner, ostensibly occupied a space of more than 10-12 letters, whereas both the names - Papanna and Gopal - are shorter. Taking advantage of undetectable name under S.No.5 of MEX-1, the respondent bank contends that the name is ".G.Papanna".. The whole issue is required to be appreciated in the light of shifting stand of the sub-staff who was instrumental in entering both the names in the register. In his explanation to an allegation against himself, he has affirmed that both transactions were true and he did it based on the instructions of the manager. This plea was accepted to drop charges against him, but was not found fit enough to be used in favour of the petitioner. The chinks in the armour of the management have further been exposed. The shifting stands of the sub-staff, who was let off by the management without any enquiry do not show the bank in a favourable light. During the inquiry proceedings against the branch manager, the sub-staff has clearly disowned the contents of the MEX-17, which was instrumental in the enquiry conducted against the the petitioner. The sub-staff in his deposition has stated that he gave MEX- 17 statement out of fear and tension. And, indeed, this statement was used by the management to nail the petitioner. In Re. Issue No.2: Concerning the charge of attempt to destroy the entries in the token register, it was simply explained away in the enquiry report relating to the branch manager that it could have been damaged during the course of banking business in the branch as it was handled by all the staff members. In fact, it is a branch with almost single digit transactions daily and the register was being handled only by three members. Smudging the entry with indelible ink cannot be treated as daily wear and tear. A perusal of MEX-1, the entries in the token register, leaves no manner of doubt that there was a deliberate attempt, indeed a successful attempt, to obfuscate or obliterate only the entries against token numbers 5 and

6. It is contended by the petitioner that it is not the duty of the branch manager to write Sectional Day Book of LAD/LAOD. There were two LAD payment challans of Rs.10,000/- each bearing token numbers 5 and

6. Out of these two challans, it is contended, the branch manager omitted to take one challan into LAD Sectional Day book on 04.06.2001, totalled the Sectional Day Book on payment side as Rs.10,535/- and left the bank by 1 p.m. He did not come back on that day. The petitioner has further contended that while tallying day book, the petitioner found Rs.10,000/- short on payment side. Out of remembrance and immediate verification of payment register, the petitioner felt that the manager omitted to take Rs.10,000/- into account. Thinking that the relevant voucher for the second transaction would be traced out, the petitioner, it is contended, altered the total in the day-book by scoring off the figures Rs.10,535/- and by writing Rs.20,535/-, instead. The charge is to the effect that the petitioner ".altered". the debit side figure. 'Alter' in Cambridge Advanced Learner's Dictionary (3rd Edn.) was defined as 'to change something, usually slightly, or to cause the characteristic of something to change. An authoritative definition of the word is available in the Oxford English Dictionary (OED, 2nd Edn., Vol.1 of 20 Volumes): ".1. To make (a thing) otherwise or different in some respect; to make some change in character, shape, condition, position, quantity, value, etc., without changing the thing itself for another; to modify, to change the appearance of. (emphasis added). MEX.3, a copy of the sectional day book shows:

10. 535 and above the said struck through figure was written:20,535. It is not an alteration, but striking off a figure and incorporating something different. A person who wanted to conceal his alleged misdeed could have chosen a better and more elegant method. The conduct of the petitioner, in fact, well accords with his consistent stand that there were two vouchers, that he made the cash payments based on them, and that now one of them was not to be traced. This version is also one of the many shifting versions of the sub-staff. Added to this is the allegation of the petitioner that he had no access to the debit voucher, based on which payments was made, during the course of enquiry until he got it under RTI. In Re. Issue No.3: Vigilance Manual and CVO's Interference: Enquiry Officer submitted his report on 05.02.2004; the Disciplinary Authority, based on the said report, desired to impose a punishment of lowering three increments, and he has accordingly sought the so called 'second stage advice' from CVO through his letter, dt.13.07.2004. This seeking of second stage advice was even prior to the final show cause notice served on the petitioner calling for his explanation. It has

