

**AFR**

## **HIGH COURT OF ORISSA: CUTTACK**

### **O.J.C. No.6479 of 2002**

In the matter of an application under Articles 226 & 227 of the Constitution of India.

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Sunil Kumar Mohanty .... Petitioner

*Versus*

Kalahandi Anchalika Gramya  
Bank and others.

.... Opposite parties

For Petitioner ... Mr. J.K. Rath,  
Senior Advocate

For Opposite ... Mr. R.K. Rath,  
Party Nos.1 to 3 Senior Advocate,  
Mr. P.V. Ramdas and  
Mr. P.V.Balakrishna,  
Advocates

For Opposite ... None  
Party No.4

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

#### **PRESENT:**

#### **THE HONOURABLE JUSTICE BISWANATH RATH**

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Date of Hearing: 05.03.2020 | Date of Judgment: 30.03.2020

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**Biswanath Rath, J.** This writ petition involves the following prayer:

"It is, therefore, humbly prayed that this Hon'ble Court be graciously pleased to admit the writ application, issue notice to the opp. parties calling upon them to show cause as to why the

disciplinary authority order dated 31.7.2001 in Annexure-18 and the appellate Authority order confirming the disciplinary authority order dated 18.5.2002 in Annexure-24 shall not be quashed;

If the Opp. parties fail to show cause or give insufficient cause, make the rule absolute by quashing Annexurs-18 and 24 and issue a writ of mandamus directing the authorities to reinstate the petitioner forthwith and grant all consequential service benefits as due and admissible to him in accordance with law within a stipulated period of two months from the date of passing of the order;

And pass such order/order(s), direction(s) as this Hon'ble Court deems just and proper in the facts and circumstances of the case;

And for which act of kindness, the petitioner as in duty bound shall ever pray."

**2.** Short background involving the case is that petitioner joined as a Branch Manager in the erstwhile Kalahandi Anchalika Gramya Bank, Sagada Branch, Kalahandi on 23.11.1981. During his service career, petitioner dependant on a departmental proceeding was already imposed with major penalty and while continuing as such, petitioner was served with charge-sheet, vide Annexure-1 on 25.07.1994 on the premises of violation of provisions under Regulation 19, 22(2), 30(1) of Kalahandi Anchalika Gramya Bank (Staff) Service Regulation, 1980 (in short 'KAGB Regulation, 1980'). Disciplinary Proceeding was concluded in participation of the petitioner based on the report of the Enquiry Officer submitted on 14.03.2001. Chairman as Disciplinary Authority passed an order of dismissal of the petitioner from Bank service under Regulation 30(1) of KAGB Regulation, 1980, however with liberty to the petitioner to prefer appeal. In the meantime entertaining the review application, the Disciplinary

Authority kept the final order of punishment in abeyance asking the petitioner to submit his written statement of defence to the enquiry report, which order was again recalled by the Chairman by his order dated 03.08.2001 asking the petitioner to file appeal before the Appellate Authority. Petitioner preferred appeal. In the meantime for non-disposal of the appeal, petitioner preferred O.J.C. No.3285 of 2002 before this Court. The said writ petition was disposed of with a direction to the Appellate Authority for early disposal of this appeal within a period of four months. Appellate Authority in the meantime disposed of the appeal with an order of dismissal of the appeal on 18.5.2002, vide Annexure-24.

**3.** Mr.J.K. Rath, learned Senior Advocate for the petitioner taking this Court to the fact that petitioner has already been superannuated requesting the Hon'ble Court instead of entering into the merit involving the enquiry proceeding, vis-à-vis, the order of the Disciplinary Authority for converting the punishment by order of dismissal to that of compulsory retirement, more particularly keeping in view the fact that petitioner is suffering throughout his life for the dismissal order on his head. Taking this Court to the charges involving the petitioner and the establishment of charges through the enquiry proceeding on the premises of involvement of minimal allegations being established through the enquiry report, Sri Rath, learned Senior Advocate attempted to justify his request for modification of the final order of dismissal.

