

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

Judgment Reserved on March 19, 2014
Judgment Delivered on May 13, 2014

+ **W.P.(C) 5821/2002**

STATE BANK OF BIKANER & JAIPUR

..... Petitioner

Represented by: Mr.Anil Kumar Sangal, Advocate with
Mr.Siddharth Sangal, Advocate

versus

S.K.TALWAR

..... Respondents

Represented by: Mr.Atul Nagarajan, Advocate with
Mr.Sushant Kumar Thakur and
Mr.Sujeet Singh Malhotra, Advocate

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the award dated May 29, 2002 passed by the Central Government Industrial Tribunal (Tribunal in short) in I.D No.148/1990, whereby the Tribunal has set aside the order of the Disciplinary Authority dated December 16, 1988, dismissing the respondent from service and as upheld by the Appellate Authority vide its order dated May 27, 1989 and directed the reinstatement of the respondent with all consequential benefits including continuity in service and back wages minus Rs.1.48 Lakhs if not recovered by the bank from the PF account of the respondent with 6% interest on the total amount.

2. The Industrial Dispute was referred by the appropriate government on the following terms:

“Whether the action of the management of State Bank of Bikaner and Jaipur, New Delhi in dismissing the workman Sh.S.K.Talwar vide their letter No.AGM/DAC/254 dated 16.12.1988 is justified? If not, to what relief the workman is entitled to?”

3. It was the case of the respondent before the Tribunal that while he was working as Head Cashier on officiating basis at the Naraina Industrial Estate, Phase-I, Branch of the petitioner bank on July 05, 1983 at about 10.15 a.m the respondent found Rs.1.48 Lakhs missing from the cash box and at that time there was no light in the premises of the bank as the electricity had gone off and the bank had no alternative arrangement of lighting. It was his case that the cash was taken out of the safe for the days’ transactions in the darkness with a battery torch. The cash was kept in the cabin. Two payments of Rs.1223.04/- and Rs.23,000/- were made to the Teller. To make the interest payment of Rs.2500/- in the denomination of RS.100 notes when the respondent turned to pick up the cash from cash box kept on his right side, he found bundles of Rs.100/- and Rs.20/- denomination missing from the cash box. He immediately raised an alarm. The Branch Manager ordered the closure of the main gate which was done at about 10.20 a.m. The Manager sent a message to the Regional Office and in a short while the security officer and other officials reached the bank. The workman remained in his seat in the cabin throughout and till the officials of the bank made a thorough search of the premise of the bank but no clue of missing cash was found. The respondent immediately asked for calling of police but the request was not heeded by the officials. The Branch Manager lodged a written complaint to the police only at about 4.20 p.m. After arrival of the police the workman was taken into custody by police and he was suspended on July 09, 1983.

4. After completing the investigation the police submitted charge sheet

against the respondent under Section 409 IPC for the criminal breach of trust. In the criminal case the respondent was discharged on February 18, 1984 but thereafter on revision he was put on trial and ultimately he was acquitted honourably vide judgment dated July 30, 1988. Apart from the fact that trial was initiated, disciplinary proceedings were also initiated with the issuance of charge-sheet on April 23, 1984. The charges which have been framed against the respondent were that once he failed to comply advice of the Regional Manager of the bank to make the loss of Rs.1.48 Lakhs good, he displayed extreme lack of vigilance in protecting the bank's cash and thereby committed gross negligence.

5. The inquiry was held into the charges framed against him. The Inquiry Officer held the charges proved. Show Cause Notice dated January 16, 1985 proposing the punishment of dismissal was issued. Reply dated February 08, 1985 was filed by the respondent. He filed a writ petition No.490/1985. Suffice to state that the respondent was acquitted in the criminal case. It was the case of the respondent that the judgment of the High Court acquitting him was not taken into consideration by the disciplinary authority while imposing the punishment of penalty of dismissal against him. According to him, the departmental appeal filed by him was also rejected by the Appellate Authority on May 27, 1989. It was the stand of the petitioner before the Tribunal that the challenge by the respondent to the impugned action of the bank was proper. According to the bank the respondent was negligent in not protecting the cash of the bank, which entail a loss of Rs.1.48 lakhs to the bank.

6. The Tribunal framed two issues, which are as under:

- 1. Whether the domestic enquiry conducted against the workman is fair and proper?*
- 2. As in the term of reference.*

7. On both the issue, the Tribunal has held that the inquiry was not fair and proper. Even though the opportunity to lead evidence was sought by the petitioner bank, the same refused as in the peculiar facts of the case, no purpose would be achieved to call upon the petitioner bank to lead evidence.

