IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(ORIGINAL SIDE)

Present:
The Hon'ble Justice Rai Chattopadhyay

WPO 344 of 2020

Suman Saha
Vs.
State Bank of India and Ors.

For the Petitioner : Mr. Meghnad Dutta
: Mr. Arindam Paul
: Ms. Debarati Das

For the respondent Nos. 1 to 3 : Ms. Deblina Lahiri
: Ms. Moumita Sharma

Judgment on : 12.11.2026

Uploaded on : 12.11.2026

Rai Chattopadhyay, J. :-

1. The writ petitioner has been charge-sheeted, subjected to disciplinary enquiry, has been subjected to punishment being found guilty of the charges levelled by the Disciplinary Authority, his challenge to which before the Appellate Authority has failed. Hence, he has filed the present writ petition, to specifically challenge the order of the Appellate Authority, dated December 27, 2018 and has sought for setting aside of the same. Eventually, the order of the Disciplinary Authority imposing punishment upon the writ petitioner as well as that of the Enquiry Officer finding him guilty of the alleged charges have also come to be challenged by the petitioner, in this matter. The petitioner has further prayed for relief that the respondent/ Bank be directed to forthwith release the amount withheld / deducted by the Bank, on

account of punishment imposed upon him of withholding of incremental benefits.

2. Before dealing with the impugned order, the background of the matter is required to be discussed. The petitioner was appointed as an "Assistant", with the respondent/Bank, on or about **December 17, 2012**. While the petitioner has been serving as a "Customer Assistant" at Madhyamgram Chowrasta Branch, he has been served with a letter dated **December 31, 2016**, to be called upon to provide with the source of the cash deposit of a sum of Rs. 200,000/-, made on **November 31, 2016**, in each of the 2 savings accounts being No. 33730448720 and 35399640888 respectively.

3. The writ petitioner responded vide letter dated **December 31, 2016**, where he has written as follows:—

> - *"Since my Mother is a pensioner and patient in high Blood sugar and hurt disease and also my mother in law suffered a heart attack recently. Both of them under regular follow up treatment. So we always keep a portion of cash for there regular follow up treatment in emergency medical purposes.*
> - *Portion of our house is under construction and other portion is also gone through major repairing work for demonetisation amount in hand for that purpose is useless and deposited.*
> - *Cash gift received on various occasions over the years deposited due to demonetization.*
> - *House hold saving deposited due to demonetization.*
> - *Withdrawal cash in hand prior to demonetization deposited as the currency became non usable.*
> - *One of my close relative marriage also done during demonetization period. for this purpose expenditure amount also deposited due to demonetization.*
>
> *The withdrawals made are also due to the above reasons and to maintain regular livelihood expenses."*

4. After duly responding to the clarificatory questionere by the writ petitioner, he has been issued a suspension letter dated **February 04,**

2017, suspending him from the service, with immediate effect. Later, on **May 31, 2017**, the petitioner was issued with a show-cause notice, demanding his written explanation about the following 3 allegations:—

> ***"Allegation No. 1:** You have deposited Rs. 4,20,000/- by Cash in your Accounts which is disproportionate to your known sources of income as detailed under **List – A** of **Annexure – I**.*
>
> ***Allegation No. 2:** You have swapped Rs. 4,92,500/- on different dates (Cumulative figure for transactions undertaken from 12.11.2016 to 26.12.2016) during Demonetization Period violating Bank's instructions as detailed under **List – B** of **Annexure – I**.*
>
> ***Allegation No. 3:** You have mis-utilized accounts of other persons for exchanging SBN using Alternative Channels like INB, CDM & GCC as detailed under **List – C** of **Annexure – I**."*

5. The petitioner's explanation followed vide his letter dated **June 27, 2017**. Consequent upon such reply being given by the writ petitioner, the respondent has revoked his suspension, vide letter dated **August 31, 2017**, without prejudice to the Bank's rights to proceed further against the petitioner under the applicable Service Rules.

6. On **September 21, 2017**, the petitioner was issued a chargesheet, bearing the following charges:—

> ***"Charge 1:***
>
> *You have deposited Rs. 4,20,000/- by Cash in your Accounts which is disproportionate to your known sources of income as detailed under **List – A** of **Annexure – I**.*
>
> ***Charge 2:***
>
> *You have swapped Rs. 4,92,500/- on different dates (Cumulative figure for transactions undertaken from 12.11.2016 to 26.12.2016) during Demonetization Period violating Bank's instructions as detailed under **List – B** of **Annexure – I**.*
>
> ***Charge 3:***

*You have mis-utilized accounts of other persons for exchanging SBN using Alternative Channels like INB, CDM & GCC as detailed under **List – C** of **Annexure – I**.*

*2. By your above acts you have been found, prima facie, liable for committing acts of **"Gross Misconduct"** under **Clause 5 (j)** of the Memorandum of Settlement dated 10.04.2002 on Disciplinary Action & Procedure for workmen staff.*

3. The above charges, if proved, would attract the provisions of penalty under Clause 6 of the said Memorandum of Settlement."