come to be known by the petitioner when obtained the material under RTI after the enquiry was over. CVO on 23.09.2005 'advised' the disciplinary authority to impose 'stiff penalty under major misconduct'. This so-called advice was rendered in a peremptory language: ".Please comply with directions of GM (VG)/CVO and act accordingly, at the earliest.". Calling this a piece of advice would at best be an oxymoron. It was followed up by another communication, dt.10.11.2005. On 19.01.2006, the Disciplinary Authority once again sought 'second stage advice' reiterating his stand that only a minor punishment should be imposed on the petitioner. On 04.03.2006, Vigilance Dept., once again stressed the aspect of imposing stiff penalty. On 15.07.2006, the Disciplinary Authority once again wrote to the CVO that its decision of imposing stiff punishment needs reconsideration and that the punishment originally proposed by the Disciplinary Authority would be appropriate. The CVO rejected the said proposal, and once again reiterated his original stand of stiff punishment and told the Disciplinary Authority through his communication, dt.23.08.2006, to ".be guided accordingly.". The entire correspondence between the Disciplinary Authority and CVO was obtained by the petitioner under RTI only after the departmental appeal was over. There was a clear abdication of quasi-judicial power on the part of the Disciplinary Authority and he has simply acted, having resisted all through and failed, under the dictate of the CVO. This position could not be improved even in appeal. From the vigilance point of view, the bank, as is evident from the prefatory statement in the Vigilance Manual of the bank, has desired to draw a distinction between a business loss which has arisen as a consequence of a bona fide commercial decision and an extraordinary loss which has occurred due to any mala fide, motivated or reckless performance of duties. While the former has to be accepted as a normal part of business and ignored from the vigilance point of view, the latter has to be viewed adversely and dealt with under the extant disciplinary procedures. Considering the need for application of the Principles of Vigilance, a special chapter on Vigilance Management in Public Sector Banks (PSBs) has been brought out by the Central Vigilance Commission (CVC). One of the enumerated misconducts falling within the purview of Vigilance Commission is the case of 'misappropriation, forgery or cheating or other similar criminal offences.' Going by the management's stand there was an attempt to misappropriate. Even assuming there was

misappropriation, let us see what would follow. The vigilance manual, produced by the learned standing counsel for the respondent bank, reveals that, in accordance with the guidelines issued by the Central Vigilance Commission, Internal Advisory Committee has been formed in the Bank by drawing up a panel of General Managers and Deputy General Managers. The Commission shall deliberate the facts and circumstances of each case and shall record its reasons for arriving at its conclusion on vigilance/non-vigilance classification of each case. The Committee shall send its recommendations to the Chief Vigilance Officer. The Chief Vigilance Officer, while taking a decision on each case, would consider the recommendations of the Committee but is not bound by the same. In the event of the Chief Vigilance Officer not concurring with the recommendations of the Committee on the Vigilance - Non Vigilance classification of the case, the Chief Vigilance Officer shall record his analysis and reasons for the same. Once a case has been classified as a Vigilance case, it will have to be treated as such till its conclusion, irrespective of the outcome of any subsequent investigation or change in circumstances. It is further evident from the Vigilance Manual: ".6.1 The Chief Vigilance Officer would refer his recommendations on the determination of Vigilance angle or otherwise to the Disciplinary Authority. In the case of difference of opinion between the Disciplinary Authority and the Chief Vigilance Officer, the matter would be referred by the Chief Vigilance Officer to the Chairman and Managing Director of the Bank. If the Chairman and Managing Director himself is the Disciplinary Authority in the case or if there is an unresolved difference of opinion between the Chairman and Managing Director and the Chief Vigilance Officer, the Chief Vigilance Officer may refer the matter to the Central Vigilance Commission. 6.2 If, in the opinion of the Disciplinary Authority, the lapses on the part of any particular official do not warrant any disciplinary action, the Disciplinary Authority may recommend to the Chief Vigilance Officer for dropping further proceedings against the official or for warning cautioning the concerned official under 'Administrative Action'. Such cases can be closed by dropping proceedings or cautioning the official, if the Chief Vigilance Officer concurs with the recommendations of the Disciplinary Authority. 6.3 In all other cases where further departmental action needs to be taken, the Disciplinary Authority shall send his recommendations on the nature of disciplinary proceedings to be initiated (minor

penalty proceedings / major penalty proceedings) to the Chief Vigilance Officer.