8. It was contended by the learned counsel for the petitioner that the Tribunal has erred in holding that the inquiry was not fair and proper. That apart he would state that the Tribunal could not have denied the opportunity to lead evidence. Further he would contend that even on merit the Tribunal has erred in setting aside the dismissal order and appellate order. According to him, para 19.5(J) of the first Bipartite Settlement dated October 19, 1966 defines the gross misconduct which inter-alia includes “*doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss.*” He would state that mere acquittal of the respondent in criminal case by giving benefit of doubt has no bearing on the punishment. According to him, an amount of Rs.1,618/- was recovered by the petitioner bank on account of financial loss and the balance amount of the PF of Rs.39,213.77/- was repaid to the respondent. He would also state that the respondent had attained the age of superannuation on June 15, 2008. The pension scheme introduced by the petitioner bank with effect from September 29, 1995 would apply inter-alia to those employees who were in the service of the bank on or after 1st day of 1986 but had retired before the 1st day of November, 1993 provided they exercise an option in writing within 120 days from the notified date to become member of the fund and refund within 60 days after expiry of the said period the entire amount of the bank’s contribution to the provident fund with interest. He would rely upon the following judgments in support of his contentions:

(a) *B.C. Chaturvedi Vs. Union of India and others*, (1995) 6 SCC 749;

- (b) *Bank of India & Anr. Vs. Degala Suryanarayana*, (1999) 5 SCC 762;
- (c) *Regional Manager, U.P.S.R.T.C., Etawah and Ors. Vs. Hoti Lal and Anr.*, (2003) 3 SCC 605;
- (d) *Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Ors. Vs. K. Meerabai*, (2006) 2 SCC 255;
- (e) *Govind Das Vs. State of Bihar and Ors.*, (1997) 11 SCC 361;
- (f) *Union Bank of India Vs. Vishwa Mohan*, (1998) 4 SCC 310;
- (g) *State Bank of India and Anr. Vs. Bela Bagchi and Ors.*, (2005) 7 SCC 435;
- (h) *State Bank of India & others Vs. T.J. Paul*, (1999) 4 SCC 759;
- (i) *Ganesh Santa Ram Sirur Vs. State Bank of India and Anr.*, (2005) 1 SCC 13;
- (j) *Damoh Panna Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain*, (2005) 10 SCC 84;
- (k) *The Divisional Controller, KSRTC Vs. M.G. Vittal Rao*, (2012) 1 SCC 442.

9. On the other hand, learned counsel for the respondent would support the award of the Tribunal. He would state that when the criminal court had acquitted him, there was no reason why the disciplinary authority has imposed the gravest punishment of dismissal of the respondent from service of the bank. In fact according to him the disciplinary authority does not consider nor deal with the aspect of acquittal by the criminal court in the impugned order. According to him, the charge which has been framed against the respondent are most frivolous. He states that the cash went missing when the lights went off. No fault can be attributed to the respondent for the missing of cash of Rs.1.48 Lakhs. Even on the aspect of conduct of the inquiry, it is the

submission of the respondent that Inquiry Officer did not allow him to lead evidence. In support of his contention, he would refer to the evidence of Mr.R.R.Dass, Bank Witness No.2, who in his cross examination stated that there was no specific recording of any opportunity given to the respondent or his representative for producing his oral and documentary evidence. According to him, the acquittal of the respondent is a material fact which should have been taken by the disciplinary authority while imposing the penalty on the respondent. He would state that in fact the show cause notice issued to the respondent on January 16, 1985 the disciplinary authority has pre-judged the guilt which is clear from the usage of the word 'decided'. He would also state that when there is a finding of fact by the Tribunal, this Court would be hesitant to interfere with such a finding. He would rely upon the following judgments in support of his contentions:

- (a) *G.M. Tank Vs. State of Gujarat and Anr.*, (2006) 5 SCC 446;
- (b) *Jasbir Singh Vs. Punjab and Sind Bank and Ors.*, (2007) 1 SCC 566;
- (c) *George N.S. Vs. Comm. of Police*, 183 (2011) DLT 226;
- (d) *Ravuru Babu Rao Vs. General Manager, Oriental Insurance Co. Ltd.*, 1997 (1) APLJ 357;
- (e) *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.*, (1999) 3 SCC 679;
- (f) *Jijaba Namdeo Borude Vs. Union of India and ors.*, 1995(3)BomCR701,1995(97)BOMLR306;
- (g) *Jaywant Bhaskar Sawant Vs. Board of Trustees of The Port of Bombay and others*, 1995 (1) BomCR 126, 1994 MhLJ 1477;
- (h) *Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant & Ors.*, (2001) 1 SCC 182;

- (i) *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*, (1999) 7 SCC 409;
- (j) *The National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad and Ors.*, (2011) 12 SCC 695;
- (k) *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors.*, (1979) 2 SCC 80;
- (l) *Urban Improvement Trust, Bikaner Vs. Mohan Lal*, (2010) 1 SCC 512.

