IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2024

PRONOUNCED ON : 27.09.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.No.2541 of 2021
and
C.M.P.No.16550 of 2021
and C.M.P.Nos.9743 & 9745 of 2023

1. The Managing Director,
State Bank of India,
Central Office,
Post Box No.12,
Mumbai – 400 021.

2. The Chief General Manager,
State Bank of India,
Local Head Office, “CIRCLETOP” House”.
18, College Lane,
Chennai – 600 008.

3. The Deputy General Manager (Appellate Authority),
State Bank of India,
Zonal Office, Ambedkar Road,
Madurai – 625 002.

4. The Assistant General Manager,
Region -II (Disciplinary Authority),

State Bank of India, Zonal Office, Madurai .. Appellants

vs

Palaniappan
1402, Ponmalar Street,
Valluvar Nagar,
Karaikudi - 630 002. .. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent to set aside the order passed by the learned Judge dated 07.02.2020 made in W.P.no.18983 of 2005.

For Appellants : Mr. C.Mohan
for M/s. Rexy Josephine Mary
for M/s. King and Partridge

For Respondent : Mr. K.M.Ramesh, Senior Counsel
for Mr. V.Subramani

JUDGMENT

(Order of the Court was made by Mr. G. ARUL MURUGAN.,J)

This Intra Court Appeal is preferred against the order dated 07.02.2020 made in W.P.No.18983 of 2005, whereby the Writ Court had set aside the punishment of removal from service imposed on the Writ Petitioner and directed the appellants to give all the monetary and consequential benefits as if he had continued in service till the age of superannuation.

2. The short facts to be noted in the appeal is that the Respondent/ Writ Petitioner was initially appointed as Clerk on 17.11.1998 in the appellant bank and thereafter was posted as Assistant in Karaikudi Branch on 22.11.2002. While so, on 19.12.2002, he was placed under suspension contemplating initiation of disciplinary proceedings for having committed certain serious irregularities. The charge memo came to be issued on 16.05.2003 containing the following five charges.

Charge No.1:

On 26/11/2002, you had fraudulently encashed cheque No.108701 dated 11/11/2002 for Rs.15000/- issued to one Shri Ghouse Myan by Shri John Batcha, NRE account holder and has failed to handover the amount to the beneficiary. In this connection the payee preferred a complaint on 18.12.2002 to the Bank for immediate recovery of the amount.

Charge No.2

You had also encashed cheque No.641708 dated 11.12.2002 for Rs.4000/- in favour of Smt. Erudayamari sent to her by her husband Shri Samikannu, NRE account holder without the knowledge of the payee of the cheque.

Charge No.3

While working at Tirupattur Branch, you had in connivance with Shri S.Ulaganathan, Accountant, Tirupattur Branch negotiated Cheque No.002539 dated 18.06.2002 for Rs.9000/- drawn on ICICI Bank, Karaikudi and had retained the above cheque for more than 5 months. Finally, the Bank could get reimbursement for the above DD purchased cheque only on 16.12.2002.

Charge No.4

You had issued the following cheques without sufficient funds in your account.

S.No	*Cheque No.*	*Date*	*Amount*	*Returned on*	*Reasons for Return*	*Favouring*
1.	325282	09/12/02	6500	9/12/2002	Insufficient Funds	S.B.Nagalingam
2.	325287	06/02/03	2000	7/02/2003	-do-	C.Muthiah

Charge No.5

On 07/11/2002 and 09/12/2002, you have absented yourself from the Office after lunch without obtaining prior permission from the Appropriate Authorities. You have not submitted your explanations to the Chief Manager.

Thus you had been unpunctual, irregular in attending office and had failed to mend yourself even after the repeated instructions of the Chief Manager of the Branch. Thus you

had been disobedient and had shown wilful insubordination for reasonable orders of the Superior.

Your above acts, if proved, would amount to Gross Misconduct in terms of paragraph 5(c), (j) and (e) of The Memorandum of Settlement dated 10/04/2002.