7. The petitioner was called upon to submit his reply to the same, which he has replied to vide his letter dated **October 6, 2017**. Vide a letter dated **January 3, 2018**, the respondent/ Bank issued a corrigendum to the said chargesheet, modifying the 3rd charge. The modified Charge No. 3, was as follows:—

"Charge No. 3:

Particulars :-

Existing: You had mis-utilized the accounts of other persons for exchanging SBN & for withdrawal beyond the ceiling specified by RBI during demonetization period. You had also mis-utilised your salary account as intermediary account for facilitating other customer by giving currency of the same amount violating bank's instructions as detailed under **List – C** of **Annexure – I**.

S/N	**Details of Transactions for exchanging SBN through Alternate Channels involving Others' Accounts.**

2	Sri Suman Saha deposited cash Rs.98,000/- (Rs 40,000/- ,Rs 40,000/- & Rs 18,000/-) in total, through GCC by using his ATM Card on 17/11/2016 to the Account No.35850170791 of Sri Prosenjit Naskar, an employee of authorized vendor – Maa Santoshi Enterprise. The same amount was transferred to the Account No.10618039148 of Sri Ramen Majumder by Sri Prosenjit Naskar on the same day. Incidentally, as per statement of Sri Ramen Majumder, Sri Majumder gave Rs.98,000/- (In denominations of 500/- and 1000/-) to Sri Suman Saha."

8. A second corrigendum was issued on **January 10, 2018**, modifying the charge No. 2, in the following manner:—

"Charge No. 2 :

Particulars :-

Existing: You have swapped Rs. 4,92,500/- on different dates (Cumulative figure for transactions undertaken from 12.11.2016 to 26.12.2016) during Demonetization Period violating Bank's instructions as detailed under **List – B** of **Annexure – I**.

List-B :

S/N	Date of Swapping of SBN	No. of Transactions	Total Amount Swapped (Rs.)
1	12.11.2016	8	1,11,500/-
2	13.11.2016	8	54,000/-
3	13.11.2016	1	1,000,00/-
4	13.11.2016	1	1,000,00/-
5	15.11.2016	9	39,000/-
6	16.11.2016	7	31,000/-

7	17.11.2016	10	55,000/-
8	25.11.2016	1	1,000/-
9	26.12.2016	1	1,000/-
TOTAL			**4,92,500/-**

To be read as:

You have swapped Rs. 2,92,500/- on different dates (Cumulative figure for transactions undertaken from 12.11.2016 to 26.12.2016) during Demonetization Period violating Bank's instructions as detailed under **List – B** of **Annexure – I**.

List – B:

S/N	Date of Swapping of SBN	No. of Transactions	Total Amount Swapped (Rs.)
1	12.11.2016	8	1,11,500/-
2	13.11.2016	8	54,000/-
3	15.11.2016	9	39,000/-
4	16.11.2016	7	31,000/-
5	17.11.2016	10	55,000/-
6	25.11.2016	1	1,000/-
7	26.12.2016	1	1,000/-
TOTAL			**2,92,500/-**

9. The disciplinary proceeding followed thereafter, starting from **January 11, 2018**. Ultimately, the writ petitioner was served with the report of enquiry dated **February 23, 2018**. He submitted his written objection to the same dated **March 16, 2018**. He received the notice of the respondent dated **March 27, 2018**, calling upon him to reply to the proposed punishment of reduction of salary to a lower scale of pay by

two stages for two years. Though the petitioner objected to such proposed punishment, vide his letter dated **March 28, 2018**, allegedly, in complete disregard thereof, the respondent passed the impugned order of penalty against the petitioner vide letter dated **March 29, 2018.** The respondent Bank/Disciplinary Authority has imposed the following penalty against the petitioner in terms of Rule 6 (e) of the provision for Disciplinary Proceedings, Memorandum of Settlement of Award Staff dated **April 10, 2002**;

> **"Reduction to lower stage in the scale of pay by two stages for two years with further directions that you will not earn increments to your pay during the period of such reduction and on expiry of such period the reduction will not have the effect of postponing the future increments to your pay."**

10. The writ petitioner has preferred an appeal challenging the order of penalty dated **March 29, 2018**, which was dismissed by the Appellate Authority vide the said impugned order dated **December 27, 2018**, holding that the penalty imposed on the petitioner was commensurate with the gravity of the charges. The present writ petition arises due to grievance and dissatisfaction of the writ petitioner about the said order of the Appellate Authority in particular and about the enquiry proceeding, enquiry report and penalty imposed by the Disciplinary Authority, in general.

11. In argument Mr. Suman Saha learned advocate for the writ petitioner has contended that the order imposing penalty against the writ petitioner dated March 29, 2018, is patently illegal, unjust and without any lawful reasoning; the said order is attacked being without due appreciation of the materials and evidence on record and having been passed in a mechanical manner; the said order as well as the

impugned order of the Appellate Authority dated December 27, 2018, have been challenged as based on no evidence.