10. Having considered the respective pleas advanced by the learned counsel for the parties, I may point out that in reply to the show cause notice, the respondent highlighted that he was not given sufficient opportunity to lead his defence. The Disciplinary Authority in his order, was of the view that no new point of substance has been pointed out by the respondent, which can be considered as a mitigating factor. It imposed a penalty of dismissal from bank's service. The respondent filed an appeal before the Appellate Authority. In the appeal, the respondent did highlight about denial of reasonable opportunity inasmuch as the Enquiry Officer did not allow him to lead evidence. The Appellate Authority while considering this ground raised by the respondent in his appeal, was of the view that the Enquiry Officer has asked the defence representative to submit his list of documents and list of witnesses during the enquiry proceedings dated October 16, 1984, which the defence representative did not submit.

11. I have seen the proceedings dated October 16, 1984. The last paragraph of the proceedings suggest that after the further examination of the bank representative was closed, the Enquiry Officer observed that defence also not submitted any list of defence witnesses or documents. It appears that while closing the bank representative's examination, the Enquiry Officer

simultaneously had asked defence representative to produce the list of defence witnesses and the documents. It appears the defence representative was caught unaware, not knowing the Enquiry Officer would call upon him to submit the list of witnesses and documents. Appropriate would have been for the Enquiry Officer to grant some time to the defence representative to submit the list of witnesses and documents. To that extent, the Appellate Authority has failed to appreciate in proper perspective, the manner in which the opportunity was denied. To that extent, this Court is of the view that the Tribunal was correct when it held that the respondent was denied the reasonable opportunity which resulted in vitiating the enquiry.

12. Further, I note the following charge was framed against the respondent:

“The allegation levelled against Shri Talwar, inter alia, is that on 05.07.1983 while he was working as Head Cashier at N.I.E., Phase-I, branch of the bank, he was given an amount of Rs.2,07,500.00 in different denominations in the morning to commence the transaction of the branch, but at about 10.20 a.m, a shortage of Rs.1,48,000/- was detected in the cash held in his custody and he failed to make good of the amount before the close of the business of the same day. He also did not make good of the aforesaid shortage. In spite of Bank asking him to do so. He also did not displayed proper vigilance in protecting the Bank’s cash, entrusted to him and held under his custody and thereby caused a loss of Rs.1,48,000/- to the bank and acted in a manner highly prejudicial to the Bank’s interest and displayed gross negligence involving the Bank in serious loss.”

13. A perusal of the charge would reveal, there are no allegations of misappropriation against the respondent. Rather, the charge also stipulated that he failed to make good shortage of Rs. 1,48,000/-. This would denote that the petitioner was ready to close the case, provided, the respondent had made good the shortage. As pointed by the Tribunal, it is not a case where he has violated any safety norms or left the cabin without authority. The bank

has produced witnesses, which included Mr. S.P.Kochhar, BW1, Mr. Amar Singh, BW2 and Mr. S.P. Syal, BW3. The finding of the Enquiry Officer on the testimony of the three witnesses is as under:

“.....Mr. S.P.Kochhar, the then Accountant of the branch (Bank's Witness No. BW-1) in his testimony identified the above exhibits (i.e. B/2/A & B/2/B) to be the true copies of page no. 204 & 205 of vault register and confirmed that the sum of Rs. 2,07,500-00/- was withdrawn from the vault on 05.07.1983 and paid to Sh. S.K.Talwar which was duly received by Sh. Talwar for days transaction on 05.07.1983. This register was produced for the examination to the defence also and no objection to its correctness as well as the correctness of the testimony of Sh. Kochhar was made by the defence. Accordingly, the fact that an amount of Rs. 2,07,500-00/- in different denominations was handed over to Sh. S.K.Talwar in the morning of 05.07.1983 stands admitted by Sh. Talwar.

