

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No.84 of 2025**

**Sri Dipayan Das,**

son of Late Hamendra Kumar Das,  
aged about 59 years, resident of  
Murabari (near SDM Office, Bishalgarh  
backside), P.O.+P.S.+Sub-Division-Bishalgarh,  
District-Sepahijala, Tripura

---- Petitioner(s)

Versus

**1. The State of Tripura,**

represented by the Secretary,  
Public Works Department,  
Government of Tripura, New Capital Complex,  
P.O. New Secretariat, P.S. New Capital Complex,  
District-West Tripura, Pin-799010

**2. The Secretary,**

Public Works Department (R&B),  
Government of Tripura, New Capital  
Complex, P.O. New Capital Complex,  
P.S. New Capital Complex, District-West Tripura,  
Pin-799010(Appellate Authority)

**3. The Chief Engineer,**

Public Works Department (R&B),  
Government of Tripura, New Capital  
Complex, P.O. New Secretariat,  
P.S. New Capital Complex, District-West Tripura,  
Pin-799010

----Respondent(s)

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For Petitioner(s)	: Mr. Sankar Lodh, Adv. Mr. Subham Majumder, Adv.
For Respondent(s)	: Mr. Mangal Debbarma, Addl. G.A.
Date of Hearing	: 21.07.2025
Date of delivery of Judgment & Order	: 01.08.2025
Whether fit for reporting	: YES

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**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order**

This writ petition is filed by the petitioner challenging the memorandum vide No.F.12(1)-PWD(E-II)/2017/20589-91 dated 07.03.2018 (Annexure-6) for initiation of disciplinary proceedings vide

No.F.12(1)-PWD(E-II)/2017/20704-706 dated 12.03.2018 (Annexure-5), enquiry report dated 08.12.2023 in connection with case No.43/INQ/ACDI/PWD/2019 (Annexure-9), the order of punishment vide No. F.12(1)-PWD(E-II)/2017/21183-91 dated 22.03.2024 (Annexure-14) and also the appellate order dated 13.08.2024 (Annexure-16) to this writ petition.

**[02]** Heard Mr. S. Lodh, Learned counsel assisted by Mr. S. Majumder, Learned counsel appearing on behalf of the petitioner and also heard Mr. M. Debbarma, Learned Addl. G.A. appearing on behalf of the State-respondents.

**[03]** The factual background of this case is that by a memo dated 07.03.2018 (Annexure-6 of this writ petition) issued by the Chief Engineer, PWD(R&B) Tripura, Agartala the petitioner was imputed by the Chief Engineer, PWD(R&B) Tripura, Agartala being the disciplinary authority on the charge of misbehavior or misconduct and it was proposed that under the said memorandum, the departmental proceeding under Rule 14 of the CCS(CCA)Rules, 1965 will be carried out against the present petitioner and two others on the following charges :

**STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST 1. SHRI ANJAN KUMAR DEB, UD CLERK 2. SHRI DIPAYAN DAS, U.D. CLERK 3. SHRI RAJA DEY, L.D. CLERK OF OFFICE OF THE EXECUTIVE ENGINEER, PMGSY DIVISION NO.1, AGARTALA, WEST TRIPURA**

**ARTICLE OF CHARGE NO-I**

**(1) Sri Anjan Kumar Deb, U.D. Clerk with the task in Cash section as Accountant from 04-06-2016 (2) Shri Dipayan Das, UD Clerk as Cashier from 04-06-2016 & (3) Shri Raja Dey, L.D. Clerk was assigned as Cashier from 07-12-2017. During the tenure of their work in Cash section they misappropriated and embezzled liquid Cash of Rs. 71,47,169,00 (Rupees Seventy one lakh forty seven thousand one hundred sixty nine only. Consequently, a committee was constituted to enquire the issue and an FIR was also lodged by the then Executive Engineer, PMGSY Division No-1, Agartala, Tripura against 1. Shri Anjan Kumar Deb, U.D.C 2. Sri Dipayan Das, U.D.C and 3. Shri Raja Dey, L.D.C. and such behavior on the part of a Govt. Servant is most un-becoming violation of Rule 3 (1) of the Tripura Civil Service | Conduct Rules, 1988.**

**ARTICLE OF CHARGE NO.-II**

**1) Shri Anjan Kumar Deb, U.D. Clerk (2) Shri Dipayan Das, U.D. Clerk & (3) Shri Raja Dey, LD. Clerk adapted dishonesty with artifice and trick in forging signature of Sri Ratan Lal Saha, the then Executive Engineer, PMGSY Division, Agartala on the copy of 4 (four) cheques as received from the S.B.I. Kunjaban Branch, Agartala bearing No. 104126,104127, 104128, 104129 against Account No. 30231183305**

which were used in defalcation case referring the artifice and trick as a case of Surgery. Such disorderly behavior on the part of a Govt Employee is unwise and violation of Rule-3(1) of the Tripura Civil Services (Conduct) Rules, 1988

**ARTICLE OF CHARGE NO.-III**

As per provision laid down in Chapter 12 of PMGSY Administrative Accounts Manual, it is the responsibility of the Divisional Accountant to affix his initials with date after the last entry of the day's transaction in the Divisional Cash Book and stock Accounts, in token of mandatory check in the manual system of accounts keeping. But the Cash book of Administrative Expenses Fund revealed that during the period of defalcation (1) Shri Anjan Kumar Deb, U.D. Clerk (2) Shri Dipayan Das, U.D. Clerk (3) Shri Raja Dey, L.D. Clerk had not recorded entries in Cash Book as well as not verified the transaction with the bank statement which exposed that they failed to maintain minimum devotion to their duty.

**ARTICLE OF CHARGE NO.-IV**

It appears from the Bank statement that out of the total Rs. 78,01,346 debited from Administrative Expenses fund account w.e.f 01-04-2016 to 14-02-2017. Rs. 6,54,177.00 had been debited through the first 39 cheque leaves issued serially & recorded in Cash book but the remaining Rs. 71,47,169.00 had been debited through the last 15 out of 17 missing cheque leaves of Administrative Expenses Fund Account. Such type of act reveals that an amount Rs. 71,47,169.00 was illegally drawn from Administrative Expenses Fund Account by (1) Shri Anjan Kumar Deb, U.D.Clerk (2) Shri Dipayan Das, U.D. Clerk & (3) Shri Raja Dey, L.D. Clerk during their tenure.

(S. C.DAS)  
CHIEF ENGINEER, PWD(R&B)  
TRIPURA, AGARTALA

The statement of imputation of misconduct and misbehavior in support of said article of charges by the said memorandum dated 07.03.2018 along with his enclosures were communicated to the petitioner asking him to submit his written statement of defence within a period of fifteen days.