4. To the contrary, Mr. R.K. Rath, learned Senior Advocate appearing for the contesting opposite parties being assisted by Mr. P.V.Balakrishna, learned counsel taking this Court to the charges and the establishment of most of the charges through enquiry proceeding contended that petitioner being a Bank employee and allegation involving misappropriation and misutilization of funds as well as power being established, referring to the decision in the case of ***South Indian Cashew Factories Workers' Union Vrs. Kerala State Cashew Development Corporation Ltd. and others***, reported in (2006) 5 SCC 201 contended that for the involvement of a bank employee in serious allegations, being established through enquiry not only this Court has limited scope to interfere in such matter but for the decision of the Hon'ble apex Court, no leniency should be shown involving such allegations.

5. Considering the rival contentions of the parties and looking to the charge-sheet vide Annexure-1, this Court finds the following charges and statement of imputations against the petitioner:

CHARGESHEET:

1. Under Regulation 30(2) of Kalahandi Anchalika Gramya Bank (Staff) Service Regulations, 1980, this charge-sheet is served on Sri Sunil Kumar Mohanty, Officer since placed under suspension. The Article of Charges and the statement of imputations are enclosed which are self-explicit.

2. The list of documents on which the charges rest and the list of witnesses on which testimony the charges are sought to be established are placed as Annexure-A and

Annexure-B respectively. These lists are, however, not self limiting. So, any new document may be presented and any new witness examined to establish a charge. Any of the listed items may be dropped, too.

3. Sri Mohanty is to acknowledge receipt of this letter on the duplicate hereof along with his signature and date and submit his statement of defence within 30 days from the date of receipt thereof and forward the acknowledged copy to reach the undersigned as soon as possible, through the Branch Manager, K.A.G.B., Boudh.

4. Sri Mohanty may inspect the relevant books/records at our Sagada(K) Branch on any working days if he so needs to submit his statement of defence. For the purpose he is allowed three days which is inclusive of the 30 days granted to him to submit his statement of defence.

5. Further, Sri Mohanty is to specifically admit or deny each charge for it is on specific denial of any charge(s) that an enquiry will be ordered into the same.

#### ARTICLE OF CHARGES:

Sri Sunil Kumar Mohanty, Officer since placed under suspension for his alleged involvement in other serious irregularities elsewhere, has also during his incumbency at our Sagada (K) branch committed such serious irregularities as misappropriation of Rs.10,000/- from Branch cash, and, later tampering with the debit voucher and the Head Office A/c. Register maintained at the Branch; siphoning off of a large sum of money for his personal use through various factious a/cs by misutilising his financial powers as Branch Manager; blatant violation of the Bank's laid down instructions in the matter of following the accounting procedure as well as general administration; failure to exercise effective control over staff posted under him; unauthorised absence and manipulation of records to suppress the same; gross irregularities in the documentation, conduct and follow up of advances thereby causing heavy loss to the Bank;

incurring loss to the Bank by making unrelated payments to third parties and further by allowing interest concession to ineligible borrowers under the Agriculture Head; and, above all acting in a manner highly detrimental to the interest of the Bank. Thus Sri Mohanty has failed to serve the Bank honestly and faithfully and has by his above acts of omission and commission violated Regulations 19, 22(2), 30(1) of Kalahandi Anchalika Gramya Bank (Staff) Service Regulations, 1980.

**STATEMENT OF IMPUTATIONS:**

1. That on 23.10.86 Sri Mohanty took Rs.10,000/- (Rupees ten thousand only) from the branch Sagada(K) to deposit the same in the Current Account of the Bank maintained at State Bank of India, Bhawanipatna. But instead of depositing the sum in the said current A/c. Sri Mohanty has misappropriated the entire sum. When detected later Sri Mohanty has tampered with the relative voucher supporting the aforesaid transaction and has fraudulently substituted the original voucher with another unconnected transaction and also tampered the Head Office A/c register.

