REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8258 OF 2009

UNITED BANK OF INDIA **...APPELLANT(S)**

VERSUS

BISWANATH BHATTACHARJEE **...RESPONDENT(S)**

J U D G M E NT

S. RAVINDRA BHAT, J.

1. The appellant (hereafter called "the bank") is aggrieved by a judgment of the Calcutta High Court[1]. By the impugned judgment, the division bench set aside the decision of a learned single judge of the High Court; the single judge had dismissed the challenge by the respondent (writ petitioner- hereafter called "the employee") to his dismissal from the bank's service.

2. The employee was initially appointed as a cashier-cum-clerk by the bank, on 18.01.1971. Later, he was promoted to Junior Management Officer Grade Scale-1. He served as branch manager of the bank's Chandabila branch from 14.12.1988 to 30.05.1990. Disciplinary proceedings were initiated against him when a charge sheet on 23.10.1997 alleging his complicity in five major charges (stated in paragraph 15 below) was issued by the bank. The charge sheet was issued seven years after he was transferred from the Chandabila branch. During this time several audits were conducted in terms of the norms stipulated by the Reserve Bank of India.

The allegations against the employee pertained to the period when he was posted as Manager in the said Chandabila branch. The charge sheet alleged that he

[1] Dated 16.12.2008 in FMA 2696/2007.

disbursed loan in favour of twelve fictitious persons in connection with the Integrated Rural Development Project (hereafter called "IRDP") introduced by the Central Government. The loan had two components wherein 50% i.e., ₹ 5,000/- was repayable term and the remaining 50% i.e., ₹ 5,000/- was subsidy. In terms of the scheme, 93 applications were received which were to be examined and the applicants identified on the basis of joint inspection by the bank and the Gram Panchayat concerned. Once the identified applications were forwarded to the District Rural Development Agency (hereafter called "DRDA") the latter had to submit the subsidy amount. The bank alleged that the applications were forwarded to DRDA which in turn released ₹ 4,68,833/- towards subsidy. However, the bank's subsidy register reflected only ₹ 4,08,833/-, and did not reflect the remainder of ₹ 60,000/- along with the names of the twelve beneficiaries who purportedly received the said amount. The bank also alleged that the loan register showed that the loan and the subsidy was given to twelve beneficiaries against SSI account nos. 45/90 - 56/90. The employee / respondent denied the allegations. Other charges were that the employee, in connivance with another employee, deliberately ensured that the relevant papers were missing; more seriously it was alleged that the amount of ₹ 60,000/- forming the subsidy component, (of the total ₹ 1,20,000/- disbursed to the beneficiaries) was misappropriated. The employee denied these allegations. The bank proceeded to conduct an enquiry.

4. The enquiry officer submitted his report on 05.05.2001. The report, *inter alia,* held that Sri Haradhan Bera, Pradhan of Chandabila Gram Panchyat, identified those persons claiming to be beneficiaries, in the enquiry. The enquiry officer relied on the evidence of seven beneficiaries, who deposed that no loan amount was disbursed, and that they had not received any reminder or letter from the bank, regarding return of loan amount and had not affixed their thumb impressions on the forms. The report also indicted the employee / respondent for transferring the amounts to Sri Madan Mohan Saha, another employee (CCG) of the bank. Furthermore, the report placed strong reliance on a confessional statement made by others charged, including Sri

Subhendu Dash, Ex-Pradhan of Chandabila at the time of the incident (document X, photocopy of the alleged confession dated 03.03.1994). The enquiry officer therefore, found that the employee was guilty of the charges. The report noted, interestingly, that the *loan* amount (i.e., ₹ 60,000/- out of ₹1,20,000/-) was deposited in the account of the bank, and that the balance was misappropriated.

