

Court No. - 49

Case :- WRIT - A No. - 51221 of 2008

Petitioner :- Anil Kumar Srivastava

Respondent :- Union of India and others

Counsel for Petitioner :- A.S. Diwekar, A.G. Karunakar, Anil Kumar Srivastava, J.H. Khan, Shailendra Singh, W.H. Khan

Counsel for Respondent :- A.S.G.I., Dr. Ashok Nigam, P.K. Singh, P.K. Sinha, Pramod Kumar Singh, SC

Hon'ble J.J. Munir, J.

1. This writ petition is directed against the order of the Assistant General Manager, Bank of Baroda, Kanpur Region, Kanpur dated 15.01.2002, dismissing the petitioner from service, after holding disciplinary proceedings. Also, under challenge is the order of the General Manager, Bank of Baroda, Zonal Office U.P. and Uttarakhand, Zone Lucknow dated 27.06.2008, dismissing the petitioner's appeal against the order of the Assistant General Manager, last mentioned, and affirming the order dated 15.01.2002.

2. The original petitioner in this petition, the late Anil Kumar Srivastava, was a Clerk in the service of the Bank of Baroda (for short, 'Bank'), posted at the Latouche Road Branch, Kanpur. He was dismissed from service by the Bank after holding a departmental inquiry. He had challenged his dismissal by means of the present writ petition and died during pendency. His heirs and L.R.s, to wit, his sons, Sajal Srivastava and Suyash Srivastava, applied for substitution on his behalf, which was granted by this Court on 15.02.2022. They have since been substituted as petitioner Nos.1/1 and 1/2. They will be collectively referred to as 'the petitioner' hereinafter. For all intents and purposes, whatever is said in this judgment about

the petitioner, would bear reference to the deceased petitioner, Anil Kumar Srivastava, whose estate his heirs and L.R.'s represent. Apart from the possible benefit to the deceased petitioner's estate, that might ensue if the petition succeeds, it would also be the interest of the heirs and L.R.s in pursuing this petition that the stigma affecting the deceased's reputation is removed.

3. The petitioner was appointed in the service of the Bank on 06.09.1983 in the ministerial cadre. He had served the Bank in their various branches. He was initially posted to a Branch of the Bank at Lucknow as a Clerk. He was serving the Bank at their Latouche Road Branch, Kanpur in the year 1996, when a fraud was committed at the Hapur Branch of the Bank. A First Information Report was lodged by the Manager of the Branch at Hapur, reporting the fraud. The fraud was unearthed by a Clerk at the Hapur Branch, who got suspicious about remittance of money through a bank draft. He confirmed about the issue of the draft from the Latouche Road Branch of the Bank at Kanpur, which led to the fraud being discovered. One Smt. Parveen, who had to encash a cheque for funds, that had been remitted through the suspect instrument, was arrested. The FIR, last mentioned, was lodged on 20.12.1996, giving rise to Case Crime No.65 of 1996, under Sections 420, 467, 468 and 471 IPC, Police Station Hapur, District Ghaziabad (now District Hapur). The FIR was lodged against Smt. Parveen wife of Khalil Ahmad, a resident of Shop No.20, Shakun Market, Railway Road, Hapur. During course of investigation by the Police, it was detected and the Latouche Road Branch of the Bank at Kanpur confirmed that some blank demand drafts and mail transfer forms were found missing from an almirah at the Kanpur Branch of the Bank aforesaid. It was these forms, that

were misutilized at the Hapur Branch. Accordingly, on 24.12.1996, an FIR, about the draft and mail transfer forms being stolen, was lodged against unknown offenders by the Senior Manager, Latouche Road Branch of the Bank at Kanpur with the Police, giving rise to Case Crime No.189 of 1996, under Section 380 IPC, Police Station Fajalganj, District Kanpur. As already said, the said FIR was registered against unknown offenders. During investigation, the petitioner, who was working at that time with the Latouche Road Branch of the Bank at Kanpur, was arrested by the Police from Hapur in the crime registered there. The petitioner applied for and was granted bail, securing his liberty.