3. It seems that the respondent had not chosen to offer any explanation by submitting a reply to the charge memo. However the Bank by proceedings dated 15.07.2003, appointed an Enquiry Officer for conducting enquiry. Pursuant to the enquiry in the disciplinary proceedings, the Enquiry Officer submitted his report on 15.04.2004 holding that the charges 1, 3, 4 and 5 as proved and charge No.2 as not proved. The disciplinary authority concurred with the findings of the Enquiry Officer and proposed to impose punishment of 'Dismissal Without Notice from the Bank Service' and issued 2nd show cause notice to the respondent on 14.06.2004. On receipt of reply, personal hearing was adduced to the respondent on 26.06.2004 and ultimately by an order dated 12.07.2004, the 4th appellant imposed the punishment of dismissal without notice from bank service with immediate effect.

4. The respondent filed an appeal on 27.08.2004 before the 3rd appellant / Appellate Authority and the Appellate Authority by order dated 30.10.2004 considering the period of fourteen years service of the respondent to the Bank, modified the punishment as "discharged from service" instead of "dismissal without notice". Challenging both the orders of the Disciplinary Authority and the Appellate Authority, the respondent had preferred the Writ Petition. The Writ Court observed that Charge No.1 had been framed only based on the complaint given by the account holder Ghouse Miyan and since he had not been examined as witness, the opportunity to the delinquent to cross examine the witness was denied, particularly when the complainant himself had withdrawn the complaint by issuing another letter on the same date. The writ court as such held that there had been violation of fair treatment to the delinquent and holding that the punishment imposed is illegal, perverse, had ultimately set aside the punishment and directed the appellant Bank to give all the consequential benefits. Assailing the orders passed by the Writ Court, the Appellant Bank had preferred the Writ Appeal.

5.1. Mr. C. Mohan, the learned counsel appearing for the appellant Bank argued that, when the respondents had not come forward to offer his explanation to the charge memo and in the domestic enquiry, the charges 1, 3, 4 & 5 having been proved, the learned Judge had interfered in the punishment only on the ground that the complainant was not examined and the documents were not furnished which is unsustainable and against the settled proposition.

5.2. The learned counsel further contended that when 14 documents have been marked on the side of the Bank and particularly the documents in PEX.1 to PEX.3, relates to the first charge and other exhibits relate to the charges 3, 4 & 5, the learned Judge had erroneously recorded a finding that the documents have not been submitted.

5.3. The learned counsel, by relying on the complaint dated 18.12.2002 of the account holder B.Ghouse Miyan, submitted that, when the cheque was handed over to the delinquent on 26.11.2002 for collecting the amount, the delinquent misled and handed over a receipt to the complainant, and the money was not handed over on 26.11.2002 and

even on 09.12.2002 and only a sum of Rs.4,000/- was handed over on 16.12.2002 and due to which the complaint in PEX.2 has been lodged by the complainant on 18.12.2002.

5.4. The learned counsel by relying on PEX 3, which is the Cashier's Payment Scroll dated 26.11.2002, submitted that the S.No.13 with token No. 506 was used by the delinquent and he had received a sum of Rs.15,000/- covered under the cheque. The learned counsel in respect of the second letter dated 18.12.2002 given by the complainant submitted that, the word “on that day on 18.12.2002” instead of “today” for withdrawing the complaint makes it amply clear that only after the complaint was lodged, the delinquent was able to persuade the complainant by handing over the money.

5.5. The learned counsel further by relying on the medical report contended that the delinquent only due to chronic alcoholism had stomach problem and therefore he cannot have any justification for being unauthorizedly absent and if at all he had an issue, he can attend to it only by availing necessary leave.