**[04]** The gist of the charge leveled against the present petitioner and two others is that the present petitioner as UD Clerk(Cashier) from 04.06.2016 along with two others during the tenure of work in Cash section misappropriated and embezzled liquid Cash of Rs.71,47,169.00/- and consequently, a committee was constituted to enquire the issue and an FIR was also lodged by the then Executive Engineer, PMGSY Division No.1, Agartala, Tripura against the present petitioner and others. It was the further charge that during the relevant period the present petitioner along with two others adapted dishonestly with artifice and trick in forging the signature of Sri Ratan Lal Saha, the then Executive Engineer, PMGSY

Division, Agartala. Further, it was the responsibility of the Divisional Accountant to affix his initials with date after the last entry of the day's transaction in the Divisional Cash Book and stock accounts, in token of mandatory check in the manual system of accounts keeping. But the Cash of Administrative Expenses Fund revealed that during the period of defalcation the present petitioner and two others had not recorded entries in the Cash book as well as not verified the transaction with the bank statement which exposed that they failed to maintain minimum devotion of their duty. The further charge of the prosecution was that out of Rs.78,01,346/- debited from Administrative Expenses fund w.e.f. 01.04.2016 to 14.02.2017 Rs.6,54,177.00 had been debited through the first 39 cheque leafs issued serially and recorded in Cash book but the remaining Rs.71,47,169.00 had been debited through the last 15 out of 17 missing cheque leafs of Administrative Expenses Fund Account which reveals that an amount of Rs.71,47,169.00 was illegally drawn from the Administrative Expenses Fund Account by the present petitioner and two others during their tenure.

**[05]** The petitioner denied the charges leveled against him as per articles of charge No. 1, 2, 3 and 4. Prior to that as per direction of disciplinary authority a formal preliminary enquiry was conducted by a team constituted by the authority of the government and accordingly the three members committee submitted their report to the disciplinary authority on 23.08.2017. Since the disciplinary authority was not satisfied/convinced by the defence submitted by the petitioner, so disciplinary proceeding continued against the petitioner. Smt. Aditi Majumder, Commissioner of Departmental enquiries was appointed as the Inquiring authority vide memo dated 29.01.2018 (Annexure-8) to conduct the enquiry to ascertain the alleged charges and after conducting full-fledged enquiry, the Inquiring

authority submitted report on the basis of oral/documentary on record and came to the observation that the article of charges No.1, 3 & 4 had been proved against the present petitioner and two others but the article of charge No.2 could not be proved against the present petitioner and two others. It is to be noted here that the Inquiring authority at the time of making findings of the alleged charges discussed the evidence on record in detail and gave observation against each of the article of charges and after conclusion of enquiry came to the following observation :

**".....Also, the analysis and examination of all the evidences both oral and documentary along with the exhibits also indicates that other than the 3 Accused Officers, the negligence of the DDO during the relevant period should also have been brought into the picture as it is quite surprising that the said mismatch of fund figures had been continuing for many months and the encashment of the Cheques had been going on inappropriately over a long period but was not noticed by the incumbent DDO sooner. The discrepancy in the issuance of Cheques, the lack of relevant entries in the Cash Book as well as the Cheque Book and most importantly, the fact that monthly Cash Analysis and reconciliation with bank statement was apparently not done or not looked into by the DDO makes him liable and responsible too, for the said misappropriation of funds, without a doubt. It is evident from the records that the incumbent DDO had been seriously negligent in monitoring the activities of the 3 Accused Officers who were directly accountable to him and had also been utterly negligent in ensuring time to time checks especially while closing Cash Book and issuing of Cheques, due to which such misconduct could continue over many months, without detection.**

**It is also evident that the Bank authority needed to be more vigilant while clearing the Cheques issued by a Govt. Department given that as part of the Accounting system the Specimen Signature of the DDO and the Cashier are made available with the bank immediately on assumption of charges by the incumbents and hence, any sort of discrepancy noted in the signature of the Cheque Issuing Authority should have been detected much earlier, had the monitoring system being effectively put into use.**

**Viewed in the above perspective and based on materials and evidences of both the parties and their written brief of arguments, I find and hold that the Prosecution has been able to establish the Article of Charges No. I, III & IV brought against the AOs, namely Sri Anjan Kumar Deb, UDC, Sri Raja Dey, LDC and Sri Dipayan Das, UDC successfully and hence, the decision for the same is accordingly given as "guilty".**

**Regarding the Article of Charge No. II, the Defence has been able to satisfactorily defend the Charges of forgery of signature against the 3 AOS namely, Sri Anjan Kumar Deb, UDC, Sri Raja Dey, LDC and Sri Dipayan Das. UDC and hence, the decision for the said Article of Charge is "not guilty".**

**[06]** After submission of report by the Inquiring authority (Annexure-9) to the disciplinary authority the charge officer was served with a copy of the findings by a memorandum vide No.12(2)-PWD(F-11)/2019/17144-52 dated 01.02.2024 (Annexure-10) which was issued by

the Chief Engineer, PWD(R&B) Tripura, Agartala i.e. the disciplinary authority and he was asked to submit his written representation, if any, against the findings of the enquiry authority within fifteen days from the date of issue of the memorandum. The charge officer i.e. the petitioner herein thereafter furnished his representation within the stipulated period of time (Annexure-11). The disciplinary authority after consideration of his representation by the memorandum vide No.F.12(1)-PWD(E-II)/2017/19434-42 dated 28.02.2024(Annexure-12) agreed/accepted with the findings of the Inquiring authority and proposed to impose following punishment upon the present petitioner and two others :

**GOVERNMENT OF TRIPURA  
PUBLIC WORKS DEPARTMENT(R&B)  
AGARTALA, TRIPURA**

**No.F.12(1)-PWD(E-11)/2017/19434-42**

**Dated, Agartala, the 28/02/2024**

**MEMORANDUM**

**WHEREAS** a common disciplinary proceeding was drawn up against Shri Anjan Kr. Deb, UDC, Shri Dipayan Das, UDC and Shri Raja Dey, LDC(under suspension) on the allegation of defalcation of Government money amounting to Rs. 71,47,169.00(Rupees seventy one lakh forty seven thousand one hundred sixty nine) only while they are posted in the office of the Executive Engineer, PMGSY Division No-1, Agartala under Rule 14 of the CCS (CC&A) Rules, 1965 vide Memorandum No. 12(1)-PWD(E-II)/ 2017/20589-95 dated 07-03-2018.

**AND**

**WHEREAS** the case was referred to the Commissioner of Departmental Inquiries, Government of Tripura (Inquiring Authority) vide this office Memorandum No. F.12(1)-PWD(E-II)/2017/3322-29 dated 29.05.2018 to inquire into the charges framed against the said 03(three) officials and to submit findings. The Commissioner of Departmental Inquiries, Government of Tripura delivered findings regarding Case No.43/INQ/ACDI/PWD/2019 on 08-12-2023 & had inter alia stated that the prosecution was able to establish Article of Charges No.I, III & IV brought against the AOs, namely Shri Anjan Kumar Deb, UDC, Shri Raja Dey, LDC and Shri Dipayan Das, UDC successfully and hence the Inquiring Authority concluded his findings with "guilty" of the AOs of the Article of Charges. Further as per report of the Inquiring Authority regarding the Article of Charge No-II, the Defence has been able to satisfactorily defend the charges of forgery of signature against 03(three) AOs and hence the Inquiring Authority concluded his findings with "Not guilty" of the AOs of Article of Charge.