6.15 If the case is classified as a Non Vigilance case and concurred as such by the Chief Vigilance Officer, then there is no necessity for referring the case to the Central Vigilance Commission for its First Stage Advice. In such cases, the Disciplinary Authority may take appropriate action as he deems fit.

6.16 All cases of officials coming under the jurisdiction of the Commission and classified under 'vigilance' category are required to be referred to the Commission by the Disciplinary Authority through the Chief Vigilance Officer, even if the Disciplinary Authority takes a view to close the case or caution /warn the official under administrative action.

7.1 In the case of officials coming under the jurisdiction of the Chief Vigilance Officer, on conclusion of the inquiry proceedings and before passing any final order, the Disciplinary Authority is required to consult the Chief Vigilance Officer along with complete case records to take a view on the matter of punishment, if any, to be imposed on the Charge Sheeted Officer. Such a reference is known as 'Second Stage Reference'. The advice given by the Chief Vigilance Officer in response to this reference is termed as the ".Second Stage Advice"..

7.4 If the Disciplinary Authority chooses to differ from the Second Stage Advice of the Chief Vigilance Officer on the nature of penalty to be imposed, the Disciplinary Authority shall first report the same to the Chief Vigilance Officer, who will place the conflict of opinion to the Chairman and Managing Director of the bank, for resolution.

7.5 If the Chairman and Managing Director also chooses to differ from the Chief Vigilance Officer or if the Chairman and Managing Director is himself the Disciplinary Authority, the Chief Vigilance Officer may take up the matter with the Central Vigilance Commission, for the Commission's advice.

In Re. Issue No.4: In the first place, it was not indicated anywhere in the record that the alleged misconduct of the petitioner was classified as a vigilance grade case or offence. Assuming it had been done, the elaborate procedure prescribed under the vigilance manual has been grossly ignored. This Court is of the considered opinion that the direction of the CVO has never sounded as any piece of advice, and the change of mind on the part of the disciplinary authority has never been informed by reasons as could be seen from the order of punishment, dt.28.08.2006. Thus, the said order suffers from incurable infirmities - both substantive and procedural.

Analysis of Ratio in the Decisions relied on by the Respondent: In V.M.C.

Krishnappa⁸, in a case of proven misconduct of financial irregularities and of making fraudulent withdrawals deriving pecuniary gain for himself, the offence being one of the most serious offences, the disciplinary authority passed an order of removal against the charged official. In that context, it was held by the Supreme Court that the punishment could not be said to be unreasonable or unduly harsh. In fact, the Reviewing Authority, however, modified the order of punishment and gave him a lighter punishment instead. The charged official having accepted it without ado, their Lordships have held that they could not see any scope for interference with the punishment on a purely subjective view taken by the High Court. In *Gulabhia M. Lad*⁹, the Supreme Court has discussed the scope of the judicial review in disciplinary proceedings, stating thus: ".14. The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts.". Even in *Shashi Kanth S Patil*¹², a Three Judge Bench of the Hon'ble Supreme Court reiterated the same proposition of law that judicial inference is permissible if there is violation of natural justice or statutory regulations. Interference is permissible, even if the decision is vitiated by considerations of extraneous evidence or that the conclusion made by the authority on the very face of it is wholly arbitrary or capricious that no person could have arrived at such a conclusion. Having stated thus, their Lordships have held that it cannot however be overlooked that the disciplinary authority is the sole judge of facts the enquiry has been properly conducted. There cannot be any quarrel with the proposition of law, which is well settled, as has been laid down by the Apex Court. For the reasons stated herein below, this Court, however, is of the opinion that the