5.6. The learned counsel further contended that, it is not mandatory for the Management to examine the complainant and in the domestic enquiry, strict rules of evidence may not apply and relied on the decision of the Hon'ble Supreme Court in the case of **State of Haryana & Anr Vs. Rattan Singh** reported in **1977 (2) SCC 491,** which has also been followed in the case of **State of Karnataka & Anr Vs. Umesh** reported in **(2022) 6 SCC 563.**

5.7. The learned counsel further contended that, the scope of the High Court exercising judicial review under Article 226 of the Constitution of India, is only to the extent of satisfying the manner in which the decision has been arrived at and the Court is not the Appellate Authority to reappraise the evidence and arrive at an independent finding. In this regard, the learned counsel relied on the following decisions:

(i) B.C.Chaturvedi Vs. Union of India and Another reported in **(1995) 6 SCC 749**

(ii) High Court of Judicature at Bombay Vs. Shashikant S.Patil and Another reported in **(2000) 1 SCC 416**

(iii) Principal Secretary, Govt. of A.P Vs. M.Adinarayana reported in **(2004) 12 SCC 579**

(iv) State Bank of India and Others Vs. Ramlal Baskar reported in **(2011) 10 SCC 249**

(v) State Bank of India Vs. Narendra Kumar Pandey reported in **(2013) 2 SCC 740**

(vi) State Bank of India Vs. R.Periyasamy reported in **(2015) 3 SCC 101**

(vii) Premnath Bali Vs. High Court of Delhi And Another reported in **(2015) 16 SCC 415**

(viii) Director General of Police, Railway Protection Force and Others Vs. Rajendra Kumar Dubey reported in **2020 SCC OnLine SC 954**

(ix) State Bank of India Vs. Ajay Kumar Srivatsava reported in **(2021) 2 SCC 612.**

(x) Chatrapal Vs. State of Uttar Pradesh and Anr reported in **2024 SCC Online SC 146**

5.8. The learned counsel further by relying on the Judgment of the Hon'ble Supreme Court in the case of **State Bank of India Vs. A.G.D. Reddy** reported in **2023 SCC Online SC 1064** contended that, in a disciplinary proceeding, the question of burden of proof depend upon the nature of charge and the nature of explanation put forward by the respondent and in the instant case, the respondent had not come forward to give explanation and the onus was on him to prove the transactions as set out in the charge.

5.9. The learned counsel further contended that, the Writ Court had ventured into to reappraise the evidences and without taking note of the documents submitted and mainly on the ground that the complainant was not examined, dehors the availability of the materials had interfered in the punishment which is not sustainable and sought for interference of this Court.

6.1. Per contra, Mr. K.M.Ramesh, the learned counsel appearing for the respondent argued that, as far as the first charge is concerned,

there is no oral evidence on the side of the employer and only documentary evidence has been relied on. Further by relying on the proceedings in the enquiry contended that the second letter dated 18.12.2002 given withdrawing the earlier complaint was very much available and has also been referred in the proceedings.

6.2. The learned counsel further contended that, one Ramanadhan, Senior Assistant at the Branch had deposed that he saw the second letter dated 18.12.2002 given by the complainant. It is his further contention that, since the complainant had withdrawn the complaint on the same day, there is no cheating and therefore the first charge against the delinquent employee cannot be sustained. As far as the charges 3, 4 & 5, it is the contention of the learned Counsel that, these charges do not amount to a misconduct and at the best can only invite a minor punishment.

6.3. The learned Senior counsel further contended that the departmental enquiry being a quasi judicial proceeding, the Enquiry Officer has to arrive at a finding upon taking into consideration the

materials brought on record and when there is no direct evidence and more particularly when the complainant himself has not been examined, the report of the Enquiry Officer cannot be sustained as it is based on mere surmises.

6.4. It is his further contention that in the Departmental Enquiry, the suspicion however high cannot substitute the legal proof and when the charges leveled against the respondent has not been proved through witnesses. More particularly when the respondent did not have the opportunity to cross examine the witness, fair opportunity has not been adduced to the respondent and therefore the report submitted by the Enquiry Officer holding that the charges are proved cannot be sustained. Only by taking note of all these aspects, the learned Judge had rightly interfered with the orders passed by the Disciplinary Authority and the Appellate Authority, as the punishment imposed on the respondent was found to be illegal and perverse and based on no legal evidence, had set aside the punishment which is perfectly justified and need no interference and sought for dismissal of the appeal.