**AND**

**WHEREAS** the Disciplinary Authority had accepted the findings of the Inquiring Authority.

**AND**

**WHEREAS** as per Rule 15 of the CCS(CC&A), 1965 the findings of the Inquiring Authority were furnished to the said 03(three) officials vide this office Memorandum No.F.12(2)-PWD(E-II)/2019/17144-52 dated 01-02-2024 giving them an opportunity to furnish their written representation, if any, on the findings of the Inquiring Authority within 10(ten) days of the receipt of the Memorandum.

**AND**

**WHEREAS** Shri Anjan Kr. Deb, UDC, Shri Dipayan Das, UDC and Shri Raja Dey, LDC(under suspension) have submitted their written representations vide letters No Nil all dated 15-02-2024. The

contents of the said representation were examined thoroughly and found not convincing as well as not tenable.

**AND**

**WHEREAS considering the gravity of the issue and taking into consideration the findings of the Inquiring Authority, the undersigned has arrived at a conclusion that Shri Anjan Kr. Deb, UDC, Shri Dipayan Das, UDC and Shri Raja Dey, LDC (under suspension) deserves penalty for violation of the provisions of Rule 3(1) of Tripura Civil Service (Conduct) Rules, 1988 and proposes to impose below mentioned penalty upon the said 03(three) officials as per Rules:**

**"i. Compulsary retirement"**

**"ii. The amount of the defalcation money is to be recovered equally from all the 03(three) officials as the above stated persons were not found involved in the said defalcation case".**

**NOW, THEREFORE, the charged officers are hereby given an opportunity to furnish their written representation, if any, on the proposed penalty within 10 (ten) days from the date of issue of this Memorandum. In case no reply is received within the scheduled date, it will be presumed that the charged officers have nothing to say regarding this issue and necessary action will be taken accordingly.**

**(Rajib Debbarma)  
Chief Engineer,  
PWD(R&B), Tripura**

**[07]** The petitioner was further asked to submit his written representation, if any, on the proposed penalty within ten days from the date of issue of the memorandum. After that, considering the representation of the petitioner dated 11.03.2024 (Annexure-13) the disciplinary authority found the same had no substance by memo vide No.F.12(I)-PWD(E-II)/2017/21183-91 dated 22.03.2024 (Annexure-14) agreed with the findings of the Inquiring authority in respect of the present petitioner accused officer along with two others and imposed the following punishment as per CCS (CCA) Rules, 1965 and closed the proceedings against him :

**Government OF TRIPURA  
PUBLIC WORKS DEPARTMENT(P&B)  
AGARTALA, TRIPURA**

**No.F.12(I)-PWD(E-II)/2017/21183-91**

**Dated, Agartala, the 22/03/2024**

**ORDER**

**WHEREAS a common disciplinary proceeding was drawn up against Shri Anjan Kr. Deb, UDC, Shri Dipayan Das, UDC and Shri Raja Dey, LDC on the allegation of misappropriation of Government moneys amounting to Rs. 71,47,169.00 (Rupees seventy one lakh forty seven thousand one hundred sixty nine) only while they were posted in the office of the Executive Engineer, PMGSY Division No-1, Agartala under Rule 18 read with Rule 14 of the CCS (CC&A) Rules, 1965 vide Memorandum No. 12(1)-PWDXE-II)/ 2017/20589-95 dated 07-03-2018**

**\*\*\*\*\***

**NOW, THEREFORE, after a careful consideration of all the above mentioned aspects, the undersigned being the Disciplinary Authority**

is pleased to impose the below mentioned penalty upon Shri Anjan Kr. Deb, UDC, Shri Dipayan Das, UDC and Shri Raja Dey, LDC as per CCS (CC & A) Rules, 1965 :-

- i. "Compulsory retirement" with immediate effect.
- ii. "The amount of the misappropriated Government money is to be recovered equally @ Rs.23,82,390/- (Twenty three lakh eighty two thousand three hundred ninety) only from each of all the 03(three) delinquent officials as the above stated persons were found involved in the said misappropriation case."

The period of suspension of the said 03(three) officials shall not be treated as on duty.

(Rajib Debbarma)  
Chief Engineer,  
PWD(R&B), Tripura

**[08]** The petitioner being dissatisfied with the order of major penalty filed appeal to the departmental appellate authority i.e. Secretary to the PWD Department by filing a memorandum of appeal on 06.05.2024 (Annexure-15) on the following grounds :

#### GROUND OF APPEAL

- (1) For that the Ld. Disciplinary Authority relied the findings of the Ld. Enquiry Authority whimsically, as such the said decision of the Ld. Disciplinary Authority is liable to be quashed and set aside.
- (2) For that the Ld. Disciplinary Authority without considering the aspect that the cheque book issued contained 100 pages from 104031 to 104130 for Administrative Account to the Executive Engineer and as per Accounts Manual of PMGSY Rule 7.7 the cheque books and receive books must be maintained by the Divisional Officer i.e. the Executive Engineer, but without considering this the Ld. Disciplinary Authority whimsically passed an order of compulsory retirement and recovery of amount on 22.03.2024 which is liable to be quashed and set aside.
- (3) For that the Ld. Disciplinary Authority without considering the aspect that the memorandum of understanding entered in between TRRDA Bank and MORD in which the bank was not supposed to make payment beyond the ceiling limit of quarterly fund allocated to each Division and in present proceeding it was found that the bank had made payment beyond the ceiling limit as such as per the Accounts Manual of PMGSY the Divisional Officer i.e. the Executive Engineer ought to be informed by the bank regarding payment beyond ceiling limit.
- (4) For that the Ld. Disciplinary Authority did not considered that the Enquiring Officer did not seized the cheque book from the custodian of cheque book i.e. the Divisional Officer/ Executive Engineer and the prosecution witnesses admitted that as per guideline of PMGSY the DDO concern is the custodian of all cheque books but failed to cite under what Rules a Cashier concern be the custodian of such important cheque book.
- (5) For that the Ld. Disciplinary Authority did not considered that the LDC of the receive section of the Executive Engineer, PMGSY Division -I confirmed that on 23.03.2021 she received only the letter vide no. 732 dated 17.03.2016 without any cheque book and there is no iota of evidence that the Divisional Officer (Executive Engineer) handed over the cheque book to the Appellant Sri Dipayan Das or to the then Cashier Sri Raja Dey.
- (6) For that, the Disciplinary Authority did not consider that there is no proof that the Appellant misappropriate the funds as alleged.
- (7) For that, the Disciplinary Authority imposed the penalty of compulsory retirement and recovery of amount of Rs. 2382390/- is not only illegal but also arbitrary in nature as there is no iota of evidence in respect of misappropriation of funds.