12. His further contention is that the penalty imposed upon the writ petitioner citing Rule 6(e) of the Memorandum of 2002 is contrary to the said provision itself. It is submitted that the said Rule prescribes several form of punishments that can be imposed upon an employee being found guilty of "gross misconduct". According to the petitioner, a plain reading of the said Rule would further make it clear that the authority is empowered to impose any one of several forms and/or nature of punishment prescribed by Rule 6, upon finding an employee to be guilty of "gross misconduct". Mr. Suman Saha learned advocate has submitted that the extent of power of the Disciplinary Authority is inferable from use of expression "or" appearing in the text of Rule 6, after each specific form of punishment mentioned in each of the sub paragraph of Rule 6. In other words, it has been submitted that Rule 6 prescribes several forms and/or nature of punishments which are in exclusion of and alternative to each other and the petitioner has to be imposed with one and cannot be twice vexed. But in this case allegedly, the respondent has committed error by making the petitioner vexed with double punishment, which is not the mandate of the Rule.

13. In this regard Mr. Suman Saha learned advocate for the petitioner has relied on a Supreme Court judgment in ***Commissioner of Customs Central Excise and Service Tax, Patna versus Union of India and Others 9reported at 2023 SCC Online SC 1330)***, where the Court has held that what is plain and unambiguous from a bare reading of a provision under consideration must be interpreted in the same way as it has been stipulated and not in a way that it presumes deficiency and radically changes the meaning and context of the provision; that, when the meaning of the provision is clear and unambiguous by the usage of "or" , there is no scope to interpret the said word as a disjunctive

"and"; and also that usage of "semicolon" and "comma" essentially import scope of the provision laid down before that, to have come to an end having no bearing with the later portion of the provision.

14. According to the petitioner he has been imposed with penalty not only as per Rule 6 (e) only but also that under Rule 6 (f) of the 2002 Memorandum, which is in clear violation of the measures of punishment prescribed under Rule 6. It is submitted that the punishment imposed by the Disciplinary Authority subsequently affirmed by the Appellate Authority is therefore without authority and jurisdiction.

15. Regarding the alleged erroneous findings of the Enquiry Officer, it has been submitted that the explanation offered by the petitioner to the 1st Charge, either have not been considered in its proper perspective or at times not considered at all. That the petitioner has duly offered explanation for deposit of sums of Rs. 2.20 lakhs and 2 lakhs respectively as alleged, in his two accounts, which have neither been disbelieved nor considered by the Enquiry Officer in his report; that, similar non application of mind may be noticed from the decision of the Disciplinary Authority as well as the Appellate Authority respectively, in this regard. It has further been submitted in this regard that to come to a finding of disproportionate accumulation in his accounts than his income, the Enquiry Officer has not considered his total salary but only that of the year 2016, which according to the petitioner, completely demolished the finding itself being based on surmises only.

16. So far as the 2nd Charge is concerned, according to the petitioner, though enough reliance has been placed on RBI Guidelines to hold alleged lapses on his part as per the PEXS, but no such Circular and/or guidelines of RBI has been produced which may be seen to

have been violated by the petitioner, as alleged. The petitioner says that the bank has not been able to prove any violation committed by the petitioner, of any RBI guideline or rules of the bank. The petitioner says that at the relevant time, when it was a phase of demonetisation, there was no order either by the RBI or the bank itself, at least no order as such could be produced and proved by the respondent to have prohibited swapping of the outdated currency notes. On the contrary, the witness (PW-1) has specifically asserted in his deposition, that there was none. It has further been submitted that transaction in question were undertaken during the extraordinary circumstances prevailing at the time of demonetisation to assist customers and other persons and that neither any pecuniary benefit accrued to the petitioner nor any financial loss was caused to the bank. On the contrary during demonetisation the highest cap for deposit of money in bank was stipulated to be Rs. 2,50,000/-. That, whatever limit of exchange of Specified Bank Notes (SBFs) was provided (that is, Rs.4000/- to 4500/- later reduced to Rs. 2000/- with effect from November 18.2016) was with regard to a single person.

17. Inn respect of the 3rd Charge, it has been contended that there was no independent evidence to establish that the petitioner had misused his account for facilitating third party transactions. According to the writ petitioner the mere routing of funds through an account, in absence of any further material demonstrating misconduct, could not have formed the basis of adverse finding against him. That, neither any unjust enrichment or mala fide motive of the petitioner could not be proved, nor there was any specific complaint in this regard by any customer or other person, lodged against the petitioner. A decision of the Supreme Court is relied on in ***United Bank of India versus Biswanath Bhattacharjee (reported at 2022 13 SCC 329)***, where the Court has held that despite the position of law being settled

about the limited scope of judicial review as to the materials and findings in a disciplinary proceeding, but 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 could not have been rendered by any reasonable person placed in like circumstances, the remedies under Article 226 are available and intervention is warranted.