6.5. In support of his arguments, he relied on the following judgments:

(i) Roop Singh Negi Vs. Punjab Nation Bank & Others reported in **(2009) 2 SCC 570**

(ii) Union of India and Others Vs. Gyan Chand Chattar reported in **(2009) 12 SCC 78**

(iii) Commissioner of Police, Delhi and Others Vs. Jai Bhagwan reported in **(2011) 6 SCC 376**

(iv) Vincent Vs. The Director of Government Examinations reported in **CDJ 1985 MHC 160**

(v) Hardwari Lal Vs. State of U.P and others reported in **(1999) 8 SCC 582**

(vi) Union of India Vs. H.C.Goel reported in **AIR 1964 SC 364**

(vii) A.V.Krishnamurthi Vs. Government of Tamil Nadu and others reported in **1984 (1) LLJ 46**

(viii) Central Bank of India Vs. Prakash Chand Jain reported in **1969 (2) LLJ 377 (SC)**

(ix) A.L. Kalra Vs. Project and Equipment Corporation of India Ltd reported in **1984 (2) LLJ 186**

(x) Dasari Srinivas Vs. Deputy General Manager, Syndicate Bank reported in **MANU/AP/1598/2014**

(xi) Deputy General Manager, Syndicate Bank and others Vs. Dasari Srinivas reported in **MANU/TL/0453/2022.**

7. Heard the rival submissions and perused the materials available on record.

8. The respondent/ Writ Petitioner who had been appointed as Clerk in the State Bank of India on 17.11.1998 was posted to Karaikkudi Branch on 22.11.2002. While so, he was placed under suspension on 19.12.2002 in contemplation of disciplinary proceedings. A charge memo was issued on 16.05.2003 containing five charges as referred above. The respondent did not come forward to offer his explanation but however the 4th appellant by proceedings dated 15.07.2003 appointed an Enquiry Officer to enquire into the charges. In the enquiry, the appellants were represented by the Presenting Officer and the respondent was represented by the defence representative and the hearings were held on

several dates. In the enquiry, 2 witnesses were examined by the employer and 14 documents were marked. Further on the defense side 2 witnesses were examined and 6 documents were marked. The Enquiry Officer submitted the enquiry report on 15.04.2004 holding that charges 1, 3, 4 & 5 were proved and charge 2 has not been proved.

9. The second show cause notice was issued on 14.06.2004 and after receipt of the reply, by an order dated 12.07.2004 the 4th appellant Disciplinary Authority imposed punishment of dismissal without notice from bank service. The respondent filed appeal before the 3rd Appellant on 27.08.2004 and the Appellate Authority by order dated 30.10.2004 modified the punishment from dismissal from service to discharge from service. By the impugned order dated 07.02.2020, the Writ Court set aside the punishment and directed the respondent to grant all monetary and consequential benefits.

10. The main ground on which the Writ Court had interfered in the punishment imposed is that, the complainant B.Ghouse Miyan in respect of the first charge was not examined as witness and thereby the

opportunity for cross examination was denied. It is also the contention of the respondent that when the complainant B.Ghouse Miyan has not been examined and further when the complainant himself on the same day, by a subsequent letter had withdrawn the complaint, the issue of cheating does not arise and the charges cannot be sustained.

11. In so far as the examination of the complainant as witnesses is concerned, in the domestic enquiry, the strict rules of evidence may not apply and even the hearsay evidence is sufficient in the Departmental proceedings, provided if it has nexus and credibility. The Hon'ble Supreme Court in the decision of **State of Haryana & Anr Vs. Rattan Singh** reported in **1977 (2) SCC 491,** held that, departmental enquiry is not bound by strict rules of Evidence Act and all materials which are logically probative for prudent mind are permissible. The relevant portion is usefully extracted is hereunder:

> ***"4.*** *It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that*

departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is

beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

12. The above decision was also reiterated by the Hon'ble Supreme Court in the case of ***Divisional Controller, KSRTC v. A.T. Mane*, (2005) 3 SCC 254** and the relevant portion is extracted hereunder:

> ***"9.*** *From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh*

[(1977) 2 SCC 491 : 1977 SCC (L&S) 298] is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh [(1977) 2 SCC 491 : 1977 SCC (L&S) 298] has since been followed by this Court in Devendra Swamy v. Karnataka SRTC [(2002) 9 SCC 644 : 2002 SCC (L&S) 1093].