**(8) For that, the Disciplinary Authority arbitrarily imposed the penalty un-proportionately which is liable to be set aside.**

**(9) For that, the Disciplinary Proceeding started without giving any show cause notice to the Appellant before framing the Charge which is gross violation of natural justice.**

**(10) For that, the Disciplinary Authority did not consider that the negligent part of the Divisional Officer/ the then Executive Engineer would not suffer the Appellant by giving false allegation upon the Appellant.**

**(11) For that, the Disciplinary Authority did not consider that as per the Memorandum of Understanding, the Clause 4 (iii) all payments to be made as per the instruction and communications issued by the Authorized Officer i.e. Executive Engineer by Account Payee cheque and if any wrong payment is made in violation of the standing instruction and communication then the bank will pay back the same.**

**(12) For that, the Disciplinary Authority without considering all aspects arbitrarily and whimsically awarded the punishment and penalty which is liable to be set aside and quash.**

Therefore, it is my humble prayer before you to quash and set aside the final order dated 22.03.2024 issued by Disciplinary Authority and exonerate me from all the charges for ends of justice. It is also my humble prayer to stay the final order dated 22.03.2024 in Ref. No.F.12(1)-PWD(E-11)/2017/21183-91 issued by Disciplinary Authority till disposal of the present Appeal, otherwise I will be highly prejudiced.

**[09]** The appellate authority thereafter by an order dated 13.08.2024 was pleased to dismiss the appeal filed by the petitioner upholding the findings/observations of the disciplinary authority with the following observations (Annexure-6):

**"An appeal petition was submitted by Shri Dipayan Das, the then UDC of the Public Works Department regarding a major penalty which was imposed on him by the Disciplinary Authority [Chief Engineer, PWD(R&B), Tripura] vide Order No.F. 12(1)-PWD(E-II)/2017/21183-91 dated 22-03-2024.**

The brief background of the fact is that common disciplinary proceeding was drawn up against Shri Anjan Kr. Deb, UDC, Shri Dipayan Das, UDC and Shri Raja Dey, LDC on the allegation of misappropriation of Government money amounting to Rs. 71,47,169.00(Rupees seventy one lakh forty seven thousand one hundred sixty nine) only under Rule 18 read with Rule 14 of the CCS (CC&A) Rules, 1965 vide Memorandum No. 12(1)-PWD(E-II)/2017/20589-91 dated 07-03-2018 while they were posted in the office of the Executive Engineer, PMGSY Division No-I, Agartala. Inquiry was conducted by the Inquiring Authority (The Commissioner of Departmental Inquiries, Government of Tripura )in conformity with the provisions of Rule 14 of the CCS(CC&A) Rules, 1965 and has thereafter submitted an enquiry report vide Case No. 43/INQ/ACDI/PWD/2019 holding all the officers concerned guilty of the charges in Article No-I,III, & IV barring Article No-II brought against them. The Disciplinary Authority had accepted the findings of the Inquiring Authority and in compliance with CCS(CC&A) Rules'1965 had imposed the following penalty upon all the 03 (three) officers under Rule 11(vii) with a direction that the period of suspension of the said 03(three) officials shall NOT be treated "as on duty" vide Order No.F.12(1)-PWD(E-II)/2017/21183-91 dt. 22-03-2024 :-

*i. "Compulsary retirement ".*

*ii. "The amount of the defalcation money is to be recovered equally from all the 03(three) officials as the above stated persons were found involved in the said defalcation case".*

Have perused the instant appeal petition of Shri Das, the then UDC of PWD exhaustively. Have also perused the relevant case records available in the file.

Significant discrepancies were noticed between the figures reflected in the records of the Cash Book of the Administrative Expenses, Fund Account of PMGSY with the Cheque Issue Register as well as in the Bank Statement with the Cash Book indicating significant procedural failure on part of the accused.

Records available indicate that the defalcation of Government money took place through 15 (fifteen) nos. of cheques of the Administrative Expenses Fund Account PMGSY between 22-06-2016 and 9-01-2017. It has been observed that during the said period, the appellant Shri Dipayan Das held the charge of Cashier in that office.

The staff in charge dealing with the Cash Book, Cheque Book and Cheque Issue Register cannot claim to be innocent and say that he is unaware about the defalcation in question, as he is among the limited and specific number of designated people such as Cashier or Accountant meant for handling the same.

The accused official had failed to perform his duty with sincerity and devotion as was expected from him as the Cashier of the Divisional Office.

Therefore, after careful examination of all the relevant aspects of the case, the main grounds of appeal of the appellant as well as considering the gravity of the matter vis a vis records available in the file, the Appellate Authority finds no merit in the appeal and the penalty order issued vide No.F.12(1)-PWD(E-II)/2017/21183-91 dated 22-03-2024 passed by the Disciplinary Authority, in respect of Shri Dipayan Das, the then UDC is hereby upheld and confirmed.

Let the copy of this Order be served to all concerned.

The appeal is hereby disposed of."

**[10]** Being dissatisfied with the said order of departmental authority imposing major punishment, the petitioner has filed this writ petition claiming the following relief/reliefs :

"In the premises whereof, it is most humbly and respectfully submitted that Your Lordships would be graciously pleased to:

i. **ISSUE RULE**, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for calling for the records, lying with the respondents, for rendering substantial and conscionable justice to the petitioner, and for quashing/setting aside the impugned Memorandum No.F.12(1)-PWD(EII)/2017/21183-91 dated 07.03.2018 (Annexure-6 supra), initiation of common disciplinary proceeding, vide impugned Order No. F.12(1)-PWD(E-II)/2017/20704-706, dated 12.03.2018 (Annexure-5 supra), impugned Enquiry Report, in connection with Case No. 43/INQ/ACDI/PWD/2019, dated 08.12.2023 (Annexure-9 supra), impugned Order of Punishment No.F.12(1)-PWD(E-II)/2017/21183-91, dated 22.03.2024 (Annexure-14 supra), and the impugned Appellate Order dated 13.08.2024 (Annexure-15 supra);

ii. **ISSUE RULE**, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing the respondents to revoke/rescind the impugned Memorandum No.F.12(1)-PWD(EII)/2017/21183-91 dated 07.03.2018 (Annexure-6 supra), initiation of common disciplinary proceeding, vide impugned Order No. F.12(1)-PWD(E-II)/2017/20704-706, dated 12.03.2018 (Annexure-5 supra), impugned Enquiry Report, in connection with Case No. 43/INQ/ACDI/PWD/2019, dated 08.12.2023 (Annexure-9 supra), impugned Order of Punishment No.F.12(1)-PWD(E-II)/2017/21183-91, dated 22.03.2024 (Annexure-14 supra), and the impugned Appellate Order dated 13.08.2024 (Annexure-15 supra), and thereafter, direct the respondents to reinstate the petitioner in