There is an evidence of Sh. Amar Singh (B/W2) who was working as a cash peon on 05.07.1983 in the branch that the cash so withdrawn by Sh. S.K.Talwar from the vault was put by Sh. S.K.Talwar in his cash box and the same was duly locked by him (Sh. Talwar). Sh. Amar Singh has further stated that he brought this cash box from strong room to the cash cabin of Sh. S.K.Talwar and Sh. Talwar was all the times, following him upto the cash cabin and key of the cash box was Mr. Talwar. This statement of Sh. Amar Singh has not been rebutted by Sh. Talwar during the course of the enquiry. From the foregoing, it is established that an amount of Rs. 2,07,500-00/- withdrawn by Sh. S.K.Talwar was put by him in his cash box and brought to the cabin duly locked by him. Upto this time, Sh. Talwar has not disputed the contents of the cash box. After having brought the cash box in his cabin, Sh. S.K.Talwar has handed over some cash to the teller and made one payment and thereafter declared a shortage of Rs. 1,48,000/-. This fact has not been re butted by Sh. Talwar. Thus, this position also tantamount to admission.

Sh. Talwar was given full opportunity during the course of enquiry to clarify the position. But, he could not

adduce any evidence to establish entry of any third person into his cabin or access of third person. It has been pointed out during the course of enquiry by the evidence of Sh. S.P.Syal (B/W-3), the Branch Manager that there has been light glowing in the head cashier cabin because of permanent special arrangements with Payal Cinema that in case of light failure, connection of head cashier cabin gets automatically connected with the generator set up by the Cinema. This fact has also been admitted by Sh. S.K.Talwar. The fact that Head Cashier's cabin was having proper locking arrangements including insight latches as stated by Sh. S.P.Syal, the Branch Manager in the course of the enquiry has not been disputed by Sh. S.K.Talwar”.

14. I find that in none of their testimony, bank witnesses highlighted that the respondent has misappropriated money, neither did they highlighted that the respondent had left the cabin leaving the cash box there. Further, their testimony does not remotely suggest any act of the respondent with wrongful intention.

15. The Supreme Court in the case reported as *Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Ors.*, (2007) 4 SCC 566, has held as under:

“7. Before advertng to the question involved in the matter, we may see what the term 'misconduct' means. In State of Punjab and Ors. v. Ram Singh Ex. Constable, [1992]3SCR634, it was stated:

Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

Misconduct in office has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the officer holder had no right to perform, acts

performed improperly, and failure to act in the face of an affirmative duty to act.

8. *In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:*

The term 'misconduct' implies, a wrongful intention, and not a mere error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct.

[See also Bharat Petroleum Corpn. Ltd. v. T.K. Raju (2006)IILLJ113SC.]

9. *It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behavior in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India and Ors. v. J. Ahmed, (1979)IILLJ14SC , whereupon Mr. Sharan himself has placed reliance, this Court held so stating:*

Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster 17 Q.B. 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers) 1959 1 WLR 698. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur, (1960)ILLJ167Bom , and Satubha K. Vaghela v. Moosa Raza, (1969)10GLR23 . The High Court has noted the definition of misconduct in Stroud's Judicial

Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”

16. Further, in the case reported as *Union of India (UOI) and Ors. Vs. J. Ahmed*, (1979) 2 SCC 286, the Supreme Court has stated as under:

“... It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence.”

17. Similarly, in the case reported as *Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Ors.*, (1984) 2 SCC 556, the Court has held that mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct.

18. Further, in the case reported as *ITC Ltd., Monghyr, Bihar v. Presiding Officer, Labour Court, Patna (Bihar)*, (1978) II LLJ 354 SC, the Court has opined that negligence by itself cannot be held to constitute misconduct.

19. In the present case, as held above, it is not proved that the respondent was negligent in performing his duties which resulted in the shortage of Rs. 1,48,000/-. The charge does not use the word

‘negligence’. The charge only states that the respondent did not display proper vigilance in protecting the bank’s cash. Be that as it may, it is true that clause 19.5(j) of the Bipartite Settlement dated October 19, 1996 stipulates, ‘doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss’, would amount to gross misconduct. But, if this provision is read in conjunction with the law laid down by the Supreme Court in the cases referred to above, it was at the most an error of judgment on the part of the respondent which cannot be equated with a conduct of a wrongful intention which is prejudicial to the interest of the bank or was a gross negligence or negligence which resulted in the shortage of Rs. 1,48,000/-. In any case, I find that the Tribunal, in the impugned award has observed that loss has occurred from the possession of the respondent and his readiness to make good the loss and given liberty to petitioner bank to recover the loss of Rs. 1,48,000/- from the respondent, there is no error in ultimate conclusion of the Tribunal in the impugned award.