discretion exercised by the respondent bank suffers from illegality and material procedural irregularity, apart from being indeed shocking to the conscious of this Court. The statutory regulations with regard to CVO's interference have been violated. It could be very easily demonstrated that the decision of the disciplinary authority has also been vitiated by considerations extraneous to the evidence and merits of the case. Further in answer to the contention of the petitioner that he had been prejudiced on the count of not conducting a joint enquiry, the learned standing counsel has drawn the attention of this Court to the observations of the Supreme Court to the effect that a single distinguishing feature in the nature of duties or degree of responsibility may make a difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adduction of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination. (See *Gulabhia M. Lad*⁹, para 15). Though the petitioner did attack the disciplinary proceedings, even without considering the so-called prejudice caused to the petitioner, the disciplinary proceedings could well be found fault with on other grounds, which are discussed by and by. Though in *Y.S. Sadhu*¹⁰ it is held that if the matter is required to be remanded to the disciplinary authority, the enquiry proceedings shall continue from stage where it stood before the alleged vulnerability surfaced, in the facts and circumstances of the case, this Court shall be examining whether the matter suffers only from procedural infirmities and, that, whether at this length of time, the clock has to be set back. In *Munnalal Jain*¹¹, the facts are that the Bank Manager withdrew an amount of Rs.25,000/- unauthorisedly from bank; later when he was exposed, he took a plea that the amount had been withdrawn in view of urgent requirement of his wife's surgical operation and that he had informed about the said withdrawal to the Head Office. In fact, the alleged information to the Head Office could not be established. Though the Branch Manager subsequently deposited the money with interest at 24% p.a., in the bank, the Apex Court has held that removal from service was justified and that the plea to the effect that there was no loss to the bank could not be sustained. It was further held that the punishment imposed on

the charged official could not be termed as shockingly disproportionate to the gravity of misconduct. Without fear of contradiction, this Court is of the opinion that the facts in the present case are entirely different, and as such, the ratio laid down therein may not have application in the present instance. In *Suresh Pathrella*¹³, the Apex Court has held that if the charged employee holds a position of trust, where honesty and integrity are inbuilt requirements of functioning, it would not be properly to deal with the matter lenient. The misconduct in such cases has to be dealt with iron hands. It is further held that in a case of loss of confidence in the charged officer, in such situation, it would be a futile exercise of judicial review, as the best course open for the bank would be to remove him from service. Thus, their Lordships of the Supreme Court have served a caveat that unless the decision to remove the officer is fraught with mala fides, or in violation of principles of natural justice, and prejudice to the officers made out, no interference is called for. On facts it was held that no such case had been made out. Before appreciating the said proposition of law, it is apposite to examine the facts of the case. In the said case, one party had sent a pay order of Rs.10 lakhs to the Branch Office of the bank for crediting it into account. The Chief Manager of the Bank, the charged officer, opened a new savings bank account in the name of payee of the pay order without obtaining his authority and consent, though the payee had already had a savings bank account in the branch. The proceeds of the pay order having been credited to the newly opened account, the charged officer himself prepared and signed three transfer vouchers and debited Rs.10 lakhs from the said account without any authority from the payee. Later the newly opened savings bank account was closed on the same day leaving a nil balance. Under those circumstances, the misconduct of the charged officer being patent, the Apex Court refused to interfere with the order of the disciplinary authority to remove the charged officer from service. I am afraid no such conclusion could be arrived at in the present case, where the petitioner was held guilty on a mere assumption, at best a very tenuous one based on attendant circumstances. In *K.Meerabai*¹⁴, it is held by the Hon'ble Supreme Court that the scope of judicial review is very limited, that sympathy or generosity as a factor is impermissible and that loss of confidence is primary factor and not the amount of money misappropriated. In the said case, the respondent employee found guilty of misappropriating the