**service and regularize the suspension period of the petitioner and release all pecuniary benefits and;**

**iii. CALL FOR THE RECORDS, appertaining to this petition;**

**iv. After hearing the parties, be pleased to make the RULE ABSOLUTE in terms of i. & ii. above;**

**v. COSTS of and incidental to this proceeding;**

**vi. Any other RELIEF(s) as to this Hon'ble High Court may deem fit and proper;**

**AND**

**For this gracious act of kindness the humble petitioners above named SHALL AS IN DUTY BOUND EVER PRAY."**

**[11]** The State-respondents resisted the writ petition filed by the petitioner and submitted that there is no merit in this writ petition as because the enquiring authority after considering the oral/documentary on record came to the observation that the present petitioner and two others who were also arrayed in the same proceeding were committed misconduct of defalcation of public money which was detected and came into notice during the routine inspection carried out by the then Executive Engineer, Sri Ratan Lal Saha TES Grade-IV and consequently FIR was lodged against the present petitioner and two others and after that committee was constituted vide memo dated 15.02.2017 (Annexure-17) for conducting necessary inquiry on the issue and accordingly committee submitted the report on 22.08.2017 and it was also submitted that in the report it was mentioned that there was a huge variation in between actual expenditure incurred by the PMGSY Division No.1, Agartala and the entries recorded in the relevant Cash book of the said Division during the period of the present petitioner and two others and the PMGSY Division No.1 issued cheque book and memorandum specifying ceiling limit for TRRDA issues Cheque book and memorandum specifying ceiling limit for incurring expenditure on office expenses from Administrative Expenses fund Account to PMGSY Division offices as per requirements and the documents revealed that Cheque Book, against SBI Account No.10221183205 was issued to PMGSY Division No.1, Agartala on requisition vide letter No.F.6(15)/EE/PMGSY/DIV-

AGT/2015/1174 dated 09.03.2016 which was handed over to Shri Raja Dey, LDC(Cashier).

**[12]** It was mentioned in the counter-affidavit that Shri Dipayan Das i.e. the present petitioner while taking the charge as Cashier neither recorded the details of unused cheques nor counted the number of unused cheques available in the Cheque Book and it was his responsibility to count unused leafs of cheque before issuing the same as his predecessor (Shri Raja Dey, LDC) used the same cheque book. It was also found from the enquiry report that Rs.17,88,684.00 was debited through three out of seventeen missing cheques while he was functioning as a Cashier but no entry in respect of three cheques were recorded in the Cash Book of Administrative Expenses Fund as well as Cheque Issue Register in the Division Office. Therefore, the activities of the petitioner along with others were unbecoming on the part of Government employees and attract the provision of Rule 3(1) of TCS (Conduct) Rules, 1988 which is good and sufficient reasons within the meaning of Rule-11 of CCS (CCA) Rules, 1965 for proceeding against them under Rule 14 of the CCS (CCA) Rules, 1965.

**[13]** It was further submitted that inquiring authority after considering the oral/documentary evidence on record found the petitioner and two others as guilty and accordingly submitted a report to the disciplinary authority and thereafter disciplinary authority being agreed with the findings of the inquiring authority imposed major punishment upon the petitioner and two others and after that the present petition have preferred appeal to the departmental appellate authority and the said appeal preferred by the petitioner was also rejected by the departmental appellate authority by a detailed and reasoned order. So, there is no scope at this stage to entertain the writ petition and the state respondents by their counter affidavit prayed for dismissal of the writ petition.

**[14]** At the time of hearing, Mr. S. Lodh, Learned counsel for the petitioner submitted that the petitioner joined in the department as LD Clerk on 27.08.1990 and he was promoted to the post of UDC on 12.08.2005 and thereafter he was transferred to PMGSY Division on 27.04.2016 and after that on 07.11.2016 he was asked to take over the charge of Cashier and accordingly, he took charge as Cashier as per order of the authority on 07.12.2016. Learned counsel for the petitioner further submitted that as per clause 7.7.3 of Accounts Manual of the Pradhan Mantri Gram Sadak Yojana (Accounts Manual of PMGSY for short) Administrative Expenses Fund the Executive Engineer is the custodian of the cheque books not the Cashier as Divisional Officer. The present petitioner did not receive the Cash book at the time of taking charge from the previous Cashier Sri Raja Dey on 07.12.2016 which is reflected in handing over/taking over memo dated 07.12.2016 (Annexure-1). As such, according to Learned counsel, any misuse of missing cheque leafs were not during his tenure or in the absence of legal custody the charges cannot be attributed to him directly or indirectly also. Learned counsel further submitted that the entire alleged amount of Rs.17,47,169/- was defalcated using fifteen out of seventeen cheque leafs and out of that Rs.17,47,169/-, Rs.53,58,845.00 approx. was withdrawn during the incumbency of the previous Cashier Raja Dey and during his tenure only Rs.17,88,684.00 approx. alleged to have been withdrawn. Even, the state respondents could not adduce any direct evidence showing that the present petitioner was responsible for withdrawal of the said money or receipt of the money by him as a government servant. Furthermore, mere lack of entries in the Cash book is not sufficient to justify criminal or disciplinary liability in the absence of valid proof for personal gain, unauthorized dues, endorsement or conspiracy.

**[15]** It was further submitted by Learned counsel that the inquiring authority at the time of delivery of the findings clearly observed that the charge of forgery of the signature of the then Executive Engineer was found to be not proved. More interestingly, in this case excepting the members of the inquiry team no other person or persons who were conversant with the subject matter of the alleged charge were cited as witness in the departmental proceeding by the disciplinary authority which creates a serious doubt about the prosecution story raising uncertainty about the fairness of the inquiry. Learned counsel also submitted that the disciplinary authority by the memo imposed punishment of compulsory retirement to the petitioner and he was made liable for recovery of Rs.23,82,390.00 most arbitrarily without any valid cause. Furthermore, there was no evidence regarding direct involvement of the petitioner with the alleged charge or there was no evidence on record that for his personal gain or any unfair means, the petitioner withdraw the amount and as such, the punishment imposed is grossly disproportionate to the nature of this case. Even, the disciplinary authority did not consider the petitioner's written representation dated 11.03.2024 and passed the impugned order on 22.03.2024. More so, no show cause notice was issued upon him to treat the petitioner as "shall not be treated as on duty" during the period of suspension which violates fundamental rule 54(b).

**[16]** Learned counsel also submitted that the petitioner was not a trained Cashier having no departmental training nor he was aware about the cheque related responsibilities. He was also not authorized to operate the bank account nor he was a signatory at any point of time and inspite of repeated approach to the authority, he was given the charge by force without considering his request. Learned counsel again submitted that on bare perusal of the Accounts Manual of Administrative Expenses Fund it is

crystal clear that the bank authority failed to discharge their duties but no action was taken against them. Even, the then Executive Engineer who was the custodian of cheque book was not implicated in the proceeding and more so, the inquiry committee did not examine the then DDO because he failed to keep regular vigilance over the subject matter and as a DDO he failed to discharge his duties with utmost satisfaction, sincerity and devotion. It was also submitted by Learned counsel that the petitioner does not hold the requisite qualification for the post of Divisional Accountant and as such, he cannot be panelized. In respect of departmental proceeding, Learned counsel, Mr. Lodh drawn the attention of the Court that the Executive Engineer was intentionally kept outside from the proceeding because he was directly involved with the alleged misconduct. No independent witnesses were cited by the prosecution, even, simply on the basis of evidence on record of the three members of the committee and without any corroboration, the inquiring authority arbitrarily found the petitioner and two others guilty. Even, the order of the appellate authority also suffers from principles of natural justice. So, in summing up his submission, Learned counsel for the petitioner urged for allowing this writ petition by setting aside the order of the disciplinary authority as well as order of the appellate authority.