20. Insofar as the judgments relied upon by the counsel for the parties, I refer to the same for what has been held by the Court in those judgments.

In the case of *B.C. Chaturvedi (supra)*, the Supreme Court has held 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.

In the case of *Bank of India & Anr. (supra)*, the Supreme Court has held as under:

“Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides 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 that findings. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel, (1964) 1 LLJ 38 SC, the Constitution Bench has held:

The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.”

In the case of *Regional Manager, U.P.S.R.T.C., Etawah and Ors.* (*supra*), the Supreme Court has held as under:

“11. It needs to be emphasized that the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment does not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment as considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy of question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (See Alexander Machinery Dudley Ltd. v. Crabtree 1974 LCR 120. A mere statement that it is disproportionate would not suffice. A party appearing before a Court, as to what it is that the Court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transaction or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable.”

In the case of *Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Ors.* (*supra*), the Supreme Court has held that the scope of disciplinary proceedings and the scope of criminal proceedings in a Court of Criminal law are quite distinct, exclusive and independent of each other. Further held that loss of confidence is the primary factor and not the amount of money mis-appropriated. In the instant case, respondent employee was found guilty of mis-appropriating the Corporation funds. The court states

that there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment awarded by the disciplinary and appellate authority.

In the case of *Govind Das (supra)*, the Supreme Court has held that the acquittal in criminal trial had no effect on the punishment imposed under departmental enquiry, as standard of proof in both the proceedings were different. Acquittal from criminal trial does not warrant setting aside of order of termination of service on the same charge.

In the case of *Union Bank of India (supra)*, the Supreme Court has held as under:

“11. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non supply of the Inquiry Authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non furnishing of the inquiry report/findings to him.”

In the case of *State Bank of India and Anr. (supra)*, the Supreme Court has held as under:

“A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to

discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996) IILLJ379SC, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

In the case of *State Bank of India & others Vs. T.J. Paul (supra)* the Supreme Court has held that punishment of removal awarded is disproportionate to gravity of misconduct and therefore the said order is set aside. The court has remanded the matter to Appellate Authority for imposition of other punishments other than removal. The court has also stated that actual loss is not necessary to punish for misconduct.

In the case of *Ganesh Santa Ram Sirur (supra)*, wherein the bank manager has given a loan to his wife, the Supreme Court has held that the punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. The Court has also relied upon *Regional Manager, U.P. SRTC. Etawah and Ors. v. Hoti Lal and Anr. reported in (2003) II LLJ 267 SC*, wherein the Court has held as under:-

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and

trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

In the case of *Damoh Panna Sagar Rural Regional Bank and Anr.* (*supra*), the Supreme Court has held as under:

"A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization, more particularly a Bank, is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct."

Further, the Supreme Court has stated that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law.

In the case of *The Divisional Controller, KSRTC* (*supra*), the Supreme Court has held that Workman shall be entitled for reliefs of reinstatement and back wages if criminal charges filed against him is not proved.

In the case of *G.M. Tank* (*supra*), the Supreme Court has held as under:

"16. In our opinion, such facts and evidence in the department as

well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

In the case of *Jasbir Singh (supra)*, the Supreme Court has held as under:

"9. The judgments of both the Civil Court and the Criminal Court established that the appellant was treated very unfairly and unreasonably. For all intent and purport, a criminal case was foisted upon him. A confession, according to learned Chief Judicial Magistrate, was extracted from him by the bank officers in a very cruel manner. It is, therefore, not a case where back wages should be denied. Respondent - Bank has tried to proceed against the appellant both in a civil proceedings as well as in a criminal proceedings and at both the independent forums, it failed.

10. We, therefore, are of the view that the impugned orders and judgments cannot be sustained. They are set aside accordingly. The appeal is allowed. The appellant is directed to be reinstated with back wages, continuity of service and other consequential benefits. The respondent shall also pay and bear the costs of the appellant which is quantified Rs. 10,000/-."

In the case of *George N.S.(supra)*, the Supreme Court has held that employee shall not be dismissed from service for criminal act if he is acquitted from same act as per law.

