

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**FRIDAY, THE 29TH DAY OF NOVEMBER 2013/8TH AGRAHAYANA, 1935**

**OP(LC).No. 1109 of 2011 (O)**  
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**[I.D.NO.137/2006 OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM LABOUR COURT, ERNAKULAM]**  
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**PETITIONERS:**  
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**R.AJAY NAIR,  
S/O.N.RAMAKRISHNAN NAIR,  
AGED 47 YEARS, KAMALALAYAM,  
KIZHUVALAM P.O., ATTINGAL-695 104.**

**BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM).**

**RESPONDENTS:**  
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- 1. STATE BANK OF TRAVANCORE, REPRESENTED-  
BY ITS MANAGING DIRECTOR, HEAD OFFICE, POOJAPPURA,  
THIRUVANANTHAPURAM, PIN-695 012.**
- 2. THE DEPUTY GENERAL MANAGER  
(APPELLATE AUTHORITY) DGM'S SECRETARIAT,  
ZONAL OFFICE, STATE BANK OF TRAVANCORE,  
THIRUVANANTHAPURAM - 695 001.**
- 3. THE ASSISTANT GENERAL MANAGER  
(DISCIPLINARY AUTHORITY), STATE BANK OF TRAVANCORE,  
REGION III, ZONAL OFFICE, THIRUVANANTHAPURAM - 695 001.**

**BY ADV. SRI.P.RAMAKRISHNAN.**

**THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD  
ON 25-07-2013, THE COURT ON 29-11-2013 DELIVERED THE  
FOLLOWING:**

**Prv.**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P.1 COPY OF THE MEMO NO.AGM/III/T/P & C/457 DTD. 04/10/2001 ISSUED BY THE R.3. TO THE PETITIONER.
- EXT.P.2 COPY OF THE MEMO NO.GM III/T/11 DTD. 26/11/2001 ISSUED BY THE R.3.
- EXT.P.3 COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE R.3. ON 17/12/2001.
- EXT.P.4 COPY OF THE CHARGE SHEET NO.DGM/T/DPS/93 DTD. 14/02/2002 ISSUED BY THE R.3.
- EXT.P.5 COPY OF THE REPRESENTATION DTD. 18/03/2002 SUBMITTED BY THE PETITIONER BEFORE THE R.3.
- EXT.P.6 COPY OF THE ENQUIRY REPORT DTD. 24/01/2003 IN THE DOMESTIC ENQUIRY CONDUCTED AGAINST THE PETITIONER.
- EXT.P.7 COPY OF THE SUBMISSIONS DTD. 20/02/2003 SUBMITTED BY THE PETITIONER BEFORE THE R.3.
- EXT.P.8 COPY OF THE PRELIMINARY ORDER DTD. 11/03/2003 ISSUED BY THE R.3.
- EXT.P.9 COPY OF THE REPLY SUBMITTED BY THE PETITIONER ON 25/03/2003 BEFORE THE R.3.
- EXT.P.10 COPY OF THE ORDER DTD. 08/04/2003 ISSUED BY THE R.3.
- EXT.P.11: COPY OF THE APPEAL DTD. 28/05/2003 SUBMITTED BY THE PETITIONER BEFORE THE R.2.
- EXT.P.12 COPY OF THE APPELLATE ORDER DTD. 04/08/2003 ISSUED BY THE R.2.
- EXT.P.13 COPY OF THE REFERENCE ORDER NO.L-12012/126/2004-IR (B-I) DTD.06/10/2004 ISSUED BY THE MINISTRY OF LABOUR, GOVERNMENT OF INDIA.
- EXT.P.14 COPY OF THE CLAIM STATEMENT FILED BY THE PETITIONER BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT.
- EXT.P.15 COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT BANK BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT.
- EXT.P.16 COPY OF THE REJOINDER FILED BY THE PETITIONER BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRINBUNAL CUM LABOUR COURT.