4. The Assistant General Manager of the Bank, Kanpur Region, Kanpur passed a rolled up order of suspension 'pending conclusion of the police case and/ or initiation of departmental inquiry against him'. The order of suspension was passed in exercise of power conferred upon the Assistant General Manager, who is the Disciplinary Authority, in accordance with the provisions of bipartite settlement, as amended from time to time. A charge-sheet was submitted by the Police in the criminal case registered at Hapur against the petitioner on 06.03.1997. The petitioner says that under the bipartite settlement applicable, both the criminal case and the departmental proceedings could not continue simultaneously, but that is his case and the submission about it, which would be dealt with later in this judgment.

5. So far as the facts go, a charge-sheet was issued to the petitioner in the disciplinary proceedings commenced by the Bank on 13.08.1999. The charge-sheet aforesaid, in its material part, carries the statement of imputation and the charges in the following terms:

"1. With your connivance Mr. Netra Pal Singh Armed Guard of Latouche Road Branch, custodian of the keys of the branch's main gate, unauthorisedly got prepared duplicate keys of the Almirah, in which security forms were stored, for fraudulent motives.

The said Armed Guard stole following -4-blank DD leaves and-3-blank MT leaves from the said Almirah with your connivance by using the duplicate keys got prepared by him unauthorisedly:

DD Nos. 781146, 781134, 782120 & 782229

MT Nos. 0997, 0998 & 0999.

2. You in connivance with the said Armed Guard and certain outsiders misutilised stolen DD leaf No. 781146 and got it fraudulently drawn for Rs.50,000/- on Hapur branch for opening a fictitious account in the name of M/s Parveen Hide Co., thereby committing fraud Rs.35,000/- was withdrawn out of above Rs.50,000/- from above a/c fraudulently.

3. You in the same manner as alleged at -2- above fraudulently got blank stolen MT leaf No.0997 drawn on Hapur branch for Rs.8,50,000/- for getting it credited to the aforesaid fictitious account of M/s Parveen Hide Co., thereby attempting to defraud the bank.

Your aforesaid acts amount to gross misconduct under the provisions of the Bipartite settlement as amended from time to time.

You are, therefore, charged as under:

1. You have abetted and instigated breach of duties by others.
2. You have committed acts of fraud.
3. You have done acts involving bank in serious loss.
4. You have done acts severely damaging bank's image and reputation which is prejudicial to the interest of the bank."

6. As the charge-sheet would show, an Inquiry Officer was appointed to conduct the inquiry. The Inquiry Officer issued a list of documents dated 15.09.1999 and witnesses proposed to be examined on behalf of the Management. The list was indicated not to be exhaustive, the establishment reserving their

right to produce other evidence. The documents listed were fourteen and the establishment witnesses three.

7. Before the commencement of inquiry, the petitioner made an application on 21.11.1999 to the Inquiry Officer, relying on the principle laid down by the Supreme Court in **M. Paul Anthony v. Bharat Gold Mines Ltd. and another, (1999) 3 SCC 679**, that the charges and the evidence being identical in the criminal trial that he faced and the departmental inquiry, the departmental proceedings were not maintainable. It was pointed out that the Police had filed charge-sheets, both at Hapur and Kanpur in the respective cases that they investigated, where the petitioner would face trial. The application was rejected by the Bank. The petitioner moved this Court *vide* Writ-A No.21566 of 2000, questioning the continuance of departmental proceedings pending trial on the same charges, that were to be proved by the same evidence before the Criminal Court. A time bound stay order was granted, but it could not be extended.

8. The Bank proceeded with the departmental inquiry with the Inquiry Officer holding the petitioner guilty by his report dated 09.08.2001. A show cause notice dated 06.08.2001 was issued by the Assistant General Manager, the Disciplinary Authority, enclosing therewith a copy of the inquiry report dated 09.08.2001, asking the petitioner to represent thereagainst and say whatever he wanted, in defence. The petitioner submitted a reply to the show cause. The Disciplinary Authority proceeded to pass the order impugned dated 15.01.2002, imposing the punishment of dismissal without notice. The petitioner carried a departmental appeal to the Appellate Authority, to wit, the Deputy General Manager of the Bank *vide* his appeal dated 18.02.2002. The Appellate Authority dismissed the appeal by

his order dated 27.06.2008.