In the case of *Ravuru Babu Rao (supra)*, the Supreme Court has held that when there is order of acquittal by competent Criminal Court,

and on merits, when the Civil Court held that petitioner is not liable to answer for the issue of cover notes, it is not proper to once again drive him to face departmental enquiry. It is not fair on part of authorities to resort to departmental enquiry having regard to findings of Courts constituted under Cr.P.C. and C.P.C. It was open for department to take decision on continuance of Petitioner or otherwise, but not on the basis of charge now referred to against Petitioner. If there was only finding given in favour of petitioner and if same issue was not decided by Civil Court, Court would have held that departmental enquiry may be proceeded with and directing Respondent to proceed with departmental enquiry. If department is of opinion it not worthwhile to continue petitioner in department, department is at liberty to take such decision on any other charge against petitioner, but not on basis of charge now referred to. In spite of decisions rendered by Civil Court and Criminal Courts, in favour of petitioner, if departmental enquiry is allowed, it amounts to not accepting verdicts of competent Courts.

In the case of *Capt. M. Paul Anthony (supra)*, the Supreme Court has held as under:

“33. Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex-parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary

proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex-parte, stand vitiated.

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles there from.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

In the case of *Jijaba Namdeo Borude (supra)*, the Supreme Court has held that when the witnesses before the criminal trial and the domestic enquiry are the same and in the criminal trial the said witnesses did not support the prosecution, while in the domestic enquiry, the said witnesses have deposed against the petitioner. If the witnesses were the same both in the criminal trial as well as in the domestic enquiry and when the learned Magistrate has given honourable acquittal to the accused, the Enquiry Officer is bound to consider the reasoning of the learned Magistrate while giving honourable acquittal.

In the case of *Jaywant Bhaskar Sawant (supra)*, the Court has stated that the enquiry officer, disciplinary authority and Appellate Authority did not apply their mind to verdict of honourable acquittal and complete exoneration of petitioner from charge of Criminal Court for want of evidence. The court has stated further that the petitioner became a victim of unfounded suspicion of police authorities. The court held that the petitioner is allowed to resume duty with full back wages and benefits.

In the case of *Kumaon Mandal Vikas Nigam Ltd. (supra)*, the Supreme Court has held that Doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Furthermore, the court has stated as under:

“29. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular Court,

Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locatable case (Supra).”

In the case of *Zunjarrao Bhikaji Nagarkar (supra)*, the Supreme Court has held as under:

“43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.”

In the case of *The National Textile Corporation Ltd. (supra)*, the Supreme Court has held that it is a settled legal proposition that an agent cannot be sued where the principal is known. In the instant case however, the Appellant has not taken plea before either of the Courts. In view of the provisions of Order VIII, Rule 2 Code of Civil Procedure, the Appellant was under an obligation to take a specific plea to show that the

suit was not maintainable which it failed to do so and has taken vague plea to the extent that the suit was bad for non-joinder and, held to be as not maintainable. More so, whether A is an agent of B is a question of fact and has to be properly pleaded and proved by adducing evidence. Appellant miserably failed to make the required pleadings for the purpose and thus, in view of the above, Appellant held to be as not entitled for exemption under Section 3(1)(a) or 3(1)(b) of the Maharashtra Rent Control Act, 1999 nor can it claim the status of an “agent” of the Central Government. The court has held that no party should be allowed or permitted to travel beyond its pleadings.

In the case of *Hindustan Tin Works Pvt. Ltd. (supra)*, wherein the issue was whether interest of workmen should supersede interest of employer. The appellant company will suffer huge losses on payment of full back wages to the respondent workman. The industrial jurisprudence provides for full back wages in such cases. The court has held that deviation from prevalent mode can be allowed on establishment of special circumstances by employer. Herein the company is not financially viable to pay full back wages but it is looking up and started making profit and thus payment of back wage reduced to 75 % of total.

In the case of *Urban Improvement Trust, Bikaner (supra)*, the Supreme Court has held that it is a matter of concern that frivolous and unjust litigations by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner.

21. Since I have upheld the award of the Tribunal in the facts of this case, I do not think, it is necessary to deal with the judgments referred to

above. I accordingly, hold that even though the Tribunal has vitiated the enquiry, but, has rightly not granted opportunity to the petitioner to adduce evidence, moreso, keeping in the view the fact that the Tribunal has directed the respondent to make good shortage of Rs. 1,48,000/-, which resulted in loss to the bank. I, accordingly, dismiss the writ petition with no order as to costs.

(V.KAMESWAR RAO)
JUDGE

MAY 13, 2014/akb