corporation funds. Adverting to the facts of the case, it could be said that the charged officer was the employee of the appellant bank, that during the relevant period posted as junior assistant at one of the godowns of the appellant corporation, he misappropriated the corporation's stock and money in collusion with the other employees through fraudulent practices such as deliberate omission to bring into account the stocks received, showing bogus issues in the records, falsification of accounts, submission of defective accounts, tampering of records, manipulation of accounts and records. The guilt of the charged officer having been held conclusively proved, the appellant corporation has imposed on the charged officer the capital punishment of removal from service. In the present case, as has been stated supra, the allegation against the petitioner is that he had taken advantage of a duplicate entry which came to him owing to the mistakes committed by the Branch Manager and the said-staff. Though even this charge could not be sustained as could be seen in the discussion held below, assuming that the petitioner had intended to take advantage of the situation, there was no contemplation or pre-meditation on his part at the inception, nor had the transaction emanated at his instance. Thus, this Court is constrained to observe that the ratio laid down in the said judgment may not have any application to the facts of the present case. Analysis of Ratio in the Decisions relied on by the Petitioner: In Sawai Singh¹, the Supreme Court has observed: ".16. It has been observed by this Court in Surath Chandra Chakrabarty v. State of W.B. [(1970) 3 SCC548: AIR 1971 SC752: (1971) 3 SCR1 that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of State of A.P. v. S. Sree Rama Rao [AIR 1963 SC1723: (1964) 3 SCR25: (1964) 2 Lab LJ150 and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But in a departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation. Having observed thus, under the totality of circumstances, especially having regard to the contradictory

evidence of the management witnesses, the Supreme Court has held that the report of the enquiry officer finding the appellant guilty should not have been sustained and the government should not have acted upon it. Eventually the Supreme Court allowed the appeal and reinstated the charged officer. In D.C. Aggarwal², both the Inquiry Report and recommendations of the CVC were sent to the Disciplinary Authority who passed an elaborate order recording finding against the charged official, coincidentally agreeing on each charge on which CVC had found against him but disagreeing on quantum of punishment. In that context, the Supreme Court has observed that while the wrongful acts indulged in by the official are no doubt grave, the facts brought out during the enquiry do not show that bank sustained any monetary loss thereby. Confining the discussion to the question of effect of non-supply of CVC recommendations, their Lordships have observed that law on natural justice is so well settled through a series of decisions of the Supreme Court that: ".5. ...[N]on-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry.". Their Lordships have further observed: ".[I]t appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation to the CVC which is considered sufficient'. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that the reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order.". (emphasis added) In fact, in the case on hand, the above observations of the Hon'ble Supreme Court squarely apply. Even before the petitioner was put on notice concerning the report submitted by the enquiry officer, the Disciplinary Authority decided the punishment

and sent the proposal for the 'second opinion' of the CVO. Even that opinion tentatively reached was made to be altered at the behest of CVO. The petitioner had been kept in dark all through about the parleys between the CVO and the Disciplinary Authority. After the disposal of the appeal, the petitioner had to take recourse to RTI to get the copies of the correspondence that took place between the CVO and the Disciplinary Authority. In Nagaraj Shivarao Karjagi³, placing reliance on A.N. D'Silva v. Union of India [AIR 1962 SC1130, the Supreme Court has expressed the view that the Vigilance Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the government. Accordingly, it is held: ".19. [T]he punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See : De Smith's Judicial Review of Administrative Action, 4th edn., p. 309)...". In B.C. Chaturvedi⁴, a three-Judge Bench of the Hon'ble Supreme Court has, after surveying the case law on the point, per K. Ramaswamy J, his Lordship having authored the leading judgement, held: ".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.". Concurring, B. L. Hansaria J, has held: "[T]his concurring note is to express my view on two facets of the case. The first of these relates to the power of the High Court to do "complete justice", which power has been invoked in some cases by this Court to alter the punishment/penalty where the one awarded has been regarded as disproportionate, but denied to the High Courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary; it would be wrong to think that other courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the person concerned. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/penalty, on such a case being made out. What a difference! May it be pointed out that Service Tribunals too, set up with the aid of Article 323-A have the power of striking down a legislative act.