**[17]** Learned counsel in summing again submitted the following crucial points in support of his writ petition :

- i) The petitioner was neither the custodian of the cheque book or he was the author of the forged signature,
- ii) The petitioner was not found guilty of forgery as per observation of inquiring authority,
- iii) The role of petitioner was very limited the lapses found were of procedural lapses.
- iv) The penalty imposed is fully disproportionate which cannot be legally sustained in the eye of law.
- v) The findings of the inquiring authority as well as the appellate authority appears to be non-application of

judicious mind and procedural violation for which the interference of the Court is required.

**[18]** On the other hand, Learned Addl. G.A. Mr. M. Debbarma appearing on behalf of the State-respondents submitted that considering the oral/documentary evidence on record the petitioner was found guilty of all the charges except one charge and accordingly, the inquiring authority submitted report. It was further submitted that in this case the petitioner could not satisfy the Court at the time of hearing that no opportunities were given to the petitioner in course of the departmental proceedings. According to Learned counsel, if the record of the proceeding is carefully examined, it will transpire that right from the beginning in all the stages, the petitioner was given the opportunity to defend the alleged charge leveled against him properly and furthermore, Learned counsel in course of hearing could not submit anything that there were procedural irregularities. Learned Addl. G.A. again submitted that the petitioner while functioning as Cashier failed to ensure proper maintenance of Cash book and the cheque issue register, the maintenance of which was very much necessary and relevant for financial accountability. He submitted that the inquiring authority after considering the evidence on record found the Article of charges No.1, 3 and 4 proved against the present petitioner and two others. It was also submitted that allegation of the State was misappropriation of public fund amounting to Rs.71,47,169.00 which was serious breach of trust. The inquiring authority at the end of the finding came to the observation that the petitioner as Cashier was involved in the defalcation amounting to Rs.77,88,684.00 by using three out of seventeen missing cheques and those cheques were not recorded in the Cash book or in the cheque issue register and the petitioner cannot evade from his responsibility.

**[19]** Learned Addl. G.A. further submitted that although Learned counsel for the petitioner took the plea that at the time of handing over

charge no cheque book or unused cheques were received by him which was nothing but a lame excuse on the part of the petitioner because as a public servant when he was discharging the functions of Cashier cannot take the plea that cheque book or unused leafs of cheque book were not handed over to him. Even as Cashier he neither counted nor recorded the unused cheque leafs while taking over charge violating basic norms of financial discipline and such type of conduct amounts to gross negligence and dereliction of duty as required under Rule 3(1) of the TCS (Conduct) Rules, 1988. Furthermore, although, as per manual Executive Engineer is/was the custodian of the cheque book but for day to day affairs the cheque book used to remain with the Cashier and the petitioner was handling the cheque issue register and had financial control over the cheque transaction which makes him liable for omission of entries, irregular use or failure to report anomalies. Even the disciplinary proceedings was conducted strictly under Rule 14 and 18 of the CCS (CCA) Rules, 1965. The petitioner was given adequate opportunity to defend himself like excess to documents, personal hearing, submission of written statement of defence, representation etc. So, there is no scope to take the plea that no opportunity was given to him.

**[20]** Learned Addl. G.A. also submitted that the disciplinary proceedings are based on preponderance of probabilities to be proved as beyond reasonable doubt. The inquiring authority found the petitioner's failure to follow procedures directly involved with the embezzlement of public fund justifying his penalty under Rule 11 of CCS (CCA) Rules, 1965. So, in summing up of his submission, Learned Addl. G.A. stated that there is no merit in the writ petition filed by the petitioner and the findings of the appellate authority and the disciplinary authority are based on oral/documentary evidence on record and as such, there is no scope to interfere with the proceedings and prayed for dismissal of this writ petition.

[21] However at the time of hearing, Learned counsel for the petitioner relied upon one citation of the Hon'ble Supreme Court of India in **Vijay Kumar Agarwal versus Union of India and Another** reported in **(2015) 17 SCC 625** wherein the said Apex Court in para Nos.20 an 21 observed as under :

"20. The High Court while dealing with this writ petition took the view that in case order revoking the suspension did not deal with the suspension period or payment of the salary for suspension period, order revoking suspension cannot be treated as void or non est. The only effect thereof would be that the competent authority is precluded from exercising its power under FR 54B and the legal position was that if while revoking the suspension or within a reasonable time thereof no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such an order. The necessary consequences thereof would be that the Government servant, in such a situation, is entitled to full salary for the period he remained under suspension. Therefore, High Court held that the petitioner was entitled to full pay and allowances for the period he remained under suspension and in the present case, the Supreme Court had already passed the order for grant of full salary for the period May 01, 1988 to May 13, 1996 and this amount had also been received by the petitioner though initially he had refused to accept the same when it was tendered to him in the Court. Moreover, the State of Maharashtra had not revoked the suspension on its own but to facilitate petitioner's inter- cadre transfer from Maharashtra cadre to Punjab cadre and, therefore, the order of revocation of suspension was not in exercise of power to revoke the suspension on the ground that the petitioner was no longer required to kept under suspension and these peculiar circumstances were not kept in mind by the Tribunal.

21. According to us, the aforesaid approach of the High Court, under the given circumstances, is without blemish. The High Court has relied upon certain judgments of this Court including the decision in the case of **Basant Ram Jaiswal v. Area Manager (North) MTNL Bombay : (1993) 24 ATC 641** which held that in such a situation, the competent authority cannot exercise the power under FR 54B.

Referring the same, he submitted that no show cause notice was issued upon the petitioner regarding treating of the petitioner as on duty during the period of his suspension.

[22] Learned counsel again submitted one citation of this High Court in **Pintu Das versus State of Tripura, represented by the Principal Secretary, General Administration (AR) Department and Others** reported in **2023 SCC OnLine Tri 111** wherein in para No.15 this High Court observed as under:

"15. In the instant case, the respondents while revoking the suspension or within the reasonable time thereof no order was passed pertaining to pay and allowances for the period the petitioner was put under suspension. FR-54B legally obligates the competent authority to deal with the suspension period, i.e. as to how the suspension period would be treated or payment of salary and allowances for suspension period while reinstating Government servant after revocation of his suspension otherwise, the said authority would be precluded from exercising his power under FR-54B. Keeping in mind the legal position that while revoking the

suspension or within a reasonable time thereof if no order is passed pertaining to pay and allowances for the period of suspension, the authority considered is denuded from passing any order subsequently i.e. at a belated stage and at the stage of imposing punishment disentitling him from getting full pay and allowances for the period of suspension and in that case, the delinquent employee, would be entitled to full pay and allowances for the period he remained under suspension. [Ref.Vijay Kumar Agarwal Vrs. Union of India & Anr., (2015) 17 SCC 625, paras 20-21].”