***10.** Since the only ground on which the finding of the domestic tribunal has been set aside being the ground that the passengers concerned are not examined or their statements were not recorded, in spite of there being other material to establish the misconduct of the respondent, we are of the opinion, the courts below have erred in allowing the claim of the respondent. In our opinion, the ratio laid down in the above case of Rattan Singh [(1977) 2 SCC 491 : 1977 SCC (L&S) 298] applies squarely to the facts of this case."*

13. Further the above legal position had also been followed by the Hon'ble Supreme Court in case of **State of Karnataka & Anr Vs. Umesh reported in (2022) 6 SCC 563** and also in the case of **Chatrapal Vs. State of Uttar Pradesh and Anr** reported in **2024 SCC Online SC 146.**

14. From the above referred decisions, it is clear that in the domestic enquiry, the strict and sophisticated rules of evidence in the Indian Evidence Act may not apply and all the materials which are logically probative in a prudent mind are permissible and if there is reasonable nexus and credibility, the hearsay evidence is also sufficient. The complainant need not be always examined as witness and if the materials are available in respect of the charges imputed against the delinquent, then it will be sufficient to prove the charges. If there has been a fair enquiry without any arbitrariness or bias, the findings arrived at in the enquiry need not be disturbed.

15. Keeping the above principles in mind, we would proceed to deal with the facts of the instant case. The complainant one B.Ghouse Miyan had come to the Bank on 26.11.2002 to encash the cheque bearing No. 108701 dated 11.11.2002 for a sum of Rs.15,000/- issued in his favour by one John Batcha. The delinquent/ respondent after receiving the cheque instead of giving him the token, misdirected the complainant that the cheque had to be realized and issued a receipt. However, the respondent had obtained the token for himself and with a fraudulent

intention had received the amount of Rs.15,000/- from the cashier.

16. The complainant B.Ghouse Miyan had visited the Bank on 09.12.2002 and he was informed by the respondent that, he had wrongly deposited the cheque in another account and therefore he cannot get this money immediately, but however handed over a sum of Rs.4,000/- alone to the complainant. Again when he visited the Bank on 16.12.2002 still the respondent had informed him that the money had not been realized and only thereafter the complainant had met the Manager and informed the above details and had given the complaint dated 18.12.2002, marked as PEX 2. The cheque handed over by the complainant has also been marked as PEX 1. The Cashier's Payment Scroll dated 26.11.2002 has been marked by the prosecution as PEX 3. In the cash payment scroll, in S.No.13 with token No.506, the respondent's name had been entered for having received the cash of Rs.15,000/-.

17. From the documents in PEX 1 to PEX 3 it is clear that, in respect of the cheque dated 11.11.2002 in PEX 1, the cash towards the cheque has been received by the respondent on 26.11.2002, as per the entry made in the Cashier's payment scroll in PEX3. The perusal of the

complaint dated 18.12.2002 in PEX2 makes it clear that this cheque had been handed over by the complainant to the respondent on 26.11.2002 and on the same day, the cash payment towards the cheque has been made to the respondent in PEX3. Inspite of the complainant visiting the Bank on 09.12.2002, the respondent had given only a sum of Rs.4,000/- to the complainant and had not made any payment when he again visited the Bank on 16.12.2002 and only due to which the complainant came forward to give the complaint on 18.12.2002 in PEX2.

18. It is the vehement contention of the learned counsel for the respondent that the complainant himself had given another letter dated 18.12.2002, wherein he had withdrawn the complaint and the second letter dated 18.12.2002 has been referred to in the Departmental Proceedings. The perusal of the letter as filed in the typed set of papers by the respondent states that the complainant had received the entire sum of Rs.15,000/- covered under the cheque and the respondent was not liable to pay any money towards the cheque and he also withdraws the complaint given by him earlier. If this letter is read along with the original complaint, it could be seen that the respondent had retained this

money from 26.11.2002 and had paid only a sum of Rs.4000/- on 09.12.2002 and only after the filing of the complaint by the complainant on 18.12.2002, the respondent by returning the balance money was able to persuade the complainant, which resulted in this alleged letter being given by the complainant stating that he has received the full payment towards the cheque.