2. That Sri Mohanty by misutilising his position as Branch Manager, has misappropriated Rs.23,000/- by showing the amount as disbursal of loans to various fictitious persons on different dates. The details of these fraudulent transactions are as under:

No.	Date	Loan A/c. No.	Name of the borrower	Amount (in Rs.)
i)	19.9.86	TL 121	Butia Majhi	3,000.00
ii)	23.9.86	TL 122	Poki Harijan	3,000.00
iii)	25.9.86	TL 124(A)	Anirudha Bag	2,000.00
iv)	10.12.86	TL 127	Ratu Harijan	2,000.00
v)	11.11.86	TL 125(A)	Purandar Singh	2,000.00
vi)	10.12.86	TL 128	Gurubaru Majhi	2,000.00
vii)	17.1.87	TL 128(A)	Dukhishyam Rout	2,500.00
viii)	17.1.87	TL 128(B)	Tankadhar Rout	2,500.00
ix)	20.1.87	TL 124(C)	Durbasa Naik	4,000.00

Sri Mohanty has even destroyed some of the payment vouchers such as those mentioned at items (ii) and (iii) with the intention of destroying some of the evidence of such fictitious transactions. In some of the cases the paying cashier has signed the payment vouchers. To avoid detection, Sri Mohanty has not sanctioned these alleged loans, not furnished the borrowers' address anywhere, not filled up the documents and not signed the documents, too. The transactions at item (i), (ii) and (iii) have taken place when he was in single custody.

3. That in connivance with Sri P.Mohapatra, JCC, who paid the vouchers, Sri Mohanty has further misappropriated Rs.7,000/- by showing the sum as disbursal of loan in the following three fictitious a/cs. on 22.8.86.

Date	A/c. No	Name	Amount (in Rs.)
22.8.86	TL 109	Ramjanam Singh	2,500.00
22.8.86	TL 110	Khirabati Sha	2,000.00
22.8.86	TL 111	Chandrasekhar Sha	2,500.00

Here, too, to avoid detention Sri Mohanty has not sanctioned the loans, not recorded the address of the alleged beneficiaries and where not filled up the documents properly and not signed the loan agreements. Thus Sri Mohanty had ulterior motive to defraud the Bank, through these fictitious loans.

4. That Sri Mohanty has further misappropriated a sum of Rs.5,000/- by showing the same as disbursal of loans to various fictitious beneficiaries, the details of which are as under:

Date	A/c. No	Name	Amount (in Rs.)
11.4.86	TL A/c. No.87(A)	Apurba Sahoo Vill:Bundelguda	2,500.00
11.4.86	TL A/c. No.87(B)	Kandarpa Sahoo, Vill:Bundelguda	2,500.00

Sri Mohanty has caused both the payment vouchers to be missing so as to destroy evidence against him.

5. That on 2.9.85 Sri Mohanty had arbitrarily issued a Bankers' Cheque for Rs.1042/- in favour of the New India Assurance Co. without any relative credit voucher to support the same. The cheque was eventually paid by collection through Head Office and has resulted in a loss to the Bank.

6. On 7.6.85 Sri S.K.Mohanty has withdrawn Rs.600/- from his S.B. a/c. No.416 without maintaining sufficient balance in the A/c. Later, he has scored through this debit entry to suppress the fact of the unauthorised overdrawal in the a/c. This unauthorised overdraft continued till as late as 1.4.88.

7. Sri Mohanty has absented himself from the branch and later signed sporadically some books of a/cs to register his presence on the following days as he has not signed many important vouchers transacted at the Branch including charges and Savings Bank drawal vouchers. He has not signed the DTR on many occasions.

