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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 883/2005**

Decided on 27th September, 2013

R.K.SRIVASTAVA

..... Petitioner

Through: Mr. Deepak Anand, Adv.

versus

THE MGMT. OF BANK OF BARODA & ANR. Respondents

Through: Mr. R.R. Kumar and Mr. Bharat
Singh, Advs.

**CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK**

A.K.PATHAK, J.(ORAL)

**CM Nos. 11946/2013 (Restoration) and CM No. 11947/2013 (u/Sec. 5
of the Limitation Act)**

For the reasons explained in the applications delay is condoned and
writ petition is restored at its original number.

Both the applications are disposed of.

W.P. (C) 883/2005

1. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India aggrieved by the Award dated 22nd July, 2004 passed by the Central Government Industrial Tribunal-cum-Labour Court (CGIT).

2. The dispute referred to CGIT for adjudication is as under :-

“Whether the action of the management of Bank of Baroda, New Delhi in dismissing Shri R.K. Srivastava, account-cum-cashier clerk from service w.e.f. 31.1.1989 is justified. If not, to what relief the workman is entitled to?

3. Briefly stated facts, relevant for the purpose of disposal of this writ petition, are that petitioner was appointed as Accounts-cum-Cash Clerk with the respondent no.1 in the month of September, 1982. A departmental enquiry was held against the petitioner on the following charges:-

“During the period, he was functioning as Accounts-cum-clerk at Daryaganj, New Delhi branch.

- a) He fraudulently withdrew ₹4500/- on 14.1.1987 and again on 15.1.1987, he withdrew ₹4500/- from SB A/C No. 894 of Mrs. Pruthi.
- b) On 8.1.1987, he fraudulently withdrew ₹1500/- from SB A/C No. 741 of Mohd. Ayub Khan.
- c) On 19.1.1987, he fraudulently withdrew ₹1500/- from SB A/C No. 1135 of Shri Radhey Shyam.
- d) The debit instruments were unauthorisedly entered into payment scroll by him.
- c) On 30.1.1987, he fraudulently withdrew ₹700/- from SB A/C No. 1052 of Shri Hanuman J.S. Prohit.
- f) After fraudulently withdrawing the above mentioned amounts, he destroyed/stole the debit instruments.”

4. Charge-sheet was served on the petitioner alleging therein that his above acts constituted misconduct. Enquiry Officer was appointed who conducted the enquiry. Petitioner participated in the enquiry. After completing the enquiry, Enquiry Officer concluded that charges levelled against the petitioner were duly proved. Enquiry Officer submitted his report to Disciplinary Authority, that is, Regional Manager. On the basis of enquiry report Disciplinary Authority terminated the service of petitioner. Appeal was dismissed by the Appellate Authority.

5. Petitioner alleged before the Industrial Adjudicator that charge-sheet was served on false and fabricated charges. During the enquiry petitioner was not given ample opportunity to defend himself. He was not granted permission to be represented by an advocate. Petitioner had made it clear to the Enquiry Officer that the charges were of grave and serious in nature and since he was not well conversant with the departmental proceedings, he be permitted to engage an advocate to defend himself but his request was declined. Petitioner has dismissed on the instructions of his superiors. Mr. Malhotra, Manager of the Bank had asked the petitioner to help one customer, namely, Mrs. Rekha Pruthi in depositing ₹9,000/- in her account. Accordingly, petitioner helped the said customer by writing the pay-in-slip regarding cash deposit, as per the directions of Branch Manager. Mrs. Pruthi had issued a wrong cheque herself. Statement of Sh. Malhotra, Sh. R.C. Jain, Sh. S.K. Sharma and Sh. A.K. Singhal were recorded before the Enquiry Officer as managements' witnesses on the pretext that a mere formality was being observed but no action would be taken against the petitioner. Enquiry Officer as well as

Presiding Officer made the petitioner to sit during the enquiry as a silent spectator. The enquiry was, thus, vitiated.

6. In written statement, respondent no.1 denied the afore-stated allegations. It was alleged that petitioner was occupying post of utmost trust and confidence. Petitioner committed forgery and misappropriation of customers' money. Charge-sheet detailing the charges was duly acknowledged by the petitioner. During the enquiry petitioner deposited the amounts in the accounts of respect account holders from which he had withdrawn the money. Had petitioner not withdrawn money from the accounts of the customers he would not have subsequently deposited the same of his own. Since the petitioner had deposited the money no criminal action was taken against him. Petitioner had misappropriated the funds and had breached the trust and confidence reposed by the respondent in him, thus, was rightly awarded punishment of dismissal from service. During the enquiry petitioner was afforded opportunity to cross-examine the witnesses of respondent no. 1 but he declined. He also did not examine any witness in his defence though opportunity was

afforded to him. Opportunity of personal hearing was also afforded to the petitioner.

7. It has been held by the Industrial Adjudicator that in the departmental enquiry petitioner could have defended himself by appointing any official or office bearer of the Union in terms of Bipartite Settlement. In departmental enquiries delinquent cannot claim as a matter of right to be represented through an advocate. Petitioner was afforded opportunity to cross-examine witnesses but he himself opted not to cross-examine them. All the relevant papers of misappropriation were proved in the enquiry, inasmuch as, report of handwriting expert was also produced. Though the handwriting expert was not examined but Industrial Adjudicator himself compared the handwriting of petitioner appearing on the questioned documents with the admitted signatures of the petitioner to conclude that there was a close resemblance in both the handwritings. Industrial Adjudicator further observed that petitioner himself admitted that entire proceedings were conducted in his presence; he had deposited the entire disputed amount in the customer's accounts which act of his itself indicated his involvement regarding

misappropriation of money from the accounts. Industrial Adjudicator has concluded that enquiry was conducted in a fair and proper manner, inasmuch as, principles of natural justice were duly followed. It was further held that misconduct was serious and grave in nature, thus, punishment of removal from service was not disproportionate to the misconduct and required no interference.