5. By an order dated 07.10.2002, the Disciplinary Authority, accepted the report, and, relying on the past conduct of the respondent, terminated his employment. The employee appealed this order; the appellate authority however, dismissed the appeal by order dated 28.04.2003. The aggrieved employee approached the Calcutta High Court, under Article 226 of the Constitution.[2] By a judgment and order[3] that writ petition was rejected. The employee then filed an appeal. By the impugned order, the division bench allowed that appeal, and set aside the orders of the appellate and disciplinary authorities.

Contentions of the bank

6. It is argued on behalf of the bank that the High Court re-appreciated the evidence and altered the finding on facts of the disciplinary authority on the ground of insufficiency of evidence. This was contrary to settled proposition that courts, in judicial review, cannot weigh the evidence appreciated by a domestic tribunal. It was urged that the High Court erred in acting as an appellate authority and such action is in the teeth of law laid down by this court in several decisions, such as *UP State Road Transport Corporation v Har Narain Singh*[4]; *State Bank of India v Ram Dinkar Punde*[5] and *Government of A.P & Ors. v Mohd. Narsulla Khan*[6]. Counsel further argued that the impugned judgment was in error in holding that the enquiry officer's finding of guilt, leading to the employee's dismissal, was not based on any evidence. It was argued that the High Court proceeded to appreciate evidence, premised on

[2] W.P. No. 1391 (W)/ 2004.
[3] Dated 15.05.2007.
[4] 1998 (9) SCC 220.
[5] 2006 (7) SCC 212.
[6] 2006 (2) SCC 373.

which its conclusion about the enquiry report not being based on evidence, was recorded. This approach was unsustainable.

7. It was next urged that the High Court failed to appreciate that as far as charge no. 1 was concerned, the employee had authenticated the entries made by Sri Madan Mohan Saha, ex-CCG and, therefore, his plea that he could not be faulted with for not maintaining the subsidy register, could not be sustained or accepted.

8. It was argued on behalf of the bank that the impugned judgment could not be sustained, because its conclusion of inadequate evidence to prove that loan and subsidy had been disbursed to twelve fictitious persons was erroneous. This conclusion was in spite of the fact that seven individuals deposed that they had not received any loan and subsidy amount nor did they affix their thumb impression on the applications. Likewise, the court could not have gone into the question of whether the confession statement of Sri Madan Mohan Saha and Sri Subhendu Kumar Das dated 03.03.1994 was not admitted into evidence. This, it was submitted, was contrary to the record. Counsel highlighted that the contents of that confession were not denied by the employee.

9. Learned counsel argued that the impugned judgment was erroneous as it held that the respondent employee had been prejudiced in the enquiry due to non-production of certain documents claimed by him. Those documents were not produced as they were untraceable in the branch or regional office. In fact, charge no.4 against the delinquent officer dealt with unauthorised removal of those very documents.

10. It was lastly urged that the impugned judgment, if allowed to stand, would undermine discipline in banks. Elaborating on this aspect, learned counsel submitted that this court has repeatedly held that public servants such as bank officials and managers are expected to display a degree of integrity of a higher standard than other employees, given that they have to deal with others' monies. In the present case, the disciplinary and appellate authorities acted within their rights in considering the record, appreciating the evidence and concluding that there was sufficient material to

impose the penalty of dismissal. The High Court set at naught this fact appreciation, and based on its re-appreciation of the evidence, set aside the penalty. This, it was urged, would be prejudicial to the interests of the bank.

Contentions of the employee

11. Learned counsel for the respondent employee, Mr. Kunal Chatterji, urged this court not to interfere with the impugned judgment. He contended that the employee was found guilty in the enquiry proceedings. Those findings were not based on any evidence and were purely conjectural. The findings were clearly perverse and therefore, the penalty imposed was not justified or legal. It was urged that though seven borrowers deposed favorably as far as the employee was concerned, only the Ex-Pradhan deposed against the respondent. However, he was held guilty without independent verification of identity of persons. It was underlined that no evidence was adduced about who liquidated the loan. The entire conclusions in the enquiry report were based on surmises.