18. Ms. Deblina Lahiri, learned advocate appearing for the respondents opposes the writ petition and submits that the disciplinary proceedings were conducted in accordance with law and that the findings recorded against the petitioner are supported by the materials adduced in the enquiry.

19. Insofar as the 1st Charge is concerned, it is submitted that during the enquiry it stood established that cash deposits aggregating to Rs.4.20 lakh had been made in the accounts connected with the petitioner within a few days of demonetisation. It is contended that the petitioner had not submitted his Assets and Liabilities Statements for the relevant years and that, having regard to his approximate monthly income and length of service, the deposits were reasonably found to be disproportionate to his known sources of income. According to the respondents, the enquiry report as well as the order of the disciplinary authority adequately dealt with the materials relevant to the said charge.

20. With regard to the 2nd Charge, learned advocate submits that the petitioner had swapped specified bank notes amounting to Rs.2.92 lakh on different dates during the demonetisation period in disregard of the RBI guidelines then in force. It is contended that the petitioner was duty-bound to adhere to the limits prescribed for exchange of

specified bank notes and that separate written instructions of the Bank prohibiting such swapping were not necessary. The respondents further contend that the evidence of PW-1 has been selectively relied upon by the petitioner and that, when read in its entirety, the deposition referred to the RBI circulars applicable to the transactions in question.

21. It is further submitted that a departmental enquiry is not governed by the strict standard of proof applicable to a criminal trial. The charge of misconduct is required to be established on the basis of preponderance of probabilities and upon the existence of material from which a reasonable person could arrive at the conclusion that the misconduct had been committed.

22. As regards the 3rd and final Charge, Ms. Deblina Lahiri learned advocate submits that the evidence of the witnesses established that the petitioner had utilised his salary account as an intermediary account for facilitating transactions on behalf of third parties and had thereby extended undue accommodation to outsiders by circumventing the applicable RBI guidelines. Upon consideration of the relevant documents, evidence and defence of the petitioner, the disciplinary authority concurred with the Enquiry Officer that the said charge stood partly proved.

23. The challenge to the punishment is also disputed. It is submitted that there is no absolute prohibition under Rule 6 of the 2002 Memorandum, against imposing more than one form of punishment where separate acts of misconduct have been proved. Reliance is placed upon Rule 9, which provides that more than one punishment shall not be imposed in respect of any one charge. Since 1st and 2nd Charges were proved and the 3rd Charge was partly proved, the respondents contend that the disciplinary authority did not exceed its

jurisdiction in imposing the punishment with reference to Rules 6(e) and 6(f). It is further submitted that the use of the word "or" in Rule 6 does not necessarily make the alternatives mutually exclusive in all circumstances as a matter of course.

24. Learned advocate lastly submits that the allegation of non-application of mind by the disciplinary and appellate authorities is without substance. The Appellate Authority, after considering the records and the grounds urged by the petitioner, found that no new material had been produced warranting interference with the disciplinary order and independently concluded that the punishment imposed was commensurate with the gravity of the charges proved. The respondents accordingly contend that neither the disciplinary order nor the appellate order calls for interference in exercise of the writ jurisdiction of this Court.

25. Ms. Deblina Lahiri for the respondent/Bank has referred to the following judgments, to buttress his argument:

(i) Union of India v. M. Duraisamy (2022) 7 SCC 475 where the Court has held that the High Court's jurisdiction to examine the proportionality of punishment imposed by a departmental authority is limited. A reasoned order of punishment cannot be interfered with merely on considerations of sympathy or sentiment. That where the prescribed procedural requirements have been duly complied with and the misconduct stands proved, courts would ordinarily refrain from interfering with the quantum of punishment.

(ii) Deputy General Manager (Appellate Authority) v. Ajai Kumar Srivastava (2021) 2 SCC 612 where similar proposition was settled that judicial review of disciplinary proceedings under Articles 226, 32 and 136 is confined to correcting errors of law, procedural

irregularities, manifest injustice, or violations of natural justice. Constitutional Courts do not act as appellate authorities and cannot re-adjudicate the disciplinary matter on its merits. That, judicial review is concerned with the legality and fairness of the decision-making process, not with the merits or correctness of the decision itself.

(iii) Union of India v. P. Gunasekaran (2015) 2 SCC 610 has been referred to where the Court has considered the scope for the High Court to interfere into the disciplinary proceeding. The Court finds that the High Court's review of disciplinary proceedings is confined to examining whether the enquiry was conducted by a competent authority in accordance with prescribed procedure and principles of natural justice, and whether the findings are free from irrelevant or extraneous considerations. Interference is warranted where material evidence has been wrongly excluded, inadmissible evidence has improperly influenced the decision, the findings are based on no evidence, or the conclusion is so arbitrary or unreasonable that no reasonable person could have reached it.