9. Aggrieved, this writ petition has been instituted under Article 226 of the Constitution.

10. This petition was admitted to hearing on 30.09.2008. In course of time, a counter affidavit has been filed on behalf of respondent Nos.2 and 3, to which the petitioner has filed a rejoinder. The proceedings in this writ petition between 30.09.2008, when this writ petition was admitted, and 13.11.2017, were rather eventless. On 13.11.2017, the following order was made by this Court:

“One of the questions that arises for consideration in this writ petition is as to whether the confessional statement relied upon against the petitioner was furnished to him before proceeding further with the enquiry or not. Specific averment made in para 37 and 38 have been denied.

Learned counsel for the bank refers to page 47 of the writ petition to show that at serial no.4 the investigation report dated 7.1.1997 of Sri R.K. Awasthi alongwith 19 enclosures were served upon the petitioner alongwith which confessional statement was also enclosed. This contention is strongly opposed by the counsel for the petitioner.

In such circumstances, it would be appropriate to direct the bank to produce records of the enquiry, by the next date fixed.

List on 5.12.2017.”

11. Hearing opened on 16.10.2024 and was adjourned to 18.10.2024. On 18.10.2024, hearing concluded and judgment was reserved.

12. Heard Mr. A.G. Karunakar, learned Counsel for the petitioner and Mr. P.K. Sinha, learned Counsel for the respondents and perused the record.

13. Upon hearing learned Counsel for the parties, we may notice the first submission made, which seeks to impeach the validity of the inquiry on ground of flawed procedure in the

background of a pending criminal trial on the same charges. Our attention has been drawn to clauses 19.3 and 19.4 of the bipartite settlement as also the principle in **M. Paul Anthony** (*supra*) and other authorities on the same lines, which hold that if charges in the criminal trial and the departmental proceedings are one and the same, that are required to be proved by the same evidence, the departmental proceedings must be stayed. It is also submitted that where the charges involve complicated questions of fact and law, the departmental inquiry must await the outcome of the trial. These submissions, in our opinion, would be of little avail to the petitioner at this stage, once the disciplinary proceedings have run their full course and terminated in an order of dismissal from service.

14. It is argued by the learned Counsel for the petitioner that the findings, holding the petitioner guilty of all the charges, are either based on no evidence or the result of perverse conclusions. The Disciplinary Authority and the Appellate Authority, in accepting the findings of the Inquiry Officer and punishing the petitioner, have committed the same folly of acting on no evidence or reasoning perversely. It is, particularly, argued on behalf of the petitioner that the confessional statement attributed to the petitioner and the other employee, Netra Pal Singh, who is said to have conspired with him, is a confession recorded under duress while in police custody, where the petitioner was made to sign blank papers by the Police.

15. Mr. P.K. Sinha, learned Counsel for the respondents, on the other hand, submits that the petitioner, in connivance with the other employee, Netra Pal Singh, the Armed Guard posted at the Latouche Road Branch of the Bank, got duplicate keys made to open the almirah, where the security forms were

stored. Again, in connivance with the Armed Guard, after the almirah was opened and demand draft leaves and mail transfer forms removed, one of the demand draft forms was misutilized to forge a demand draft worth Rs.50,000/-, drawn in the name of M/s. Parveen Hide Co., Hapur by the Latouche Road Branch of the Bank, which was presented for collection at the Hapur Branch of the Bank. It is argued that an FIR was lodged both at Kanpur and Hapur, and the petitioner, along with Netra Pal Singh, arrested for investigation. The officials of the Bank, with permission of the Hapur Police, met the petitioner in police custody, who made a confession of his guilt in the presence of three Bank officials, which he signed. The petitioner did not complain to the higher Authorities of the Bank that his confession was secured under duress.

16. It is argued that the departmental inquiry has been conducted in accordance with the prescribed procedure, giving due opportunity of hearing to the petitioner. The Inquiry Officer, on the basis of the petitioner's confession, the testimony of Netra Pal Singh and that of the management witnesses, Rajeev Awasthi, S.N. Vishwakarma, M.M. Lal and the documentary evidence on record, held the petitioner guilty of all the charges. The other employee of the Bank, Netra Pal Singh, the Armed Guard, who was in conspiracy with the petitioner, was also dismissed from the Bank service.