19. The charge as against the respondent in so far as fraudulently encashing the cheque of B.Ghouse Miyan for a sum of Rs.15,000/- and failed to pay the amount to the beneficiary has been established by the documents in PEX1 to PEX3, more particularly since as per PEX-3 the respondent had received the cash as early on 26.11.2002 itself and he had no explanation to offer in this regard. In such circumstances, the non-examination of the complainant B.Ghouse Miyan does not in any way impeach the credibility of the documents and when the respondent has not chosen to submit his reply to the charge memo, the onus has shifted on the respondent and it is for him to discharge by adducing necessary materials to disprove the charge as substantiated by the material documents.

20. The Enquiry Officer has specifically dealt with all these aspects in the enquiry report and taken note of the fact that in the cheque dated 11.11.2002 which is marked as PEX1 handed over by the complainant to the delinquent, the signature of the respondent is found on the reverse of the cheque and his name has been stated in the cashier's payment scroll dated 26.11.2002 in PEX3, which clearly establishes the fact that the respondent had received the proceeds of the cheque on 26.11.2002. From the documents in PEX 1 and PEX 3, the Enquiry Officer had come to the conclusion that the respondent had misdirected the complainant B.Ghouse Miyan that the cheque handed over by him has to be realized and had turned him away and had thereafter obtained the token for himself and encashed the cheque which had been retained by him after making part payment of Rs.4000/- on 09.12.2002 at least till the complaint was preferred by the B.Ghouse Miyan on 18.12.2002.

21. The Enquiry Officer had also taken note of the subsequent letter dated 18.12.2002 relied on by the defence where there was a blank statement by the complainant that the amount of Rs.15,000/- was

received in full from the respondent. Further a 3rd letter which was received almost after a year was also taken note of, where new stand was taken that since the respondent was well known to the complainant, this money was given as loan.

22. The above documents filed in PEX1 – PEX3, has been analyzed in detail by the Enquiry Officer and had rendered a finding about that the handing over of the cheque to the respondent and encashment of the amount on the same date, all having been established through the documents. The respondent was only able to prevail upon the complainant by returning the money after the complaint in PEX2 was filed by the complainant and had made several further attempts to persuade the complainant from pursuing the complaint by taking new stand.

23. As referred in the decisions above, all materials which are logically probative for a prudent mind are permissible and strict and sophisticated rules of evidence in the domestic enquiry may not apply. Here it is not a case of no evidence, but the evidence is very much

available and the documents in PEX1 to PEX3 speak for themselves by which, the transactions and the irregularities committed by the respondent stand amply proved. In fact when two witnesses had been examined on the side of the prosecution and marked documents PEX-1 to PEX-3 in respect of the first charge, only because the complainant was not examined it would not be fatal to the case of the prosecution.

24. In respect of the Charge No.3, it was held proved based on the circumstantial evidence and documents that he had retained the cheque dated 18.06.2002 for a sum of Rs.9,000/- for more than five months and the Bank was able to get reimbursement for the DD purchased only on 16.12.2002 and in respect of the 4th charge, the respondent has issued two cheques without sufficient funds in his account, and the charges were held as proved. The Writ Court had in so far as the Charge No.3 and 4 are concerned held that since no witnesses were examined and documents were marked in respect of these charges and also further the dishonour of cheque was between the respondent and the third party, it will not amount to any misconduct as it does not affect the Bank.

25. In so far as the Charge No.5 is concerned, the respondent absented himself from Office on 07.11.2002 and 09.11.2002 without prior permission and when the Enquiry Officer found that the respondent has not offered any reply to the letter served on him, except by endorsing that he is ulcer patient and received complaint and nothing prevented him from approaching the superior from availing permission for medical reasons. The learned Judge has held that though the respondent had submitted medical report to show that he was an ulcer patient and suffered from severe abdominal pain, the same was not considered by the Enquiry Officer. The Appellant Counsel had only relied on the medical record filed in PEX-4 wherein it was recorded that the respondent is affected by the chronic alcoholism that is to be treated accordingly. Therefore even if he had an abdominal problem which is due to his own habits, he can be absent from office only on leave or after obtaining permission from the higher authorities.