(iv) Income Tax Officer, Cuttack v. Biju Patnaik 1991 Supp (1) SCC 161, has been relied on while responding to the argument of the petitioner regarding absence of mindful consideration of the report of enquiry by the Disciplinary as well as the Appellate Authorities, that the Court holds therein that in administrative proceedings, an order does not become invalid merely because it does not expressly record the authority's satisfaction regarding the requisite facts. If such satisfaction is evident from the underlying record, the notice or order cannot be held illegal solely for want of an express recital.

(v) Boloram Bordoloi v. Lakhimi Gaolia Bank (2021) 3 SCC 806 has been relied on in the similar context where the Court finds where

the disciplinary authority concurs with and accepts the findings of the enquiry officer, it is not required to record elaborate or separate reasons while imposing punishment. The enquiry report and the findings contained therein constitute the basis of the disciplinary order, and no further detailed reasoning is ordinarily necessary.

(vi) Union of India v. Dalbir Singh (2021) 11 SCC 321 is the other judgment referred to by the respondent, which principally deals with the standard of proof in a disciplinary proceeding. The Court has held that while a criminal conviction requires proof of guilt beyond reasonable doubt, misconduct in disciplinary proceedings may be established on the lower standard of preponderance of probabilities, on the basis of which departmental punishment may validly be imposed.

26. At the very outset of analysation of facts with relation to the legal principles settled, let the relevant provisions under Rule 6 of the 2002 of the Memorandum be quoted, to facilitate further discussions, which is as follows:

> **"6. An employee found guilty of gross misconduct may:**
>
> ** ** ** ** **
>
> **(e) be brought down to lower stage in the scale of pay up to a maximum of two stages', or**
>
> **(f) have his increment/s stopped with or without cumulative effect; or**
>
> ** ** ** ** **"

27. Two mutually distinguishable questions are involved in this case: first, whether the disciplinary findings are amenable to interference under Article 226 of the Constitution; and secondly, whether the penalty

actually imposed is legally permissible in view of mutually exclusive character of Rules 6(e) and Rule 6(f) of the Memorandum of Settlement dated April 10, 2002, if at all. The controversy, in the opinion of this Court, requires a distinction to be maintained between the permissible limits of judicial review over the findings recorded in a disciplinary proceeding and the independent question as to whether the punishment ultimately imposed is authorised by the governing service provisions. The two questions operate in different spheres. While the former concerns the legality of the decision-making process and the sustainability of the findings recorded by the competent authority, the latter concerns the existence and extent of the disciplinary authority's power to impose a particular form of penalty. A finding of misconduct, even if otherwise sustainable, cannot dispense with the requirement that the punishment imposed therefor must conform to the governing rules.

28. The decision of the Hon'ble Supreme Court in ***Commissioner of Customs, Central Excise and Service Tax, Patna (supra)***, relied upon by the petitioner, emphasises that where the language of a statutory provision is plain and unambiguous, the same must ordinarily be given effect to in its natural and grammatical meaning. The Court cannot, merely on the ground of perceived inadequacy or inconvenience, introduce a meaning which the provision does not reasonably bear. In particular, where the legislature or the rule-making authority has consciously employed the expression “or” to separate distinct alternatives, the Court cannot ordinarily substitute the same with “and” so as to enlarge the scope of the provision. The principle assumes particular significance where the provision in question prescribes the permissible forms of disciplinary punishment and, consequently, delineates the authority's power to penalise an employee.

29. The decision in ***Biswanath Bhattacharjee (supra)***, relied upon by the petitioner, recognises that although the scope of judicial review over disciplinary findings is limited, Constitutional Courts are not precluded from intervening where the findings are unsupported by evidence, where relevant material has been ignored or irrelevant material has been taken into consideration, where the decision is vitiated by mala fides, or where the conclusion is so unreasonable or perverse that no reasonable person could have arrived at it. The principle, therefore, does not confer upon the disciplinary authority an immunity from judicial scrutiny; rather, it confines such scrutiny to recognised grounds of judicial review and excludes a mere substitution of the Court's assessment of the evidence for that of the competent authority.

30. The principles emerging from judgments relied on by the respondent in ***M. Duraisamy (supra)***, ***Ajai Kumar Srivastava (supra)*** and ***P. Gunasekaran (supra)*** are well settled. In exercise of jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over a departmental enquiry and cannot undertake a fresh assessment of the evidence merely because another view may be possible. Judicial review is directed principally towards the legality of the decision-making process, observance of the prescribed procedure, compliance with the principles of natural justice, and the existence of legally sustainable material supporting the findings. The Court is not ordinarily entitled to interfere with the quantum of punishment merely on considerations of sympathy, personal hardship or its own perception of what would constitute a more appropriate penalty.