17. Mr. Sinha has placed reliance upon **Delhi Transport Corporation v. Shyam Lal, (2004) 8 SCC 88** to submit that in the said case, it was held by the Supreme Court that it is well settled that admission is the best piece of evidence against the person making it. The confession made by the petitioner, duly signed by him and the three officers of the Bank, in whose presence he made it, makes it a clear, secure and dependable

piece of evidence, which cannot be ignored. The learned Counsel for the respondents then submits that the standard of proof in a departmental inquiry is one by 'preponderance of probabilities' and 'not beyond reasonable doubt'. The Bank have proved the charges by that standard. In support of his contention here, Mr. Sinha has placed reliance upon **General Manager (Operations) SBI and another v. R. Periyasamy, (2015) 3 SCC 101**. In addition, Mr. Sinha submits that it is a well settled principle of the law that this Court, in the exercise of powers of judicial review, is not concerned with the correctness of the decision, but the decision making process. This Court cannot sit in judgment on merits of the Disciplinary Authority's or the Appellate Authority's decision, as if it were a first appeal or any kind of an appeal. It is not open to this Court at all to re-appreciate evidence and come to conclusions contrary to those recorded by the Inquiry Officer or the Disciplinary Authority. In support of this contention, Mr. Sinha has placed reliance upon **State of U.P. and another v. Man Mohan Nath Sinha and another, (2009) 8 SCC 310**. He has further placed reliance upon **Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759**.

18. Mr. Sinha has then invited our attention to paragraph No.13 of the report in **Union of India and others v. P. Gunasekaran, (2015) 2 SCC 610** to say that their Lordships of the Supreme Court have laid down guidelines, on the foot of which this Court can judge the legality of a domestic inquiry or the order of the Disciplinary Authority passed in the disciplinary jurisdiction of the employer.

19. The question, whether this Court ought interfere with the findings recorded by the Inquiry Officer and the impugned orders made by the Disciplinary and the Appellate Authority

would really turn upon the question, if there is some evidence against the petitioner, from which a conclusion of the kind that the Inquiry Officer, the Disciplinary Authority and the Appellate Authority have drawn, could at all be reached. Upon a careful scrutiny of the material that has been considered by the Inquiry Officer and the two Authorities, who have punished the petitioner, what we notice is that they have relied mostly on investigation and clues gathered by some officers of the Bank about a fraud that happened at the Latouche Road Branch of the Bank. Most of this investigation was done by one Rajeev Awasthi, an officer of the Bank, who conducted a preliminary inquiry. A preliminary inquiry in a departmental matter is not a *sine qua non* for the initiation of disciplinary proceedings or the departmental inquiry, but if done, serves more or less like investigation in a criminal case. If there is no clue as to who has committed the misdemeanour and what is the material by which the misconduct committed by an employee can be established, a preliminary inquiry comes a handy. The report of an officer, holding a preliminary inquiry, is not *per se* material that can be proved against the delinquent during the inquiry, but whatever material is collected during the preliminary inquiry, can well be proved at the departmental inquiry to establish the charges.

20. Here, the preliminary inquiry held by Awasthi has come up with an elaborate story of conspiracy, involving the petitioner portrayed as a drunkard and a man in debt, who conspired with a brother of his, residing at Hapur, a relative and some outsiders at Kapur to secure the services of a woman in need, who may open a fake account in the name of a fake firm at the Hapur Branch of the Bank. He has said in his report that this woman was one Smt. Neelam, but asked to portray as Smt. Parveen wife of Khalil Ahmad, in order to get a bank account

opened at Hapur in the name of a fake firm, M/s. Parveen Hide Co. The petitioner got an office opened for this firm at Kanpur and a branch office through his brother, Santosh Srivastava, at Railway Road, Hapur. He then got an account opening form submitted to the Hapur Branch of the Bank in the name of M/s. Parveen Hide Co., signed by Smt. Parveen as the proprietor. An elaborate scheme was done with a Guard of the Bank by the petitioner to get a duplicate key of the almirah, fabricated by a locksmith, break it open and steal leaves of demand drafts and mail transfer forms, stowed away in the almirah.