**O.P.(LC).NO.1109/2011-O:**

<b>EXT.P.17</b>	<b>COPY OF THE AWARD DTD. 15/09/2009 IN I.D. 137/2006 OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT.</b>
<b>EXT.P.18</b>	<b>COPY OF THE PETITIONER'S APPLICATION DTD. 01/02/2012 UNDER R.T.I. ACT.</b>
<b>EXT.P.19</b>	<b>COPY OF THE REPLY DTD. 03/03/2012 ISSUED BY THE ZONAL OFFICE OF S.B.T. TRIVANDRUM.</b>
<b>EXT.P.20</b>	<b>COPY OF THE REPLY DTD. 05/03/2012 ISSUED BY THE ZONAL OFFICE OF S.B.T. KOTTAYAM.</b>
<b>EXT.P.21SERIES:</b>	<b>COPIES OF CERTIFICATES OF MERIT FOR THE YEARS 1995-6, 1996-97, 1997-98 &amp; 1998-99 ISSUED BY THE STATE BANK OF TRAVANCORE TO THE PETITIONER.</b>

**RESPONDENTS' EXHIBITS: NIL.**

**//TRUE COPY//**

**P.A. TO JUDGE.**

**Prv.**

A.M.SHAFIQUE, J.

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O.P.(L.C) No. 1109 of 2011-O  
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Dated this the 29<sup>th</sup> November, 2013

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

This writ petition is filed challenging Ext.P17, award passed by the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, (hereinafter referred as the 'Tribunal') answering a reference under S.10(1)(d) of the Industrial Disputes Act. The reference was as under:

“Whether the action of the management of the State Bank of Travancore with headquarters at Poojappura, Thiruvananthapuram - 12 in dismissing the services of Sh.R.Aji Nair, Head Cashier of Kallambalam Branch of the Bank, Dist. Thiruvananthapuram, Kerala vide order No. DGM/T/TPC/1 dated 8.4.2003 which justified? if not, what relief the concerned workman is entitled to?”

The Tribunal found that the action of the management in dismissing the petitioner from service was legal and justifiable.

2. The facts involved in the case would disclose that the petitioner, while working as Cashier in the Kallambalam Branch of State Bank of Travancore was faced with disciplinary proceedings in respect of certain charges levelled against him. An enquiry was conducted by the Bank and it was found that out of five charges, three charges were proved, one was partly proved and one was not proved.

After complying with the procedural formalities, he was dismissed from service. Though an appeal was filed before the appellate authority, the same came to be rejected. Thereafter, petitioner had moved the Central Government and accordingly a reference is made under Section 10 (1) (d) of the I.D. The Tribunal after considering the pleadings and evidence of the parties upheld the findings of the Enquiry Officer and the punishment.

3. The main contention urged by the petitioner is that the findings made by the Enquiry Officer were perverse and therefore the Tribunal went wrong in relying upon the same. It was also contended that the evidence on record did not suggest the grant of punishment of dismissal from service as the same is shockingly disproportionate to the proved charges. Petitioner therefore challenges the enquiry report, the proceedings of the management imposing punishment and the award passed by the Tribunal.

4. Before considering the factual background of the case on which the learned counsel appearing for the petitioner strongly relies upon, let me consider the scope of interference of this Court in such matters on the basis of the judgments relied upon by the learned counsel appearing on either side.

5. The learned counsel for petitioner relied upon the judgment of the Supreme Court in **The Managing Director, State Bank of**

**Hyderabad and another v. Kata Rao (2008 (3) KLT Suppl. 488 (S.C))** to contend that if the delinquent is found to be guilty of commission of procedural irregularity, it is not fit for the management to impose punishment of dismissal. Reliance is placed upon the Division Bench judgment of the Calcutta High Court in **Allahabad Bank and Ors. v. Sri.Pronab Kumar Mukherjee (1993) 1 LLJ 39 Cal)),** to contend that misappropriation, even though temporary must be established by proving dishonest intention. Only if one retains or converts money for his own use, there could be any misappropriation. A Division Bench of the Madras High Court in **Management of Madras Fertilizers Ltd. v. Presiding Officer , I Additional Labour Court, Madras (1990 (1) LLJ 298),** is relied upon in which it is held that when the Labour Court fails to do its duty or if there is any omission on the part of the Labour Court, this Court can exercise jurisdiction under Article 226 of the Constitution of India to set right such omission.

6. On the other hand, learned counsel appearing for the respondent Bank relied upon the following judgments:

**(i) Regional Manager, U.P. SRTC v. Hotilal (2003) 3 SCC 605).** The Supreme Court while considering the scope of judicial review and the proportionality of the punishment held as under:

**"10.** It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See *Alexander Machinery (Dudley) Ltd. v. Crabtree*.] A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts

in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.”

**(ii) Dev Singh v. Punjab Tourism Development Corpn. Ltd. (2003) 8 SCC 9).**

“6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.”