[23] Finally, Learned counsel for the petitioner relied upon another citation of the Hon’ble Supreme Court of India in **Satyendra Singh versus State of Uttar Pradesh and Another** reported in **2024 SCC OnLine SC 3325** wherein in para Nos.4, 6, 13, 14 and 15 wherein the said Apex Court observed as under :

4. The appellant challenged the order imposing penalty by filing the Claim Petition<sup>3</sup> before the Tribunal which allowed the same vide order dated 5th June, 2015; thereby, quashing the order dated 5th November, 2014 and directed that the appellant shall be entitled to all consequential benefits. While allowing the Claim Petition, the Tribunal came to the following conclusions: -

“While going through the record available on the file it becomes clear that the Enquiry officer proved the charges against the petitioner merely, on the basis of conclusion of the verification report prepared under Deputy Collector and the Additional Commissioner, Grade-1, Commercial Tax, Agra Zone, Agra. The delinquent officer was not involved in the inquiry. The petitioner submitted detailed explanation to the show cause notice but when we go through the punishment order and the explanation submitted by the petitioner against the show cause notice, we find that proper analysis and deliberation was not done by the opp.(sic) parties to assess the role of the petitioner in the episode.

The finding recorded by the Enquiry officer on the relevant charges can be safely termed as irrational. No reasons have been given for recording those findings. The Enquiry officer has recorded cryptic findings and concluded that the charges are proved without rationalizing those conclusions. Hence it is a fit case where the Tribunal should interfere.

We may also add here that this is not a case of procedural irregularity, and we do not propose to interfere with the order of the disciplinary authority on the ground of procedural irregularity.

...

On the basis of the discussion attempted in the preceding para we are fully convinced that the Enquiry officer and the Disciplinary have recorded irrational findings on relevant charges.”

(emphasis supplied)

6. Learned counsel representing the appellant urged that the inquiry proceedings conducted against the appellant were in gross dereliction of Rule 7(3) of the Uttar Pradesh Government Servant(Discipline and Appeal) Rules, 1999. The disciplinary proceedings were initiated and allegations constituting major penalty were proposed by Inquiry Officer. Since the appellant had emphatically denied the charges, it was incumbent upon the Enquiry officer to have recorded evidence to establish the charges attributed to the appellant. However, admittedly, not a single witness was examined by the Enquiry officer to bring home the charges, and thus, the inquiry report is non est in the eyes of law. He, therefore, urged that the Tribunal was perfectly justified in quashing the inquiry proceedings and the order imposing penalty vide order dated 5th June, 2015 and that the High Court fell in grave error of law whilst allowing the writ petition and reversing the order passed by the Tribunal. He, therefore, implored the 6 Hereinafter being referred to as the 'Rules of 1999' Court to accept the appeal, set aside the

judgment passed by the High Court and restore the order passed by the Tribunal.

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to *Roop Singh Negi v. Punjab National Bank and Others* : (2009) 2 SCC 570 and *Nirmala J. Jhala v. State of Gujarat and Another* : (2013) 4 SCC 30.

14. In the case of *Roop Singh Negi (supra)*, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under: -

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

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.

...

19. The judgment and decree passed against the respondent in *Narinder Mohan Arya case* [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ...”

(emphasis supplied)

15. Same view was reiterated in *State of Uttar Pradesh v. Saroj Kumar Sinha* : (2010) 2 SCC 772 wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Enquiry officer to examine the evidence presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in *Saroj Kumar Sinha (supra)* are as follows: -

“28. An enquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

....

**33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet."**

**(emphasis supplied)**

Relying upon the aforesaid citations, Learned counsel for the petitioner urged before this Court to allow this writ petition and submitted that the findings of the disciplinary authority as well as the appellate authority are perverse not based on cogent evidence on record.

**[24]** I have heard detailed arguments of both the sides and also perused the citations referred by Learned counsel for the petitioner as well as the documents annexed with the writ petition and also I have gone through the counter affidavit filed by the State-respondents. Admittedly, in this proceeding, the present petitioner and two others were impugned with four numbers of article of charges. Admittedly, in the departmental proceeding, excepting the three members of the enquiry committee, the State-respondents did not adduce any others witness nor cited the then Executive Engineer i.e. the Divisional Officer as witness nor cited any bank officials as the witnesses in the proceeding. Now, it is the prosecution who is to prove its case to substantiate the charges leveled against the present petitioner and two others. The inquiring authority based on oral/documentary evidence on record found the petitioner and two others as guilty of charges except Article of charge No.2 and accordingly on the basis of findings of inquiring authority, the disciplinary authority agreed with the same and imposed punishment which was later on affirmed by the appellate authority on appeal filed by the present petitioner.

**[25]** In course of hearing of argument Learned counsel for the petitioner drawn the attention of the Court that the state authority acted

beyond the Accounts Manual of the PMGSY because the petitioner was never trained to deal with the matters in issue in absence of specific training and furthermore, he was forcefully given the charge to discharge the functions as Cashier inspite of having lack of knowledge. As already stated the then Executive Engineer was not cited as witness in this case in the departmental proceeding. It is the duty of the prosecution of the State respondent authority to cite the relevant witness by whom they intends to prove the charge/charges against the accused officer. It is also on record that no bank officials were cited as witness in this case. But it is no record that the then Executive Engineer in course of his routine inspection found the discrepancy of misappropriation of public fund and accordingly he laid the FIR. In a departmental proceeding, there is very limited scope on the part of the writ Court to reassess/re-appreciate the evidence on record. In this regard in **State Bank of India and Another vs. K.S. Vishwanath** reported in **(2022)15 SCC 190** in para Nos.17-21 Hon'ble the Apex Court observed as under:

**"17. From the impugned judgment and order passed by the High Court it appears that the High Court has dealt with and considered the writ petition under Articles 226/227 of the Constitution of India challenging the decision of the Bank/Management dismissing the delinquent officer as if the High Court was exercising the powers of the Appellate Authority. The High Court in exercise of powers under Articles 226/227 of the Constitution of India has reappreciated the evidence on record which otherwise is not permissible as held by this Court in a catena of decisions.**

**18. Recently in N. Gangaraj:(2020) 3 SCC 423 after considering other decisions of this Court on judicial review and the power of the High Court in a departmental enquiry and interference with the findings recorded in the departmental enquiry, it is observed and held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is further observed and held that the High Court 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. It is further observed that if there is some evidence, that 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 under Article 226 of the Constitution of India to review/reappreciate the evidence and to arrive at an independent finding on the evidence.**

**19. In paras 9 to 14, this Court had considered other decisions on the power of the High Court on judicial review on the decisions taken by the Disciplinary Authority as under:**

**"9. In State of A.P. v. S. Sree Rama Rao [State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723] , a three Judge Bench of this Court has held that the High Court is not 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. The Court held as under: (AIR 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."