27.12.84	18.11.85	
23.1.85	23.11.85	
18.6.85	28.11.85	
10.7.85	29.11.85	
16.7.85	10.1.86	
19.7.85	11.1.86	
26.8.85	3.2.86	
28.8.85 to 2.9.85	28.2.86	
6.9.85	22.3.86	
18.10.85	31.3.86	
13.11.85	26.4.86	
	24.5.86 to 7.6.86	Not signed DTR, vouches not signed (30.5.86)
28.6.86 to 8.7.86	(Not signed DTR)	
23.7.86		



16.8.86		
30.8.86 to 3.9.86		
3.10.86 to 7.10.86	(vault not signed)	
7.10.86		
13.11.86		
14.11.86		
1.1.87		
7.1.87		
12.1.87		
13.1.87		
14.1.87		

8. That on 13.1.86, Sri Mohanty has either not checked he ledger with the voucher or has deliberately overlooked the posting of the amount of Rs.30/- withdrawn by Sri P. Mohapatra, JCC in the latter's S.B. a/c No.16 to suppress the fact of overdraft in the said a/c. On 25.10.86, too, another drawal of Rs.200/- was not posted to the said a/c. The fact of the unauthorized overdraft has not been brought to the notice of Head Office, too. Thus, Sri Mohanty has failed to discharge his duty as Branch Manager honestly and faithfully and acted malafides by allowing unauthorised overdraft in a staff a/c and deliberately suppressed this fact from the knowledge of Head Office.

9. Sri Mohanty has violated the laid down guidelines of the Bank and is charged with dereliction of duty for his failure of suppression for which the employees posted under him have not performed their duties properly. Sri Mohanty has failed to bring the same to the notice of the Head Office. The details are as under:

Date		Irregularity
<b>A) SHRI P. MOHAPATRA, JCC</b>		
11.1.85	-	Not signed most of the vouchers of the day.
23.1.85	-	Passed a credit voucher of Rs.10,000/- in Head Office a/c towards receipt of cash remittance .

7.3.85	-	Not signed many deposit vouchers.
12.3.85	-	Not signed a SB drawal of Rs.100/- (A/c. No.9)
21.3.85	-	Not signed payment voucher of Rs.400/-
25.3.85	-	Not signed SB cheque for Rs.300/- (A/c. No.9)
17.4.85	-	Not signed SB cheque for Rs.350/- (A/c. No.9)
23.5.85	-	Money paid to supplier towards supply of bullock carts. Supplier's signature not taken towards receipt of money.
4.9.85	-	Not signed many deposit vouchers.
6.11.85	-	Not signed any voucher.
7.11.85	-	Not signed the deposit vouchers.
10.4.86	-	Not signed the vouchers of the day.
11.4.86	-	Not signed many vouchers of the day.
23.4.86	-	Paid an SB withdrawal voucher for Rs.3000/- without its being passed for payment by Branch Manager.
31.7.86	-	Not signed the vouchers.
13.8.86 to 14.8.86	-	-do-
25.8.86 to 26.8.86		-do-
5.9.86 to 6.9.86	-	-do-
27.10.86	-	-do-
11.11.86	-	-do-
14.11.86	-	Not signed gold loan payment voucher and ACC payment (No.149)
5.12.86	-	Not signed the vouchers of the day.
10.12.86		Not signed the vouchers of the day.
22.12.86		Not signed many vouchers of the day.
23.12.86		Not signed payment voucher for Rs.13,000/- (GL No.181)

<b>B) I.P. PADHI, JCC</b>		
3.1.87	-	Not signed the vouchers of the day.
5.1.87	-	Not signed many vouchers.
6.1.87	-	Two gold loan payment vouchers
7.1.87	-	Many vouchers
9.1.87	-	Many vouches
12.1.87	-	Cash Credit Payment Rs.300/- (A/c. No.421)
14.1.87	-	Not signed any voucher
17.1.87	-	Two TL payment vouchers
19.1.87	-	Not signed many the vouchers of the day.
20.1.87	-	Not signed many vouchers of the day.

**C) Sri K.C.patnaik, Field Supervisor** has passed a S.B. withdrawal voucher of Rs.23,000/- on 10.7.85 which is ultravires, i.e. beyond his passing powers.