**(iii) State Bank of India v. Bela Bagchi (2005) 7 SCC 435).**

**"15.** A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik*, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

**(iv) State Bank of India v. Ramesh Dinkar Punde (2006) 7 SCC 212).**

**13.** We are, therefore, clearly of the view that the High Court has erred both in law and on facts in interfering with the findings of the inquiry officer, the disciplinary authority and the Appellate Authority by acting as a court of appeal and reappreciating the evidence.

**14.** We may now notice a few decisions of this Court in similar circumstances.

**15.** In *Union of India v. Sardar Bahadur* it is held as under: (SCC p. 623, para 15)

A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts. (SCR p. 219)

**16.** In *Union of India v. Parma Nanda* it is held at SCC p. 189, para 27 as under:

"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or

punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

**17.** In *Union Bank of India v. Vishwa Mohan* this Court held at SCC p. 315, para 12 as under:

"12. After hearing the rival contentions, we are of the firm view that all the four charge-sheets which were enquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused

to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him."

**18.** In *Chairman and MD, United Commercial Bank v. P.C. Kakkar* this Court held at SCC pp. 376-77, para 14 as under:

"14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik* it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a

bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

**19.** In *Regional Manager, U.P. SRTC v. Hoti Lal* it was pointed out as under: (SCC p. 614, para 10)

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

**20.** In *Cholan Roadways Ltd. v. G. Thirugnanasambandam*<sup>8</sup> this Court at SCC p. 247, para 15 held:

"15. It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry."

**21.** Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance such submission. As already

said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.

**22.** In *T.N.C.S. Corpn. Ltd. v. K. Meerabai*<sup>9</sup> such plea had been rejected by this Court. It was pointed out at SCC p. 267, para 29 as under:

"29. Mr Francis also submitted that a sum of Rs 34,436.85 being 5% of the total loss of Rs 6,88,737.12 is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our

view, loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, the respondent employee is found guilty of misappropriating the corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by the disciplinary and Appellate Authority."

**23.** In the view that we have taken, this appeal deserves to be allowed. The impugned judgment and order of the High Court dated 2-8-2002 is, hereby, set aside. The orders of the disciplinary authority and that of the Appellate Authority are restored. The writ petition filed by the respondent stands dismissed."

**(v) Union of India v. S.S.Ahluwalia (2007) 7 SCC 257).**

**8.** The learned Single Judge has also set aside the order by which a penalty of 10% deduction in pension for one year had been imposed. This part of the order has also been affirmed by the Division Bench. It may be mentioned here that Charge I was found to be partly proved and Charges II, III and IV were found to be fully proved. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if

it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty. In the present case the penalty imposed upon the respondent was very small, namely, 10% deduction from pension for one year. Thus there was hardly any occasion for the High Court to interfere with the order of penalty passed by the competent authority. However, having regard to the facts and circumstances of the case and specially to the fact that the penalty was a small one being 10% deduction from the pension for one year only, we do not want to interfere with that part of the order of the learned Single Judge and also of the Division Bench.

7. Having regard to the arguments of the learned counsel appearing for either parties and the judgments relied upon, the questions to be considered are (i) whether there is any scope of judicial review and if so to what extent? and (ii) whether this Court can interfere with the punishment imposed on the petitioner.

8. Five charges were leveled against the petitioner. In short the charges are as under:

(i) Misappropriation of Rs. 4 lakhs.



The allegation is that on 3.10.2001, while petitioner was working as Cashier of the Bank and dealing with receipts, was entrusted with Rs.23,85,000/-. He retained some large denomination notes including one bundle of Rs.500/- denomination notes. Though the other cashiers requested for large denomination notes he did not give it and adjusted with the receipts. 2 sections of Rs.500/- denomination notes were given to a cashier at 12.30 p.m. On verification it was found that 8 sections (of 100 pieces each) of Rs.500/- denomination notes amounting to Rs. 4,00,000/- was missing from the counter of the petitioner.

(ii) Excess cash of Rs.1000/-

On 3.10.2001, it was found that the petitioner was in possession of excess cash. Petitioner claimed to have given Rs.1000/- to his servant from the receipts and put back Rs.2000/-

(iii) Issuance of cheque dated 16/8/2001 for Rs.9000/- without sufficient balance in his account. It came for collection on 24/8/2001 and was cleared only on 11/9/2001.