31. The decisions in ***Biju Patnaik's case (supra)***, and in ***Boloram Bordoloi (supra)*** further elucidate the approach to be adopted while examining orders passed by administrative and disciplinary authorities. An administrative order does not necessarily become invalid merely because the requisite satisfaction has not been expressed in a particular formula, provided such satisfaction is discernible from the underlying record. Similarly, where the Disciplinary Authority accepts the findings of the Enquiry Officer, it is not invariably required to reproduce the entire reasoning of the enquiry report or to furnish elaborate independent reasons for every conclusion. The question is whether the decision, read in the context of the enquiry report and the materials considered, demonstrates a lawful and genuine application of mind. The decision in ***Dalbir Singh's case (supra)***, reiterates that misconduct in a departmental proceeding is established on the standard of preponderance of probabilities and not on the standard of proof beyond reasonable doubt applicable to a criminal trial. The disciplinary authority must, nevertheless, arrive at its conclusion on the basis of material having a rational probative nexus with the charge.

32. Tested against the aforesaid principles, the petitioner's challenge to the findings recorded in the disciplinary proceeding does not, on the materials placed before this Court, disclose a ground warranting interference. The record indicates that the petitioner was initially called upon to explain the cash deposits in his accounts and was thereafter served with a show-cause notice containing three allegations. A formal charge-sheet followed on September 21, 2017. The charges were subsequently modified by corrigenda dated January 3, 2018 and January 10, 2018, inter alia, by specifying the particulars of the transactions relied upon in support of the allegations. The petitioner submitted his explanations, and the disciplinary enquiry

commenced on January 11, 2018. The Enquiry Officer submitted his report on February 23, 2018, whereafter the petitioner was afforded an opportunity to submit his objections. He submitted his written objection on March 16, 2018. A further notice proposing punishment was issued on March 27, 2018, to which the petitioner responded on March 28, 2018, before the Disciplinary Authority passed its order on March 29, 2018.

33. The aforesaid sequence of events demonstrates that the petitioner was informed of the allegations against him, was afforded opportunities to explain his position, and was permitted to submit his objections to the enquiry report and the proposed punishment. No specific denial of a material procedural opportunity, or other established violation of the principles of natural justice, has been demonstrated from the record. The fact that the petitioner disputes the conclusions drawn by the Enquiry Officer or contends that his explanations ought to have been accepted does not, by itself, establish that the enquiry was conducted in violation of the prescribed procedure. The requirement of a fair enquiry is a requirement of lawful process; it does not guarantee that the explanation tendered by the delinquent employee must ultimately prevail.

34. Insofar as the 1st Charge relating to cash deposits aggregating to Rs. 4,20,000/- is concerned, the petitioner contends that the explanations offered by him, including the circumstances in which household savings and cash held for domestic requirements were deposited during the demonetisation period, were not duly considered. He further contends that the assessment of his known sources of income was defective because the Enquiry Officer allegedly confined his consideration to the salary earned during the year 2016. The respondent-Bank disputes the contention and maintains that the

deposits, when considered alongside the petitioner's approximate income, length of service and the absence of the requisite statements of Assets and Liabilities, furnished a sufficient basis for the conclusion reached in the enquiry. Upon consideration of the rival submissions, this Court is unable to hold that the impugned findings in respect of the first charge suffer from patent perversity or are demonstrably based on no evidence. The petitioner's explanation constitutes material for consideration, but the mere existence of an explanation does not oblige the Enquiry Officer to accept it as conclusive. The question whether the explanation sufficiently accounted for the deposits, and what inference ought reasonably to be drawn from the financial circumstances disclosed in the enquiry, essentially falls within the domain of the fact-finding authority, provided its conclusion is supported by relevant material. The Court cannot, in the exercise of judicial review, substitute its own calculation or appreciation of the petitioner's financial circumstances merely because the petitioner proposes an alternative assessment of the evidence. Nor can the Court infer non-application of mind solely from the fact that the authority did not accept the petitioner's explanation.

35. With regard to the 2nd Charge concerning the swapping of specified bank notes aggregating to Rs. 2,92,500/- during the demonetisation period, the petitioner has questioned the identification and proof of the instructions allegedly violated by him and has relied upon the evidence of PW-1 in support of his contention that no prohibitory instruction was established. The respondent-Bank maintains that the transactions were undertaken in disregard of the applicable Reserve Bank of India guidelines and that the petitioner's conduct must be assessed in the context of the restrictions then governing the exchange of specified bank notes. A fresh evidentiary enquiry cannot be undertaken by this Court sitting in judicial review into the transactions or to determine

afresh the precise inferences that ought to have been drawn from each document and deposition. The relevant question is whether the finding is wholly unsupported by evidence, has been arrived at by excluding material evidence or relying upon impermissible material, or is otherwise so unreasonable that no reasonable disciplinary authority could have reached it. Upon the materials and submissions recorded in the judgment, no such patent infirmity has been demonstrated as would justify this Court in reopening the factual determination merely because the petitioner disputes the interpretation placed upon the evidence or the instructions applicable during demonetisation.