12. Mr. Chatterji urged that the respondent left the branch in June 1990. The chargesheet was issued much later, and the enquiry was conducted seven years later. Counsel urged that the management withheld documents which were directed to be produced in the enquiry. This caused serious prejudice to the respondent as their production would have vindicated his position. It was submitted that the enquiry officer was swayed by photostat copy of a document which claimed to be the admission of guilt of misappropriation of funds signed, by the Ex-Pradhan and ex-cashier Sri Madan Mohan Saha in presence of manager of the bank on 03.03.1994. Those documents were not produced; a photocopy was adduced in the enquiry. Moreover, the respondent employee had neither signed on it, nor admitted it. Therefore, the consideration of that document to nail the respondent's guilt was clearly an unreasonable and perverse reason, and thus the respondent could not be bound by the contents of that document.

13. Mr. Chatterji argued that though the scope of judicial review in departmental proceedings is restricted, clearly where it is shown that the outcome of the enquiry is either procedurally unfair or illegal, or its outcomes are based on findings that are based on irrelevant facts, without taking into consideration relevant facts, or are manifestly unreasonable, the court in exercise of its jurisdiction under Article 226 of the Constitution, can (and does) interfere with the punishment imposed.

14. Learned counsel submitted that two persons whose confession was allegedly recorded in the document (i.e., Sri Madan Mohan Saha and Sri Subhendu Kumar Das) were not examined as witnesses to verify it. Despite these glaring infirmities with respect to the evidence recorded which did not point to the respondent's complicity, he was held guilty. This finding was perverse and not based on sufficient evidence. Counsel submitted that sufficiency of evidence means existence of some evidence which links the charged officer with the misconduct alleged against him. He relied on *Sher Bahadur v. Union of India & Ors*[7] and *Narinder Mohan Arya v United India Insurance Co. Ltd*[8] to urge that the High Court could interfere with findings of an enquiry which were not based on any evidence.

15. The division bench, in the impugned order, after considering the entire record, noticed the following:

(a) MW 1, Sri Satikinkar Deb, Deputy Manager, Sepai Bazar Branch stated that on the basis of the handwriting of the subsidy register and also from his own experience that Sri Madan Mohan Saha used to maintain the register on most occasions. There was no evidence that the appellant ever maintained the said register. During enquiry MW 1 stated that there was authentication of the respondent in some cases and by himself in many cases in the subsidy register when the amount was debited. It was Sri Madan Mohan Saha's duty as the cashier to maintain the subsidy register, and he failed to discharge his duty. The said amount was credited to marginal deposit account. The matter of non-recording of the said subsidy amount in the subsidy register was due to Sri Madan Mohan Saha's omission. For that irregularity the

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[7] (2002) 7 SCC 141.
[8] (2006) 4 SCC 713.

respondent could not be held responsible; he did not deliberately conceal the fact with any *malafide* intention.

(b) With respect to the charge of depositing subsidy in the account of twelve fictitious beneficiaries, findings were based on the evidence of seven of those beneficiaries, whose names were actually shown in the record. These witnesses denied having received or returned the loans. They were identified by Sri Haradhan Bera (MW2), subsequent Pradhan, Chandabila Gram Panchayat. MW2's identity was challenged at the outset by the respondent; he did not produce any identity proof. This was not dealt with by the enquiry officer; and the identity of the seven borrowers / beneficiaries was not independently proved.

(c) The third charge of misappropriation of the entire loan and subsidy amount in connivance with Sri Subhendu Kumar Das and Sri Madan Mohan Saha was based on the confessional statement document marked 'X'. That document was not exhibited. The employee was neither its author, nor signatory. Therefore, the document could not be used against him to fasten him with liability for alleged misappropriation. The finding based on a document not even admitted into evidence and not signed and accepted by the appellant was perverse.