10. Leave was granted to Sri Mohanty from 9.6.86 to 14.6.86 which he availed himself of and his leave a/c. Maintained at Head Office was debited for the aforesaid period. But although Sri Mohanty overstayed his leave without permission, and, reported for duty on 27.6.86, he has not submitted his leave application for the period of overstayal and thus leave a/c. has not been debited for the period of overstayal. Thus Sri Mohanty has remained unauthorizedly absent and did not bring to the notice of Head Office for post facto approval, in a dishonest manner.

11. By misutilizing his position as Branch Manager, Sri Mohanty just two days before his being relieved from the branch has advanced two pump set loans to Sri Mahendra Majhi and Sri Narahari Majhi both of village Kenduguda, without involving the Field Supervisor processing the loan proposals which reveal the following irregularities:

- i) No pre-sanction visits were made by the Branch Manager and the loans proposals were not properly appraised.

ii) The loan applications were incomplete and no land particulars were furnished therein.

iii) No charge on land was created under Section 4(i) of the OACOMP (Banks) Act or no security obtained to protect the Bank's interest.

iv) No delivery orders were placed with the suppliers and the bills were dated 17.1.87 whereas the loan applications and the documents bear date 18.1.87 on them.

v) The documents were incomplete and not properly executed.

vi) Sri Mohanty has himself signed on the observe of the suppliers bills as a token of having received the pump sets instead of borrowers doing the same.

vii) The bills were paid to the suppliers in one day before this relief without verifying the installation and operational effectiveness of the pump sets.

The loans have gone bad with bleak prospects of recovery. As the applications were not sponsored under any anti-poverty scheme, no subsidy was available, too.

12. Sri Mohanty has granted an SBF loan of Rs.4,000/- to one Smt. Laxmi Dei, w/o. Thaker Majhi of village Dalguma and not submitted the Discretionary power Returns to Head Office. On 04.11.85 a drawal of Rs.2000 was taken from this a/c by Sri Mohanty for his personal use without posting the voucher which was in excess of the limit granted.

13. That Sri Mohanty has granted the following gold loans against pledge of inferior quality of gold in violation of the laid down instructions. Margin and net weight have proved detrimental to the interest of the Bank and advance value specified for 22 carat gold were granted to the borrowers for inferior (17/18)carat

gold. Loans were granted to the persons belonging to Bhawanipatna, that is, outside the area of operation of the Branch and primarily to benefit them with lesser interest rates as agriculture is not the primary avocation of any of the borrowers. No land particulars were furnished in the application form. No sanction was recorded by the Branch manager Sri Mohanty too. Thus the Bank has suffered a loss on account of lesser interest income. The details of the gold loans are given as under:

G.L. A/c. No.	Name of the borrower	Date of sanction	Amount sanctioned (Amount in Rs.)	Purity of gold
179/86	Mahavir Prasad Agrawal	14.11.86	15,000/-	19 carat
127/85	Sudhansu Sekhar Deo, Statue Para, Bhawanipatna	20.11.85	7,500/-	17 carat
190	Suresh Kumar Agrawal, Bhawanipatna	14.1.87	11,000/-	18 carat 21 carat
1/73	Bibhuti Bhusan Deo, Statue Para, Bhawanipatna	07.1.85	25,000/-	18 carat

Further, there has been unsubstantiated and unauthorised cuttings in the gross and net weights mentioned in the gold loan ledger which is detrimental to the Bank's interest.

14. By misutilizing his position as Branch Manager, Sri Mohanty has sanctioned loans to fictitious persons in respect of the following a/cs. and in order to eliminate evidence and avoid detection, has not furnished the addresses of the beneficiaries properly, not obtained their photographs, not executed the documents properly and not submitted the control returns to Head Office, and, thus has misappropriated for his personal purpose the money shown as disbursed under these fictitious a/cs. The a/cs. are detailed under:

ACC A/c. Nos. 56, 57, 58, 59, 60, 61, 62, 63.