36. The challenge to the 3rd Charge, which concerns the alleged utilisation of accounts belonging to other persons and the petitioner's salary account as an intermediary for facilitating transactions, is similarly founded principally upon a disagreement with the inferences drawn by the Enquiry Officer. The petitioner contends that no independent evidence established any wrongful gain, mala fide intention or misuse of his position. The respondent-Bank, however, relies upon the transaction records and the evidence considered during the enquiry, on the basis of which the charge was held to be partly proved. The absence of proof of pecuniary gain to the employee or financial loss to the Bank cannot, by itself, be treated as conclusive proof that any misconduct has not taken place. Equally, the mere routing of money through an account cannot, without supporting material, automatically establish misconduct. The issue must be determined on the totality of the evidence and the nature of the obligation alleged to have been breached. In the present case, however, the petitioner has not established any patent perversity in the findings merely by pointing to the absence of a demonstrated financial loss or by advancing an alternative interpretation of the transactions. The Court

finds no sufficient basis, within the recognised limits of judicial review, to undertake a fresh appreciation of the evidence on this charge.

37. The petitioner's reliance upon ***Biswanath Bhattacharjee (supra)*** does not assist him in securing a reappraisal of the factual findings in the absence of an established ground of judicial review. The exceptions recognised in that decision are material and enforceable limitations upon administrative action; they do not transform the writ court into a forum for a second departmental enquiry. The record does not disclose such patent perversity, demonstrable non-consideration of material evidence, consideration of irrelevant facts, or other manifest illegality as would justify setting aside the findings of the Enquiry Officer and the conclusions founded upon them.

38. It is, therefore, necessary to distinguish the petitioner's challenge to the findings of misconduct from his challenge to the legality of the penalty. The former does not warrant interference for the reasons stated above. The latter, however, raises a distinct question of interpretation of the governing provision and the limits of the Disciplinary Authority's power. The restraint ordinarily exercised by a Constitutional Court in examining factual findings cannot be invoked to sustain a penalty which is not authorised by the applicable rules. The legality of the punishment is a question of law, independently examinable even where the underlying findings of misconduct are left undisturbed.

39. Rule 6 of the Memorandum of Settlement dated April 10, 2002, prescribes the forms of punishment that may be imposed upon an employee found guilty of gross misconduct. The relevant clauses provide that the employee may, under Rule 6(e), “be brought down to lower stage in the scale of pay up to a maximum of two stages”, or

under Rule 6(f), "have his increment/s stopped with or without cumulative effect". The word "or" appearing between these clauses is not an incidental expression devoid of legal significance. It separates two distinct forms of punishment: reduction to a lower stage in the scale of pay and stoppage of increments, with or without cumulative effect. The structure of the provision indicates that the rule-making parties have separately identified the two forms of penalty and have employed a disjunctive expression to distinguish them.

40. The principle of interpretation enunciated in ***Commissioner of Customs, Central Excise and Service Tax, Patna (supra)*** is directly relevant in this regard. Where a provision is clear and unambiguous, the Court must give effect to the language employed and cannot substitute a disjunctive expression with a conjunctive one merely to enlarge the authority's power. The use of "or" cannot, in the present context, be construed as though Rule 6(e) and Rule 6(f) were joined by the word "and", thereby authorising the imposition of both forms of punishment as a composite penalty under the same operative direction. Such an interpretation would fail to give due effect to the distinction expressly maintained between the two clauses and would permit an enlargement of the disciplinary power beyond the language of the provision.

41. The contention of the respondent-Bank that the word "or" does not invariably render every alternative, mutually exclusive, in all circumstances does not alter the conclusion in the present case. The meaning of a disjunctive expression must, of course, be ascertained in the context of the provision as a whole. Here, however, the relevant clauses enumerate distinct forms of punishment, and the disciplinary authority has no demonstrated textual basis for treating them as cumulative components of a single composite penalty. The Court is not

called upon to determine whether distinct punishments may be imposed in legally distinguishable circumstances where the governing rules expressly permit such a course. It is sufficient to hold that the present penalty, as framed, cannot be sustained by treating Rule 6(e) and Rule 6(f) as though they jointly prescribe one permissible form of punishment.

42. The respondent-Bank has further relied upon Rule 9 of the Memorandum, which provides that more than one punishment shall not be imposed in respect of any one charge. According to the Bank, since the first and second charges were proved and the third charge was partly proved, the Disciplinary Authority was competent to combine the punishments referable to Rule 6(e) and Rule 6(f). This submission does not satisfactorily answer the objection arising from the language of Rule 6 itself. Rule 9, as relied upon by the respondent, regulates the imposition of more than one punishment in respect of a single charge. It does not convert the disjunctive alternatives in Rule 6(e) and Rule 6(f) into a single cumulative form of penalty, nor does it dispense with the requirement that each punishment must be imposed in accordance with the terms and limitations of the provision authorising it. The fact that more than one charge has been found proved cannot, by itself, validate a composite penalty whose legal basis and operative terms do not conform to the governing rule.