(d) The finding on charge relating to removal of documents was not proved, since it was based on no evidence. The respondent was transferred out of the branch in 1990 and the proceedings were initiated in 1997. Sri Madan Mohan Saha was working in the branch after the respondent's transfer. So, it could not conclusively be established that the respondent removed those documents to conceal the misappropriation and to destroy them.

(e) The division bench also observed that with respect to the last charge the enquiry officer recorded that:

> *"The Management side could not establish the reason for crediting of Rs. 34,000.00 on 28.06.94 to different 28 loan accounts out of the fund transferred from S.S. Account of Sri Madan Mohan Saha to Joint S.S. Account of Sri Haradhan Bera on 28.06.94. Moreover, Sri Haradhan Bera in his evidence avoided the matter for some reasons best known to him. But for the above, there is no effect on the charge No.5 which states only that C.S.O.*

> *sent a Demand Draft of Rs. 25,000.00 dated 22,04, 1994 and for Rs. 10,000.0 dated 30.05.1994 to Shri Madan Mohan Saha and Shri Saha deposited the amounts of drafts in his own and joint S.S. Accounts. Thereafter transfer of Rs. 25,000.00 was made from S.S. Account No. 1110 of Sri Haradhan Bera and Shri Prafullah Mahata on 30.03.1994…"*

Discussion and conclusions

16. In one of the earliest decisions of *Union of India* v. *H.C. Goel*[9] relating to departmental proceedings, this court observed that where a public servant is punished for misconduct after a departmental enquiry is conducted, a clear case where interference under Article 226 of the Constitution is warranted is when there is no evidence to establish the official's guilt.

> *"**22**…. The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.*
> ***23**. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether*

[9] (1964) 4 SCR 718.

> *there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."*

17. Apart from cases of "no evidence", this court has also indicated that judicial review can be resorted to. However, the scope of judicial review in such cases is limited[10]. In *B.C. Chaturvedi* v. *Union of India*[11] a three-judge bench of this court ruled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority; it does not re-appreciate the evidence. The court held that:

> *"**12**. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal*

[10] *T.N.C.S. Corpn. Ltd.* v. *K. Meerabai*, (2006) 2 SCC 255.
[11] (1995) 6 SCC 749.

> *may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*
> ***13**. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718], this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."*

18. Other decisions have ruled that being a proceeding before a domestic tribunal, strict rules of evidence, or adherence to the provisions of the Evidence Act, 1872 are inessential. However, the procedure has to be fair and reasonable, and the charged employee has to be given reasonable opportunity to defend himself (ref: *Bank of India* v. *Degala Suryanarayana*[12] a decision followed later in *Punjab & Sind Bank v. Daya Singh*[13]). In *Moni Shankar* v. *Union of India*[14] this court outlined what judicial review entails in respect of orders made by disciplinary authorities:

> *"**17**. 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. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the*

[12] (1999) 5 SCC 762.
[13] (2010) 11 SCC 233.
[14] (2008) 3 SCC 484.

> *requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere."*

This court struck a similar note, in *State Bank of Bikaner and Jaipur* v. *Nemi Chand Nalwaya*[15], where it was observed that:

> *"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".*

19. The bank is correct, when it contends that an appellate review of the materials and findings cannot ordinarily be undertaken, in proceedings under Article 226 of the Constitution. Yet, from *H.C. Goel* onwards, this court has consistently ruled that where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are *mala fide,* or where the *findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances*, the remedies under Article 226 of the Constitution are available, and intervention, warranted. For any court to ascertain if any findings were beyond the record (i.e., no evidence) or based on any irrelevant or extraneous factors, or by ignoring material evidence, necessarily some amount of scrutiny is necessary. A finding of "no evidence" or perversity, cannot be rendered *sans* such basic scrutiny of the materials, and the findings of the disciplinary authority. However, the margin of appreciation of the court under Article 226 of the Constitution would be different; it is not appellate in character.