Term Loan A/c. Nos. 144, 322, 323, 314 (sanction letter and loan applications are not available except for a/c. No.144)

Cash Credit A/c. Nos.460(A), 560."

**6.** Looking to the Enquiry Report, Annexure-17, this Court finds based on the materials available on record, the Enquiry Officer gave the following observations:

**Charge No.1:-** In view of the above, it is proved that Sri S.K. Mohanty, C.O. during his incumbency as B.M. of Sagada (K) branch, on 23.10.86 took Rs.10000/- from the branch cash towards cash remittance but he has not deposited in C.A. with S.B.I. Further the C.O. has substituted the original voucher with another unconnected transaction and also tampered the H.O. a/c. Register. Hence the Charge No.1 is proved.

**Charge No.2:-** In view of the above, I observed that the C.O. has committed gross irregularities in documentation, disbursement of loans but the PO has not presented before the inquiry as regards the misappropriation of Rs.25,000/- by the C.O. by showing the amount as disbursement of loan to various fictitious persons. Hence the charge is not proved.

**Charge No.3:-** In view of the above, I observed that the CO has committed gross irregularities in documentation and disbursement of loan but the misappropriation of money by the CO is not proved.

**Charge No.4:-** In view of the above, the Charge No.4 is not proved.

**Charge No.5:-** In view of the above, it is proved that the CO has arbitrarily issued a Banker's Cheque for Rs.1042 in favour of N.I.A. CO. without any credit voucher which eventually resulted in loss of Rs.1042/- to the bank.

**Charge No.6:-** Charge No.6 is proved.

**Charge No.7:-** Taking into account of the above exhibits and the facts that came out in course of inquiry, I am of the opinion that the charge is partially proved.

**Charge No.8:-** Charge No.8 is proved.

**Charge No.9:-** In view of the above, I observed that the CO has failed to supervise the staffs posted under him and hence the charge is proved.

**Charge No.10:-** Charge No.10 is proved.

**Charge No.11:-** Charge No.11 is proved.

**Charge No.12:-** Charge No.12 is not proved.

**Charge No.13:-** In view of the above, it is observed that the CO has acted in a manner detrimental to the interest of the bank by sanctioning loan for AGL purpose without mentioning the land particulars of the borrowers for which it is proved that the bank has sustained a loss on account of lesser interest income and also there has been unsubstantiated and unauthorized cuttings on the net and gross weight of the ornament.

**Charge No.14:-** In view of the above, I observed that the charge of misappropriation of money by the CO has not been proved. But gross negligence in execution of documents have been observed in some of the accounts mentioned in the charge.

**7.** Looking to the gravity of allegations and the Charge Nos.1, 5, 6, 8, 9, 10, 11 and 13 are fully established, Charge nos.2, 3, 4, 12 and 14 have not been proved against the petitioner and Charge No.7 is partially established. For the nature of allegation involving the above charges, this Court finds not only there is serious allegation involving the Bank Officer but there has been also establishment of serious allegations through a duly

constituted Departmental Proceeding. This Court here finds the decision of the Hon'ble apex Court, vide in the case of *Union of India v. Sardar Bahadur*, reported in (1972) 4 SCC 618 and observed in SCC p. 623, para 15 as follows:

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

In the case of *Union of India v. Parma Nanda*, reported in (1989) 2 SCC 177, this Court while dealing with the scope of the Tribunal's jurisdiction to interfere with the punishment awarded by the disciplinary authority observed in SCCp.189, para 27 as follows:

"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 enquiry 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."

Further in the case of *B.C. Chaturvedi v. Union of India*, reported in (1995) 6 SCC 749, Hon'ble apex Court reviewed some of the earlier judgments and in SCC p.762, para 18 held as under:

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

This Court here finds decision of the Hon'ble apex Court, vide in the case of ***Rajasthan Tourism Development Corporation Limited and another Vrs. Jai Raj Singh Chauhan***, reported in (2011) 13 SCC 541 has also clear support to the case of petitioner.