43. The impugned order of punishment dated March 29, 2018, expressly refers to Rule 6(e), but directs that the petitioner be reduced by two stages in the scale of pay for two years, with the further stipulation that he shall not earn increments during the period of such reduction. The first component of the penalty is referable to Rule 6(e), whereas the additional stipulation regarding the non-earning of increments during the period of reduction is, in substance, referable to the distinct

form of punishment contemplated under Rule 6(f). The legal character of a penalty must be determined by its operative terms and substantive effect and not merely by the clause mentioned in the order. The express reference to Rule 6(e) cannot, therefore, be treated as sufficient to bring the entire composite penalty within that clause when its additional component has the character of the separate punishment prescribed under Rule 6(f).

44. This Court is conscious that the Disciplinary Authority may have intended, by the impugned order, to impose a punishment proportionate to the gravity of the misconduct found proved. Nevertheless, the objective of imposing an appropriate penalty cannot justify the adoption of a form of punishment which is not permissible under the governing provision. The authority's discretion operates within the limits of the power conferred upon it. The principle that punishment must be commensurate with the gravity of misconduct does not authorise the disciplinary authority to disregard the prescribed forms of penalty or to combine distinct alternatives contrary to the governing rule. The proportionality of a punishment and its legal permissibility are separate requirements, and both must be satisfied.

45. The finding of the Appellate Authority that the punishment imposed was commensurate with the gravity of the charges does not cure this defect. An appellate authority may examine the sustainability of the findings, the fairness of the proceeding and the proportionality of the penalty; it cannot, merely by affirming the punishment as appropriate, validate a form of penalty which is inconsistent with the governing provision. Consequently, although this Court finds no sufficient ground to interfere with the findings of the Enquiry Officer on the grounds urged by the petitioner, the penalty imposed by the

Disciplinary Authority and affirmed by the Appellate Authority cannot be sustained in its present form.

46. The appropriate relief, in the circumstances, is not to exonerate the petitioner from the charges found proved or partly proved, nor to substitute this Court's own assessment of the appropriate punishment for that of the competent authority. The defect identified is confined to the legal form of the penalty. The matter must, therefore, be remitted to the Disciplinary Authority for reconsideration of the question of punishment in accordance with Rule 6 of the Memorandum of Settlement dated April 10, 2002. Let it therefore be directed that the Disciplinary Authority shall consider whether, having regard to the nature and gravity of the misconduct found proved, the appropriate penalty should be imposed under Rule 6(e) or under Rule 6(f), and shall pass a fresh, reasoned order in conformity with the governing provision. The exercise shall be confined to reconsideration of the penalty, and the findings of misconduct shall remain undisturbed by reason of the present judgment.

47. Since the penalty in its present form cannot be sustained, the financial consequences flowing from the impugned direction, including the stoppage or withholding of increments during the period of reduction, cannot continue to be retained merely on the strength of the penalty now set aside. The amount or financial benefit withheld from the petitioner by reason of the impugned penalty shall, accordingly, be released forthwith, subject to such appropriate consequential adjustment or recovery, if legally permissible, as may arise from the fresh decision of the Disciplinary Authority. The release directed herein shall not be construed as a final adjudication that the petitioner is immune from any lawful financial consequence of a penalty, which may subsequently be imposed in accordance with the governing rules.

Any such consequence shall, however, arise only upon a fresh and lawful decision of the competent authority and shall be implemented in accordance with law.

48. For the reasons aforesaid, the writ petition succeeds in part. The order of the Disciplinary Authority dated March 29, 2018, and the order of the Appellate Authority dated December 27, 2018, are set aside to the extent that they sustain the composite penalty combining the consequences referable to Rule 6(e) and Rule 6(f) of the Memorandum of Settlement dated April 10, 2002. The findings of misconduct recorded in the disciplinary proceeding are not interfered with. The matter is remitted to the Disciplinary Authority to reconsider the penalty in accordance with the observations made herein and to pass a fresh, reasoned order selecting the permissible form of punishment under Rule 6(e) or Rule 6(f), as the case may be, having due regard to the gravity of the misconduct proved and the applicable rules. The authority shall not combine the two forms of punishment in the manner held impermissible in this judgment.

49. Pending such reconsideration, the respondent-Bank shall forthwith release the financial benefits withheld from the petitioner pursuant to the penalty dated March 29, 2018, including the benefits withheld by reason of the stoppage of increments under the impugned order. Such release shall be without prejudice and subject to the Authority's power to impose a fresh penalty permissible either under Rule 6(e) or Rule 6(f) of the 2002 Memorandum and to give effect to the lawful financial consequences, if any, arising therefrom. Any subsequent withholding, adjustment or recovery shall be permissible only in accordance with the fresh order and the applicable Rules. The reconsideration shall be undertaken expeditiously and, preferably, within eight weeks from the

date of communication of this order. Until a fresh order is passed, the penalty set aside herein shall not be acted upon or enforced.

50. There shall be no order as to costs.

51. All connected applications, if any, stand disposed of.

52. Urgent photostat certified copies of this judgment, if applied for, shall be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)