20. In the present case, the impugned judgment discloses scrutiny of the record. The same level of scrutiny is absent in the decision of the learned single judge. That

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[15] (2011) 4 SCC 584

the division bench conducted the kind of scrutiny that it did, cannot be a factor to hold its decision erroneous. In this context, it would be worth recollecting Bernard Schwartz[16] that judicial review- of administrative decisions: warrants a minimum level of scrutiny:

> *"If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial enquiry must not be so restricted that it prevents full enquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. It makes judicial review of administrative orders a hopeless formality for the litigant. ... It reduces the judicial process in such cases to a mere feint."*

21. Coming now to the charges, it can be seen that MW 1, the management witness, who deposed about the procedure in the bank, for recording entries in the subsidy register, clearly stated that at the relevant time, some entries were made by the respondent, and some by Sri Madan Mohan Saha, who *"used to maintain the subsidy register on most occasions."* He also deposed that it was Sri Madan Mohan Saha's duty as the cashier to maintain the subsidy register. Saha failed to discharge that duty. In view of this evidence, and no contrary documentary evidence casting the primary responsibility to maintain the subsidy register on the respondent, the impugned judgment, in this court's opinion, cannot be faulted with in concluding that there was no material to prove the first charge against the employee. As regards the second charge of misappropriation of subsidy amount from twelve individuals, whose names were fraudulently introduced, the bank relied on the depositions of seven persons. They were identified by Sri Haradhan Bera (MW2), himself at the time Pradhan, Chandabila Gram Panchayat. MW 2's identity was challenged at the outset by the respondent; he did not produce any identity proof. The enquiry officer did not rule on this. The impugned judgment concluded that in the absence of proof of Sri Haradhan Bera's identity, and any independent material, with respect to the seven

[16] In Administrative Law, 2nd edn., p. 584.

alleged beneficiaries, their identity was not independently proved. Additionally, there had to be some material, linking the employee (respondent) with the applications, introducing the borrowers, etc. MW-1, the subsequent manager, clearly deposed in reply to a query (question no. 8) as to who used to *"identify the borrowers"* before sanction and disbursement of IRDP loans, that the *"Pradhan/Member of Gram Panchayat"* used to identify the beneficiaries. Such being the case, the involvement of the respondent employee had to be shown by more definitive evidence. It is again a matter of record, that the then Pradhan of the Gram Panchayat, Sri Subhendu Kumar Das, identified the borrowers. In these circumstances, even in departmental proceedings, there had to be some overt evidence, and not mere suspicion, to support a valid finding of complicity of the respondent. In these circumstances, the impugned judgment cannot be faulted with in its findings on the second charge.

22. The third charge of misappropriation of the entire loan and subsidy amount in connivance with Sri Subhendu Kumar Das and Sri Madan Mohan Saha was based on a confessional statement (document 'X'). A copy of that document is on record. The relevant part reads as follows:

> *"Today on dated 3.3.94, in the presence of Manager babu of UBI, Chandabila Branch the statement of Cashier babu (Madan Mohan Saha) has been recorded in the presence of following persons.*
> *The loan amount in respect of 1 O IRDP loan from A/c. No. SSl-45/90 to 54/90 were equally shared by we four of us, namely (1) Sri Subhendu Das, (2) Sri Biswanath Bhattacharyya, (Manager) (3) Sri Madan Mohan Saha (Cashier), (4) Basudeb Roy (Peon). The above loan amount were liquidated by we the four persons and subsidy amount were also received by four of us.*
>
> *Sd/- Sri Subhendu Kumar Das, 3/3/94*
> *Sd/- Madan Mohan Saha, 3/3/94*
>
> *The above mentioned discussion and confession were held today at 12.30 P.M. in my presence. The discussions were completed peacefully.*
>
> *Sd/- Manager - 3/3/9 4*
> *With Manager's Office Seal.*
> *Attested*
> *By Manager with seal*
> *15.3.94"*

The document was witnessed by six persons (Sri S.K Sukhjan Ali, Sri Santosh Kumar Saha, Sri Trilochan Singh, Sri Suresh Chandra Das, Sri Nabin Suri and Sri S.K. Washef Hussain). The document was not exhibited. Undeniably:

(a) The respondent did not sign the confession.