21. It was then conspired with the Guard of the Bank that once the forms were stolen, a fabricated bank draft would be prepared in the name of M/s. Parveen Hide Co. and sent to the Hapur Branch, a forged document absolutely, with a forged forwarding letter. All this forgery was to be done by a relative or acquaintance of the petitioner's, a school teacher, who taught fine arts and was a master at forgery. According to Awasthi, the officer holding the preliminary inquiry, everything was done as planned and Netra Pal Singh, the Armed Guard, unauthorizedly got duplicate keys to open the almirah fabricated through a locksmith, in which security forms were kept. In connivance with the Armed Guard and certain outsiders, the security forms were stolen and misutilized by the petitioner. Misutilizing one of the leaves for a blank demand draft form, it was fraudulently drawn up into a demand draft, payable at Hapur, worth Rs.50,000/-, favouring M/s. Parveen Hide Co., Hapur. It was credited in the account of the aforesaid firm and Rs.35,000/- were withdrawn by Mrs. Parveen @ Neelam, the alleged proprietor of the bogus firm. Another mail transfer leave, stolen from the Latouche Road Branch of the Bank, was misutilized by the petitioner to draw up a demand for Rs.8,50,000/- on the Hapur Branch of

the Bank, favouring M/s. Parveen Hide Co. This act of fraud remained abortive because it was detected by the Bank.

22. It must be remarked that at the hearing before the Inquiry Officer in the departmental proceedings, the Inquiry Officer, noticing that the charges were not full and complete in all particulars, but came along with statement of imputations, though not formally set out, proceeded to record his findings allegation-wise.

23. The first allegation, that was considered by the Inquiry Officer, may best be understood by expressing it the way it is done in the inquiry report. It reads:

"Allegation No. 1: With your connivance Mr. Netra Pal Singh Armed Guard of Latouche Road Branch, cutodian of the Keys of the Branch's main gate, unauthorisedly got prepared duplicate Keys of the Almirah, in which security forms were stored, for fraudulent motives. The Said Armed Guard stole followings - 4 - Blank DD leaves and 3 - blank MT leaves from the said almirah with your connivance by using the duplicate Keys got prepared by him unauthorisedly :

DD No. 781146, 781134, 782120 & 782229

MT Nos. 0997, 0998, & 0999"

24. This was tried on the basis of following evidence led on behalf of the establishment:

"a. The investigation report

b. Confessional statement of Shri A.K. Srivastava.

c. Cross examination of DW - Shri Netra Pal Singh and Examination-in-chief of MW - Shri Rajeev Awasthi, S.N. Vishwakarma & Shri M.M. Lal."

25. The defence document, that was considered, is described as follows:

"d. Defence Documents - Voucher of payment of conveyance paid to Shri Netra Pal Singh and copy of attendance register."

26. The findings recorded by the Inquiry Officer on the given

material are of much relevance and must be quoted for every word of these. The findings on Allegation No.1 recorded by the Inquiry Officer read:

"EO's Findings / Observations :

Persuing the documents, evidences, recordings of examination-in-chief and cross examination of the witnesses produced before the enquiry by the P.O. and D.R./C.S.E. the undersigned as E.O. submit his findings as under :

1. The reported committed fraud of Rs. 35,000/- from Bank of Baroda, Hapur Branch took place on 13.12.1996 and another incident of attempted fraud of Rs.8,50,000.00 took place on 18.12.1996 at that branch. Both these act of fraud committed by a group of persons after designing a well planned conspiracy for defrauding the bank and gain undue financial benefits for themselves, unauthorisedly.

2. Both the acts of fraud were committed through a fraudulent and fake current account opened in the name of M/s. Parveen Hide Co., H.O. 95/22, Farrash Khana, Kanpur & Branch Office at 20, Shakum Market, Railway Road, Hapur on 12.12.1996. For the purpose the document/paper/instrument relating to Bank of Baroda, Latouche Road branch, Kanpur were used / produced with false/forged signature of the authorised officials attached to Latouche Road Branch, Kanpur. The used D.D. leaf No. 781146 and M.T. No. 0997 of Latouche Road Branch, which were stolen from Latouche Road Branch, Kanpur.

3. On detecting those frauds at Hapur Branch & Latouche Branch, Kanpur F.I.R. were lodged by the respective Branch at Hapur & Kanpur. Subsequently after police investigation, police cases were filed before the Hon'ble court at Hapur & Kanpur. In relating to the said police case, a group of persons including Bank's Staff members attached to Latouche Road Branch, Kanpur - Shri A.K. Srivastava and Shri Netra Pal Singh were arrested by the police and the police case / trail is pending before the Hon'ble Court at Hapur & Kanpur against those named persons.