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of a long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in

Shivdeo Singh case [Shivdeo Singh v. State of Punjab, AIR 1963 SC1909 that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter. (emphasis added) In M.V. Bijlani v. Union of India⁵, the Supreme Court has held: ".25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.". In the same judgement, the Supreme Court has held that once a specific charge has not been framed, enquiry in respect of the allegations regarding which no charge has been framed cannot be entertained. (see para 14 of the judgement). Indeed, in the perspective of evidentiary proof, the quasi-criminal nature of the departmental proceedings has been reiterated in Narinder Mohan Arya⁶. In Re. Issue No.5: In this case, there is no evidence that the petitioner has misappropriated any amount. The finding of the disciplinary authority is as follows: ".As charges proved against CSE speak of his doubtful integrity and moral turpitude, I confirm the punishment proposed in my letter No.COHYD:VG:139:2006, dated 27.05.2006, i.e., ".Removal from service with superannuation benefits, i.e., pension and/or provident fund and gratuity as would be due otherwise under the rules and regulations prevailing therefrom and without disqualification from (sic, for), future employment". under clause 6(b) of Memorandum of Settlement, dated 10.04.2002, for charge Nos.1 & 2 together and ".Censure". under Clause 8(a) of Memorandum of Settlement, dated 10.04.2002

for the charge Nos.4 and 6.". Neither the final show cause notice issued on 27.05.2006 nor the order of removal dated 28.08.2006 passed by the disciplinary authority does indicate why the said authority persuaded himself to change his initial opinion of imposing a punishment of lowering three annual increments, based on the so-called advice of the CVO. There is no whisper, either in the charges framed initially or in the final show cause notice issued by the disciplinary authority, about either moral turpitude or loss of confidence. Despite the same, the punishment was imposed on the grounds of moral turpitude and loss of confidence, which had not been part of the charges initially framed. That is force in the contention of the petitioner that the charge of moral turpitude was made part of the regulations of the respondent bank subsequent to the alleged event of misconduct taking place. As such, the contention of the learned counsel for the respondent that since the charges were framed after the amendment of the regulations making 'moral turpitude' part of the regulations, it could be part of the charges, cannot be sustained. Further, in *Narinder Mohan Arya*⁶, after surveying the case law concerning the scope of the departmental enquiry and the extent of interference permissible under judicial review, the Supreme Court has held: ".26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See *State of Assam v. Mahendra Kumar Das* [AIR 1970 SC1255 . (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See *Khem Chand v. Union of India* [AIR 1958 SC300 and *State of U.P. v. Om Prakash Gupta* [(1969) 3 SCC775 . (3) Exercise of discretionary power involves two elements-(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See *K.L. Tripathi v. State Bank of India* [(1984) 1 SCC43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice

which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See *Sawai Singh v. State of Rajasthan* [(1986) 3 SCC454 . (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. [See *Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra* [(1987) 2 Cal LJ344 .]. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See *Central Bank of India Ltd. v. Prakash Chand Jain* [AIR 1969 SC983 , *Kuldeep Singh v. Commr. of Police* [(1999) 2 SCC10) (emphasis added) Regarding sufficiency of evidence, in the same judgement, it is held: ".44. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.". Does the Present Adjudication involve Re-appreciation of Evidence or undue Interference with the Discretion of the Respondent Management?. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. (See *Moni Shankar v. Union of India*, (2008) 3 SCC484. It is stated without any hesitation that the evidence gathered is inconsistent and unreliable. To sustain the charge of misappropriate, there is no evidence at all, thus the very finding on that count is perverse. Once it is held that there is no evidence to sustain the charges levelled against the petitioner, the punishment imposed on his is shockingly disproportionate. Further, the statutory infraction is evident from misapplication of