(iv) Indulging in transactions dis-proportionate to the salary income through his personal account. He was dealing in financial transactions with stock-broking firms through his

accounts.

(v) That he had tried to intercept a letter from the Attingal Main Branch to another Branch at Cherunniyur. The letter was an intimation for recovery of overdue housing loan installments relating to his wife.

9. The petitioner's explanation is that on 3.10.2001 he has withdrawn Rs. 23,85,000/- from the vault as per the instructions from the joint custodian for meeting the days cash requirements. Exchange of currency notes of various denominations across the counter is a normal practice. According to him, to the best of his memory, he would have parted with a bundle of Rs. 500/- denomination across the counter while attending to receipts. According to him, paucity of light and his vision complaint might have contributed to the shortage of such a huge amount. Since he arranged the amount on 4.10.2001, according to him, there was no misappropriation at all. In regard to the second charge, regarding giving Rs.1000/- from the bank to his servant, he denied the said allegation. According to him, he could not locate the difference as he was totally exhausted owing to the incident on that day. In regard to the third charge that he had despatched a cheque for Rs. 9000/- from Bank of India on collection basis, which cleared on 11.9.2001, he contends that numerous cases of similar nature would happen in the branches for which he should

not be made responsible. Regarding the allegation of transaction with stock brokers, according to him, only meagre amounts are being invested in the share market for which there is nothing unusual. He also denied the interception of the letter from the courier.

10. Ext.P6 is the enquiry report. In regard to the first charge, from the evidence on record, the Enquiry Officer found that the contention about shortage having occurred due to exchange of notes by mistake cannot be true. Further the Enquiry Officer finds from the deposition of P.W.3 that around 1. 30 p.m. the delinquent wanted to confirm whether all the 500 rupee notes were taken out from the vault and it was confirmed by checking the vault once again at that time. Enquiry Officer therefore finds that at the relevant time the delinquent was aware of the shortage. If it was an inadvertent mistake due to exchange of notes, he would have informed the said matter immediately and some steps could have been taken to trace the person to whom he exchanged the notes. It is found that the delinquent was calm, cool and steady through out the said episode and therefore from his conduct it was inferred that the theory of exchange of notes is a planned and fabricated one. Hence the Enquiry Officer found the charge to be true and explanation offered was an attempt to cover up the misappropriation.

11. In regard to the second charge, the Enquiry Officer relied upon the evidence of PW1 and PW2. It is found that the actual amount replenished by the delinquent is only Rs. 3,99,000/-. Therefore there was deficiency of Rs. 1000/- from the cash available with the petitioner was true.

12. With reference to the third charge, it is found that the charge was partially proved since at the time of drawing the cheque, sufficient balance was not available in his account.

13. With reference to the 4<sup>th</sup> charge namely transactions which are disproportionate to his income and transaction with broking firms, it is found that the delinquent had transaction to the tune of Rs. 5,25,000/- in 15 months through his account. It was found that bulk amounts were credited to his account and withdrawn on the same day. Hence the said charge was treated as true.

14. On the basis of the enquiry, show cause notice proposing punishment was issued and ultimately he was dismissed from service. The Tribunal also had verified the factual circumstances of the case and found that the enquiry was properly conducted. Once the enquiry is properly conducted and there is no evidence to show that the findings are perverse or illegal, even the Industrial Tribunal cannot interfere with such findings rendered by the Enquiry Officer.

15. The learned counsel for the petitioner however, contends that there were several discrepancies which were unnoticed by the Tribunal. In the memo issued by the third respondent, it was stated that the petitioner had distributed only 481 pieces of Rs.500/- notes out of 1481 pieces withdrawn from the vault in the morning to the cashiers attending the bank payments and that the petitioner had retained with him one bundle consisting of 10 sections of Rs. 500/- denomination notes. It is contended that the Tribunal had failed to consider this fact and proceeded on the basis that there was no possibility of the petitioner having 10 sections of Rs.500/- denomination notes. In fact the Tribunal comes to the conclusion that the Rs. 500/- currency distributed to the paying cashier was 760 numbers. If it was given from the currency taken from the vault, then he would have only 721 available with him. He had received Rs.5,87,703/- in his receipt counter. He had not counted the number of each currency he had received on that day. He does not say that he had distributed either the entire amount or some amount received by him in his counter to the paying cashier. Hence it is found that in the absence of such a contention it has to be presumed that he could only have 721 number of Rs.500 currency notes and not 1000 at the relevant time. Though it is contended that such a finding is erroneous, I do not think so. In the charge sheet it is indicated that the petitioner