10. In *B.C. Chaturvedi v. Union of India*:(1995) 6 SCC 749 again a three-Judge Bench of this Court has held that power of 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 eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under: (SCC pp. 75960, paras 1213)

"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 inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry 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 inquiry 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 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 inquiry 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 coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, 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 : AIR 1964 SC 364] , this Court held at SCR 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.”

11. In **High Court of Bombay v. Shashikant S. Patil** High Court of Bombay v. Shashikant S. Patil (2000) 1 SCC 416, this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under:

“16. The Division Bench [**Shashikant S. Patil v. High Court of Bombay**, 1998 SCC OnLine Bom 97 : (2000) 1 LLN 160] of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

12. In **State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya** [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya (2011) 4 SCC 584, this Court held 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 ground for interfering with the findings in departmental enquiries. The Court 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.

10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in

criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

13. In another judgment reported as *Union of India v. P. Gunasekaran* [*Union of India v. P. Gunasekaran*, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] , this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings : (SCC p. 617, para 13)

"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:  
(i) reappreciate the evidence;  
(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;  
(iii) go into the adequacy of the evidence;  
(iv) go into the reliability of the evidence;  
(v) interfere, if there be some legal evidence on which findings can be based.  
(vi) correct the error of fact however grave it may appear to be;  
(vii) go into the proportionality of punishment unless it shocks its conscience."

14. On the other hand the learned counsel for the respondent relies upon the judgment reported as *Allahabad Bank v. Krishna Narayan Tewari*: [*Allahabad Bank v. Krishna Narayan Tewari*, (2017) 2 SCC 308 : (2017) 1 SCC (L&S) 335] , wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the writ court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The enquiry officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct."

20. That thereafter this Court has observed and held in paragraph 7, 8 and 15 as under: (*N. Gangaraj case*(2020) 3 SCC 423.

"7. The disciplinary authority has taken into consideration the evidence led before the IO to return a finding that the charges levelled against the respondent stand proved.

8. We find that the interference in the order of punishment by the Tribunal as affirmed:2011 SCC Online Kar 4510 by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

\* \* \*

15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High

**Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. We may notice that the said judgment has not noticed the larger Bench judgments in S. Sree Rama Rao [State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723] and B.C. Chaturvedi [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] as mentioned above. Therefore, the orders passed by the Tribunal and the High Court:2011 SCC OnLine Kar 4510 suffer from patent illegality and thus cannot be sustained in law."**

**21. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has committed a grave error in interfering with the order passed by the disciplinary authority dismissing the respondent – delinquent officer from service. The High Court has erred in reappreciating the entire evidence on record and thereafter interfering with the findings of fact recorded by the Enquiry Officer and accepted by the disciplinary authority. By interfering with the findings recorded by the Enquiry Officer which as such were on appreciation of evidence on record, the order passed by the High Court suffers from patent illegality. From the findings recorded by the Enquiry Officer recorded hereinabove, it cannot be said that there was no evidence at all which may reasonably support the conclusion that the Delinquent officer is guilty of the charge."**

From the aforesaid observation of the Hon'ble Apex Court it appears that in a case of this nature there is very limited scope on the part of the High Court in a writ jurisdiction to :

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

**[26]** Here in the case at hand it appears that the inquiring authority at the time delivery of findings touched upon all the relevant points in deciding the article of charges framed against the present petitioner. At the time of hearing of argument, Learned counsel, Mr. Lodh appearing on behalf of the petitioner failed to satisfy the Court showing that there were procedural irregularities in the departmental proceedings or no scope was given to the petitioner in the proceeding to conduct his defence. There was also no argument from the side of Learned counsel appearing for the petitioner that in the proceeding before the inquiring authority no scope was given to the present petitioner to adduce witness to substantiate his defence save and except the plea that the proceeding was not conducted in accordance with the guidelines of PMGSY in regards to Administrative Expenses Fund, and the relevant manual was not allowed. It was not the

case of the petitioner that some unauthorized persons dealt with those issues or the persons who were entrusted to disburse the fund under Administrative Expenses Fund were not authorized to discharge their functions. Sometimes it may so happen that due to lacking of staff the department concerned may be constrained to follow the up to date guidelines of the manual and there is no evidence on record that for failure to follow the accounts manual the authority of PMGSY prevented the fund or restrained the concerned authority to go ahead with matter. Furthermore, there is also no evidence on record that in absence of following the accurate guidelines as per manual the fund under PMGSY cannot be handled by the authority department concerned.

**[27]** On the other hand from the side of the present petitioner there was no step in writing that he was forged to take over the charge as Cashier. There is also no such step on the part of the petitioner that at the time of discharging the functions as Cashier it came to his knowledge that used cheque leafs or unused cheques were not handed over to him by his predecessor Cashier and as such in this regard he drawn the attention of the higher authority to substantiate his defence and furthermore as per instructions of the manual if we believe that the Executive Engineer was the custodian of the cheque book but there is no such practice that the entire cheque book is/was used to write by the concerned Executive Engineer at the time issuing cheque.

**[28]** Situated thus, it appears to this Court that the point of arguments raised by Learned counsel for the petitioner are not at all convincing for acceptance as a valid ground for interference. In course of hearing, Learned Addl. G.A. referring para No.3 of the counter affidavit drawn the attention of the Court that during the incumbency of the petitioner as Cashier by using three cheques bearing No. 104117, 104118,

104119 money was misappropriated/defalcated from the public fund. Furthermore, it was also the duty of the Cashier at the relevant point of time to reconcile the entire matter with the bank authority time to time. More so, from the findings of the inquiring authority it appears that the petitioner accused officer by the mechanism of cross examination of the witnesses of the presenting side could not raise any doubt/cloud to disbelieve their evidence nor by adducing defence witness he could brush aside the allegation of the prosecution in respect of article of charges framed against him.

**[29]** Situated thus, after hearing both the sides in detail and also after going through the relevant documents annexed with the writ petition, the counter affidavit and the citations as referred by the petitioner it appears to this Court that the petitioner could not make out any case for interference of the findings of the disciplinary authority as well as the appellate authority. More so, from the order of the disciplinary authority it appears that it was specifically mentioned by the disciplinary authority in the memorandum dated 22.03.2024 that the period of suspension of the present petitioner and two others shall not be treated as on duty and that order was communicated to the petitioner by the authority concerned. So, the plea taken by the petitioner that no show cause notice was issued to him is not legally sustainable and the same cannot be accepted at this stage.

In the result, the writ petition filed by the petitioner bears no merit and accordingly, the same stands dismissed.

Pending application/s, if any, also stands dismissed.

**JUDGE**