the provisions of the Vigilance Manual. There is total abdication of powers of the part of the Disciplinary Authority, who has acted simply on the dictates of the CVO. As such, the interference of this Court is on well-established principles of judicial review. Conclusion The management has sought to punish the petitioner on tenuous grounds and substantially based on surmises and conjectures. It bears repetition to state that the petitioner had no role in allegedly having duplication of a loan entry, as well as in issuing two tokens ostensibly for one transaction. One cannot stop wandering at the naivety of the management in believing the story of the sub-staff that the same credit voucher was sent twice by the Manager, perhaps by oversight, and that, though he could record the name in the token register correctly for the first time, later when it was sent back, the same name was misspelt, when both the names are absolutely different. Having said that, till the single voucher with two tokens as was contended by the management, or two vouchers with two distinct token numbers as was contended by the petitioner, came to him in the cabin, the petitioner admittedly had not even been aware of the transaction. The management has reconstructed the whole alleged misconduct on the part of the petitioner with hind sight based on a correction in the entry in the day book effected by the petitioner. Indeed, if there is any misconduct committed on the part of the petitioner, it was his correcting sectional day book, which was initially prepared by the manager, in his absence and without his consent. In a small branch, had the Manager been vigilant, by the evening of the same day he could have come to know about the mistake or misappropriation committed by any of the staff members. Though in an unusual manner the petitioner went about the village making an appeal to the public to return the money if anybody had been paid the said money in the bank by oversight, it was without express leave of the Manager. In any event, the charge with regard to the said misconduct was held not proved by the enquiry officer. In fact, the disciplinary authority, being the primary authority of fact finding, has had the frontal view of the offence and he accordingly correctly gauged the situation, assessed the lapses and arrived at a just conclusion of awarding minor punishment to the petitioner, without upsetting the applecart of the management with regard to the other two staff members. In the light of my discussion above concerning the role of vigilance, in the first place the misconduct attributed to the petitioner has not been categorised as the vigilance

grade offence. Despite that though the disciplinary authority has persisted with his request to permit him to impose a minor punishment by taking into account the totality of circumstances, the CVO, in my considered view, having no role to play, has insisted on and persisted with his so-called advice in peremptory language to impose the major punishment. Though the management has stated that the disciplinary authority has got sufficient leverage to exercise its jurisdiction and in fact by exercising the said discretion, he eventually handed out the punishment to the petitioner, the order dated 28.08.2006 of the disciplinary authority does not reveal any reasoning as to how he persuaded himself to change his mind based on the advise of the CVO. Owing to the wrong approach adopted by the respondent Bank, the petitioner has almost got what is otherwise his long career snuffed out and has been out of employment for about 13 years. Remitting the matter at this juncture would be nothing but prolonging the agony further. This Court does not desire to let the petitioner go free. As a matter of proportionality, since the punishment imposed on the petitioner is shockingly disproportionate for the reasons elaborated above, the Court feels *ex debito justitiae* appropriate to impose a modified punishment on the petitioner in the manner as had initially been contemplated by the disciplinary authority. In any event, though this Court is of the firm opinion that the first and second charges have not been proved concerning the charge No.4 and charge No.6 having been held been proved, it meets the interest of justice of the order of the appellate authority dated 15.02.2008 is modified in the following manner: Relief: Accordingly, for the aforesaid reasons, the order dated 28.08.2006 of the disciplinary authority, as well as that of the appellate authority passed on 15.02.2008, is hereby set aside. Consequently, the respondent bank is hereby directed to reinstate the petitioner forthwith with all attendant benefits, such as continuity of service, but only with 50% of the back wages. Further consequently, as a matter of substituted punishment, there shall be lowering of two annual increments from the pay scale of the petitioner, as on the date of the initiation of disciplinary proceedings. With the above directions, the writ petition stands disposed of. There shall be no order as to costs. As a sequel to it, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

DAMA SESHADRI NAIDU,J Date :

03. 02.2014