had retained some large denomination notes, including one bundle of Rs. 500 denomination notes. It was further stated that there was no necessity to hold such a large amount of cash aggregating Rs. 10 lakhs. However while evaluating the evidence by the Enquiry Officer it has out that from 1481 pieces of Rs.500/- notes, 400 were given to Mr.Jose, the paying cashier in the morning and thereafter 200 pieces once and 88 pieces twice. The other paying cashier did not get any Rs.500/- notes from the petitioner. Therefore the Enquiry Officer and the Tribunal has on the above material evidence come to the conclusion that explanation offered by the petitioner for having given Rs.500/- bundles instead of Rs.100/- bundles were wrong. Of course, in the charge it is indicated that after giving two bundles of Rs.500/- notes to Mr.Jose, thereafter he had given from the receipts. The finding is that 80 pieces each were given twice. It could be either from the receipts or from the bundles taken from the vault. I do not think that there is any contradiction between the charges levelled and proved. The fact remains that Rs.3,99,000/- was missing and such minor deviations cannot unsettle the finding of fact by the Tribunal.

16. The next contention raised by the learned counsel for the petitioner is that the petitioner had reported the shortage by 1.30 p.m to the Deputy Manager (Accounts) and this fact had been unnoticed by the Tribunal. Further it is contended that the Enquiry

Officer had held that the first charge was proved on the presumption that a bundle of Rs. 500/- could not be given through the cash counter, which according to the petitioner is perverse. Further it is contended that since no loss had been caused to the bank, the punishment imposed is grossly disproportionate to the proved charges. It is contended that petitioner had 17 years of service in the bank and he had no intention to misappropriate any amount and that he had not been dishonest to the bank.

17. On a perusal of the findings made by the Enquiry Officer which is confirmed by the Tribunal, I am of the view that this is not a case which warrants judicial review. No material is available to indicate that the findings are either perverse or illegal. Hence finding of misconduct stands proved.

18. **Kata Rao's** case (supra) relied upon by the learned counsel for petitioner is not applicable to the facts of this case, as in the said case the misconduct alleged was not so grave as in the case. The delinquent was found to be guilty of commission of procedural irregularity. That apart it was observed since the delinquent had already retired, no interference is required. In **Pronab Kumar Mukherjee's** case (supra) it is held that misappropriation, even though temporary must be established by proving dishonest intention. Only if one retains or converts money for his own use,

there could be any misappropriation. I do not think that there is any doubt regarding the above proposition. But application of the proposition depends on the facts and circumstances of each case. Merely for the reason that the bank employee had made available the deficit amount on the next day by itself will not be sufficient to establish lack of dishonest intention. The argument of the petitioner is that as far as the first charge was concerned regarding loss of Rs.3,99,000/-, the matter was reported by the petitioner to the superior authority at about 1.30 p.m and when it was confirmed that the amount was not available, the deficit amount was paid by the delinquent the next day itself. **Pronab Kumar Mukherjee's** case was considered in the light of the fact that the delinquent was not the only person handling the cash, whereas he offered to pay the same. No enquiry was conducted in the matter and there was no proof of dishonesty or intention to misappropriate. In the case on hand the loss is admitted. Unless there is a valid explanation for the loss of Rs.4 lakhs from the cashier's counter, one can assume dishonest intention to misappropriate the amount. Even temporary misappropriation is equivalent to misappropriation. It is found on enquiry, that the explanation offered was not satisfactory or believable. In that event the inference is finding of guilt.



19. In **Hotilal** (supra) the Supreme Court while considering the scope of judicial review and the proportionality of the punishment held that it is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. In **Dev Singh** (supra) a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. In **Bela Bagchi** (supra) it is held that a bank

officer is required to exercise higher standards of honesty and integrity. He is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. In **Ramesh Dinkar Punde** (supra) relying on ***Union of India v. Sardar Bahadur*** it is held that if the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts. In that case it was further held that the respondent was a Manager of the Bank and in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.

20. Having regard to the law laid down by the Supreme court in the aforementioned judgments I do not think the Tribunal has committed any error of law in not interfering with the punishment of dismissal.

In the result none of the grounds are enough to set aside the impugned order and accordingly the writ petition is dismissed.

A.M.SHAFIFIQUE, JUDGE

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