26. The enquiry proceedings were conducted on 08.10.2003, 17.10.2003, 18.11.2003, 17.12.2003, 22.12.2003, 20.01.2004 and in the

enquiry, the presenting officer on behalf of the Management and the defense representative on the side of the respondent were present and the respondent had participated in the enquiry. Adequate opportunities have been given to the respondent and based on the materials available, the Enquiry Officer had submitted the enquiry report holding that the Charges 1, 3, 4 and 5 are proved. When all the above referred materials were available on record, the Enquiry Officer has dealt with these aspects in his enquiry report and therefore it is not a case of no evidence but sufficient evidence available to prove the charge.

27. Further the second show cause notice was also issued to the respondent to offer his explanation based on the enquiry report and only after considering the reply, the disciplinary authority on concurring with the findings of the Enquiry Officer imposed the punishment of "Dismissal Without Notice from Bank Service". In fact, in the appeal preferred by the respondent before the Appellate Authority taking into consideration the fourteen years of service put in by the respondent, the Appellate Authority had modified the punishment from "Dismissal Without Notice from Bank Service" to "Discharge from Service". The

learned Judge had reappraised the evidence and holding that the non examination of the complainant in respect of first charge would be fatal and that the enquiry is improper and perverse, had interfered in the punishment imposed.

28. The scope of the Judicial Review by the High Court under Article 226/227 of the Constitution of India, in respect of interfering with the punishment imposed in the disciplinary enquiry is fairly well settled and it has been consistently held that in judicial review, the Court ought not to venture into reappraising the evidence and the Court can only see whether enquiry has been conducted in a proper and fair manner. When once the enquiry is found to be fair and proper, then it is for the disciplinary authority to decide on the punishment to be imposed on delinquent. The Courts in judicial review must only see whether the decision making process is correct and not the correctness of the decision itself. Only when the punishment imposed is not proportionate to the charges and shocks the conscience of the Court, the Courts can interfere, but even in such circumstances, the Court can only set aside and remand the matter to the disciplinary authority for imposing the proportionate

punishment.

29. At this juncture it would be relevant to refer to the following decisions. The Hon'ble Supreme Court, in the case of **B.C.Chaturvedi Vs. Union of India and Another** reported in **(1995) 6 SCC 749,** analyzed the scope of judicial review and held as follows:

> "***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 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 [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is*

perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

...

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

30. Further in the case of **High Court of Judicature at Bombay Vs. Shashikant S.Patil and Another** reported in **(2000) 1 SCC 416, the**

Hon'ble Supreme Court dealing with Judicial review has held as follows:

> "***16.*** *The Division Bench 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.***"

31. Again in the case of **Union of India & Ors Vs. P.Gunasekaran** reported in **(2015) 2 SCC 610,** the Hon'ble Supreme Court has set out the broad guidelines as to what should and should not be seen by the High Court while exercising judicial review:

> *"**12.** Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
>
> *(a) the enquiry is held by a competent authority;*
>
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
>
> *(c) there is violation of the principles of natural justice in conducting the proceedings;*

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

***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."

32. Further in the case of **State Bank of India Vs. Narendra Kumar Pandey** reported in **(2013) 2 SCC 740,** the Hon'ble Supreme Court had held that the proof required in a departmental proceeding in not beyond doubt but only based on preponderance of probability. The relevant portion is extracted hereunder:

*"**23.** The inquiring authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion that most of the charges were proved. **In a departmental enquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt.** Reference may be made to the judgments of this Court in Union of India v. Sardar Bahadur [(1972) 4 SCC 618] and R.S. Saini v. State of Punjab [(1999) 8 SCC 90 : 1999 SCC (L&S) 1424]. The documents produced by the Bank, which were not controverted by the charged officer, support all the allegations and charges levelled against the charged officer.*

In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the Bank and not controverted, it is always open to the inquiring authority to accept the same."