8. I have heard the learned counsel for the parties and also perused the record. It is not the case that enquiry was held behind the back of petitioner. Petitioner remained present during the enquiry. Witnesses were examined in his presence. He was afforded opportunity to cross-examine them but he chose not to avail that opportunity. For this act he cannot put blame on anyone else except upon himself. In a domestic enquiry there is no requirement of providing an advocate to a delinquent, thus, if such a permission was declined nothing wrong can be found with this approach. It is not the case that respondent no.1 was represented through a lawyer. Had the respondent no.1 been represented through a lawyer the petitioner would have been entitled to similar treatment. Four witnesses were examined before the Enquiry Officer who deposed against

the petitioner. Petitioner was afforded opportunity to lead evidence in his defence but he did not produce any witness in the witness box.

9. Learned counsel for the petitioner has vehemently contended that Mrs. Rekha Pruthi, one of the account holders, was not produced in the witness box. That apart, Smt. B. Maya, Special Assistant working in Darya Ganj Branch of respondent no.1 was not produced. They were material witnesses to prove the charge of misappropriation from the account of Mrs. Rekha Pruthi. In my view, non appearance of these witnesses would not be fatal, inasmuch as, respondent no. 1 had examined four witnesses, namely, Sh. Malhotra, Sh. R.C. Jain, Sh. S.K. Sharma and Sh. A.K. Singhal who were working in the same branch and had deposed against the petitioner regarding the charges which were enquired upon. Learned counsel has further contended that hand writing expert was not produced and his non-production was also fatal as in his absence signatures of petitioner on disputed documents remained unproved. I do not find much force in this contention. Industrial Adjudicator has categorically observed that he had gone through the report of hand writing expert and compared the questioned writings with admitted writings

himself and was of the view that questioned and admitted writings were of one and the same person as there was close resemblance in both the hand writings. In *Lalit Popli vs. Canara Bank and Ors.* AIR 2003 SC 1796, Supreme Court held, thus, “irrespective of an opinion of the handwriting expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of handwriting expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts evidence is not there, Court has power to compare the writings and decide the matter”. Reliance was placed on *Murari Lal vs. State of Madhya Pradesh* 1980 CriLJ 396. It was further observed that Enquiry Officer and the Disciplinary Authority took pains to carefully consider the handwriting expert’s report and also looked at the documents to arrive at their own conclusion. It is also well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the

disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him; whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of “proof beyond doubt” has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

10. Industrial Adjudicator has perused the record and returned a categorical finding that the enquiry was conducted in a fair and proper manner, inasmuch as, principles of natural justice were followed. The findings of facts returned by the Industrial Adjudicator upon appreciation of material before it cannot be interfered by this Court in exercise of power of judicial review under Article 226 of the Constitution. In *New India Flour Mills and another vs. Sixth Industrial Tribunal, West Bengal and others* 1963 1 LLJ 745, a Single Judge of Calcutta High Court has

observed thus, “It is difficult for me, sitting in constitutional writ jurisdiction, to interfere with a findings of facts, even though the findings may have been arrived at on a wrong evaluation of evidence”. Power of High Court of judicial review under Article 226 of the Constitution is limited. High Court would step in, in case, award is based on no evidence or suffers from any manifest error of law. If the Award of the Industrial Adjudicator is based on some evidence, the High Court would refrain from interfering on technical grounds.

11. In Calcutta Port Shramik Union vs. Calcutta River Transport Association and Others, (1989) 1 L.L.N. 1, Supreme Court held thus:-

“In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible that awards made by Industrial Tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the Tribunals by striking down awards on hyper-technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis.”

12. Above all, admittedly, petitioner had himself deposited the money during the enquiry which was withdrawn by him from the customers' accounts. His this act amounts to admission of guilt by him. That apart, guilt of petitioner was duly proved during the enquiry. Findings of facts returned by the Enquiry Officer upon appreciation of evidence have rightly not been interfered by the Industrial Adjudicator. In *State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya* AIR 2011 SC 1931, Supreme Court held thus "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 a ground 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. 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 extraneously considerations”. In Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane 2005 (1) ALT 18 (SC), Supreme Court has held 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 domestic tribunal.

13. Findings of facts returned in the domestic enquiry as also by the Industrial Adjudicator cannot be interfered with by this Court in exercise of its power under Article 226 of the Constitution. Writ jurisdiction cannot be compared with the appellate jurisdiction. In exercise of its power of judicial review this Court can interfere only if the award is based on no evidence or is perverse in the sense that no prudent person can arrive at a finding on the evidence adduced by the parties which Industrial Adjudicator has taken. In Lalit Popli (Supra), Supreme Court has held thus “while exercising jurisdiction under Article 226 of the Constitution,

the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority”.

14. In the instant case, I do not find any manifest error of law or jurisdiction nor is it case of no evidence. Petitioner’s counsel has placed reliance on State Bank of India vs. J.R. Surma 2002 VII AD (Delhi) 325 which I find to be in the context of different facts.

15. In the light of above discussions, writ petition is dismissed.

A.K. PATHAK, J.

SEPTEMBER 27, 2013
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