8. Further in the case of ***State Bank of India Vrs. Ram Lal Bhaskar and another***, reported in (2011) 10 SCC 249, in paragraphs-12 and 13 of the above judgment, Hon'ble apex Court observed as under:

"12. This Court has held in *State of A.P. v. S. Sree Rama Rao*, reported in AIR 1963 SC 1723 at pp.1726-27, para 7).

"7. .... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under article 226 to review the evidence and to arrive at an independent finding on the evidence."

13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against Respondent no.1 do not constitute any

misconduct and that Respondent no.1 was not guilty of any misconduct.

9. In the case of ***State Bank of Bikaner & Jaipur Vrs. Nemi Chand Nalwaya***, reported in (2011) 4 SCC 584, Hon'ble apex Court in paragraph-7 held as under:

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide *B.C.Chaturvedi v. Union of India*, reported in (1995) 6 SCC 749, *Union of India v. G.Ganayutham*, reported in (1997) 7 SCC 463, *Bank of India v. Degala Suryanarayana*, reported in (1999) 5 SCC 762 and *High Court of Judicature at Bombay v. Shashikant S. Patil*, reported in (2000) 1 SCC 416)

10. From the above, this Court finds there is little scope available with the High Court to re-examine or re-appreciate the evidence and materials involving the enquiry report. Similarly in the case of ***South Indian Cashew Factories Workers' Union Vrs. Kerala State Cashew Development Corporation Ltd. and others***,

reported in (2006) 5 SCC 201, this Court finds the Hon'ble apex Court in paragraphs-11, 12 and 14 observed as follows :

11. In *Delhi Cloth and General Mills Co. Ltd. v. Labour Court*, reported in (1970) 1 LLJ 23 (SC), this Court has held that merely because the enquiry officer is an employee of the management it cannot lead to the assumption that he is bound to decide the case in favour of the management.

12. In *Saran Motors (P) Ltd. v. Vishwanath*, reported in (1964) 2 LLJ 139 (SC), this Court held as follows: (LLJ p. 141)

"It is well known that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual bias attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer."

13. xx xx xx.

14. The only other ground found by the Labour Court against the enquiry officer is that he made some unnecessary observations and, therefore, he was biased. The plea that the enquiry officer was biased was not raised during the enquiry or pleadings before the Labour Court or in the earlier proceedings before the High Court. The bias of the enquiry officer has to be specifically pleaded and proved before the adjudicator. Such a plea was significantly absent before the Labour Court. We also note that the Labour Court itself found that the enquiry officer relied on the evidence adduced in the enquiry and his findings were not perverse. After such a finding, even if he has stated some unwarranted observations, it cannot be stated that the report is biased. In *TELCO v. S.C. Prasad*, this Court held that: (SCC pp. 380-81, para 13)

"13. Industrial Tribunals, while considering the findings of domestic enquiries, must bear in mind that persons

appointed to hold such enquiries are not lawyers and that such enquiries are of a simple nature where technical rules as to evidence and procedure do not prevail. Such findings are not to be lightly brushed aside merely because the enquiry officers, while writing their reports, have mentioned facts which are not strictly borne out by the evidence before them.”

**11.** This Court here finds involving Bank employees itself the Hon’ble apex Court already given the view that there should be heavy punishment to prevent such offences being taking place in the financial institutions. Hon’ble apex Court observed therein to have strict approached involving such employees. For the establishment many of the serious charges against the petitioner through the enquiry report, for support of the decisions referred to herein above to the case of opposite parties, this Court finds there is no scope for showing leniency in such cases and accordingly there is no scope of interfering in the order of punishment as well as in the order of the Appellate Authority under Annexures-18 and 24 respectively. The writ petition thus stands dismissed. There shall be no order as to cost.

.....  
**BISWANATH RATH, J.**

*Orissa High Court, Cuttack.  
 Dated the 30<sup>th</sup> March, 2020/Uks, PA*