33. In the case of **State Bank of India Vs. R.Periyasamy** reported in (**2015) 3 SCC 101,** the Hon'ble Supreme Court has held as follows:

*"**11.** It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218] , this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in SBI v. Ramesh Dinkar Punde [(2006) 7 SCC 212 : 2006 SCC (L&S) 1573]. More recently, in SBI v. Narendra Kumar Pandey [(2013) 2 SCC 740 : (2013) 1 SCC (L&S) 459], this Court observed that **a disciplinary authority is expected to prove the charges levelled against a bank officer on the preponderance of***

probabilities and not on proof beyond reasonable doubt."

Further the standard of proof in disciplinary proceedings is also reiterated in the recent Full Bench decision of the Hon'ble Supreme Court in **Union of India & Ors Vs. Dilip Paul,** reported in **2023 SCC OnLine SC 1423.**

34. Further in the case of **State Bank of India Vs. Ajay Kumar Srivatsava** reported in **(2021) 2 SCC 612,** the Hon'ble Supreme Court of India has held that when the finding has been arrived at by the competent authority based on some evidence, then the conclusion shall not be disturbed. The relevant portion is extracted hereunder:

> "***24.*** *It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the*

disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. *When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:*

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) ***whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.***

...

28. *The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings*

of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and ***so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained****."*

35. Therefore it has to be only ensured as to whether the enquiry has been conducted in a proper and fair manner and sufficient opportunity has been provided to the delinquent. The adequacy or reliability of evidence is not relevant and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. As such when the documents have been marked and proper domestic enquiry has been conducted by affording fair opportunity to the respondent and there are materials and evidences to substantiate particularly Charge No.1, in respect of the irregularity committed by the respondent, it cannot be held to be case of no evidence, only on the ground that the complainant was not examined, when the respondent was not able to dislodge the materials available particularly in PEX-1 to PEX-3, where he has signed in the reverse of the cheque and received the cash

through the Payment Scroll Register.

36. The Enquiry Officer, based on the materials available, had come to a conclusion and rendered findings holding that the charges as proved. As held in the above decisions, the High Court cannot sit in appeal over the finding rendered by reappraising the evidences in Judicial Review. The learned Judge had in fact reappraised the evidences and had arrived at a conclusion that the enquiry proceedings were not proper and irregular and thereby had interfered in the punishment imposed by the disciplinary authority, which is legally impermissible.

37. In view of the above discussions, we are of the considered opinion that the enquiry has been conducted in a fair and proper manner by affording sufficient opportunities to the respondent and therefore the order of the learned Judge holding that the fair treatment has not been given to the respondent cannot be sustained.

38. When once the enquiry conducted has been found to be proper and the report submitted by the Enquiry officer had also been based on materials and evidences available which have been accepted,

then it is for the Disciplinary Authority and the Appellate Authority to decide on the quantum of punishment to be imposed on the delinquent. The Disciplinary Authority had agreed with the findings of the Enquiry Officer and imposed punishment of dismissal without notice from Bank Service, however the Appellate Authority had taken a lenient view by considering 14 years of service and modified the punishment to one of discharge from service.

39. The respondent being an employee of the public Bank, where the money of customers and public at large are dealt with, high standard of integrity and honesty is expected from the respondent. When the respondent had acted prejudicial to the interest of the customer, which will erode the public trust and confidence over the Bank by which the prospects of the Bank would be adversely affected, we are of the considered view that the punishment imposed is not disproportionate shocking our conscience, but rather proportionate to the charges leveled against the respondent. The other decisions relied on by the respondent are not relevant to the facts of the present case.

40. In view of the above findings, we have no hesitation interfering

in the orders passed by the learned Judge and accordingly the impugned order passed in the Writ Petition is set aside and the punishment imposed by the disciplinary authority as modified by the Appellate Authority stands restored.

41. Resultantly, the Writ Appeal stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

(A.S.M.,J) **(G.A.M.,J)**

27.09.2024

Index: Yes/No
Neutral Citation : Yes/No
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To

1. The Managing Director,
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