(b) The confessional statement dated 03.03.1994 was made by Sri Subhendu Kumar Das and Sri Madan Mohan Saha, which was attested by an officer of the bank.

(c) The confession was an admission as far as its makers were concerned. The impugned judgment held that this document could not be used against the employee respondent to fasten him with liability for alleged misappropriation. The finding based on a document not even admitted into evidence and not signed and accepted, by the appellant was held to be perverse.

23. This court previously had an occasion to deal with a departmental proceeding that culminated in a penalty, where the enquiry was based on the confessional statements made to the police and no other material. The court, in *Roop Singh Negi v. Punjab National Bank*[17] held such evidence to be inadequate:

> *"**15**. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."*

There are decisions of this court (*J.D. Jain v Management of State Bank of India*[18] and *State Bank of India v Hemant Kumar*[19]) where witness depositions which stated that the charged employee had previously confessed or admitted his role and guilt,

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[17] (2009) 2 SCC 570.
[18] 1982 (1) SCC 143.
[19] 2011 (2) SCC 22.

were held to be admissible. In the present case, however, the confessional statement was *not by the respondent.* Those who authored the confession, did not depose in the enquiry. Furthermore, no witness who heard the authors of the confession, deposed to it. At best then, that document bound the authors, not third parties, like the respondent. The enquiry officer clearly erred by relying on such extraneous matters, as the respondent could not be made a scapegoat for the confession of others, especially with regard to his role. The bank's charge about his complicity had to be proved by evidence. This document, containing others' confession, could not have been used against him.

24. As far as the other two charges go, the division bench correctly held that there was no evidence to show that the respondent had removed the documents, from the bank. Importantly, he was charged seven years after the alleged incident; by that time other managers had taken over the branch. As regards the last charge of transferring amounts through three demand drafts from the account of Sri Madan Mohan Saha to Joint S.S. Account of Sri Haradhan Bera on 28.06.94 was concerned, the enquiry officer noted that, *"Sri Haradhan Bera in his evidence avoided the matter for some reasons best known to him."* In the absence of any other material, the finding that the amounts had been misappropriated by the respondent, who in connivance with Sri Madan Mohan Saha, and Sri Subhendu Kumar Das, ensured that the loan component was returned to the bank, cannot be said to have been established.

25. An interesting side is this - Sri Madan Mohan Saha, who confessed to the misconduct, was charged and proceeded with departmentally. The confession of guilt, which he owned up to, nevertheless resulted in a mild penalty of withholding of increments. However, the respondent, who did not admit his guilt, or confess to it, and in respect of whom there was no credible evidence, even going by the lower standards of acceptable proof in departmental inquires, was held to be guilty and visited with the penalty of dismissal. A reading of the disciplinary authority's order reveals that his past record of minor misconduct played a major role in determining his guilt, despite lack of evidence, and the extreme penalty of dismissal.

26. In view of the foregoing discussion, and having regard to the record, the impugned judgment cannot be faulted with. The appeal is unmerited. The appellant bank is directed to ensure that the respondent's services are deemed to be reinstated, and calculate all his benefits, including arrears of salary, pay increase (as applicable), increments, and all consequential benefits, and calculate his terminal benefits, and fix his pension, if admissible to him under the bank's regulations. The determination of these benefits shall be undertaken, and the payment of all amounts be made, within three months from date of this judgment. The appeal is dismissed without order on costs.

.....J
[K.M. JOSEPH]

.....J
[S. RAVINDRA BHAT]

New Delhi,
January 31, 2022.