4. Shri Anil Kumar Srivastava the clerical staff attached to Latouche Road Branch, Kanpur has guaranted while opening a cash credit loan account in the name of M/s. Suyash Electricals (firm belongs to Smt. Rekha Srivastava wife of Anil Kumar Srivastava and Brother of Shri Anil Kumar Srivastava at Chunni Ganj Branch, Kanpur). The said account as per Bank's records was not functioning well and the Bank has demanded re-payment of loan in the said account from the account holders & the guaranter.

5. The co-convicted persons i.e. A.K. Srivastava, Netra Pal Singh, Chander Bhushan Upadhyaya, Inder

Singh Chauhan, Satish Kumar Srivastava, Santosh Kumar Srivastava and Smt. Neelam alis Parveen are all known to each other and related for designing as executing the said conspiracy.

6. On detecting the acts of fraud, the Bank appointed Shri R.K. Awasthi to investigate in the matter vide letter no. UPK/22/A&I/1521 dt. 19.12.96. Shri Awasthi submitted the investigation report dt. 7.1.97 to his appointing authority - AGM R/O Kanpur. During the course of investigation Shri Awasthi recorded the statement of Shri A.K. Srivastava & Netra Pal Singh and others on 2.1.97 at Hapur police station in presence of Bank officials Shri S.N. Vishwakarma and Mr. M.M. Lal.

7. In the written brief submitted by the DR CSE argued that the statement of Mr. A.K. Srivastava & Mr. Netra Pal Singh was obtained by Shri Awasthi on 2.1.97 at Hapur police station where they were in police lockup, thus those were recorded under police pressure / threat & under duress, hence can not be taken cognizance of it. The investigation report of Mr. Awasthi is almost copied from the case diary filed by the Hapur police and produced before the Honble Court in connection with the police case. However, if those statement of Shri Srivastava & Mr. Singh were recorded under police pressure / threats on 2.1.97, why the same fact was not brought before the disciplinary authority / AGM R/O Kanpur immediately after it was recorded by Shri Awasthi in presence of other Bank officials and well before the enquiry begins? which itself indicate the argument as well as the recorded cross examination statement of Mr. Srivastava and Mr. Singh are after thought and attempt to make an alibi from the said allegation.

8. It is true that the PO failed to produce any witness/ supporting evidence for preparation of the duplicate Key of the security form almirah by a locksmith during the period of 2 hrs. i.e. between 9.00 to 11.00 A.M. when the Key of the Branch main gate remained under possession of Shri Netra Pal Singh, nor he could produce any evidence/ vouchers for payment of repairing the lock of the said almirah which was tampered/ got opened by a duplicate key for the purpose of obtaining the blank DD/ MT leaves from the stock, unauthorisedly. However, the circumstances vis-a-vis record of the attendance register of Mr. Srivastava & Mr. Singh which shows from April to Dec. 1996 both these staff members remained absent for a significant period e.g. Mr. Srivastava was present only 15 days in May, 17 days in June, 19 days in July, 22 days in Aug., 21 days in Sep., 20 days in Oct., 20 days in Nov., Mr. Singh was present 18 days in April, 4 - May, 17 - June, 21 - July, 14 - Aug., 15 - Sep., 6 - Oct., 17 - Nov., Shri Srivastava was present on 4, 9 to 12, 14 and 16 in Dec. similarly, Shri Singh was present from 11 - 14 only in Dec. 1996. No leave application with cogent reason is available in Bank's record for their such frequent

absentism.

9. As per the records of the cross examinations of the management witnesses and defence witnesses, the co-accused persons namely A.K. Srivastava, Netra Pal Singh, Chander Bhushan Upadhaya, Inder Singh Chauhan, Santosh Kumar Srivastava etc. were taken into police custody in connection with the said fraud case, which itself indicates the involvement of these persons in the said acts of fraud.

10. The DD leaf no. 781146 and MT leaf no. 0997 which were used for the said fraud, were belong to the stock of Latouche Road Branch and were stolen alongwith other alleged DD and MT leaves from the stock of Latouche Road Branch and then used/presented at Hapur Branch for the acts of fraud. Without any involvement / connivance of staff member such unauthorised procurement can not be made possible.

In view of the above narration from Point no. 1 to 10 the allegation no. 1 stand proved, partly by documentry / oral / circumstantial evidences."

27. It is true that the evidence by which this charge and the others, of which we would take notice later in this judgment, is not of sterling quality or one that can be regarded as clinching. But, it is not our province, in doing a secondary review of the findings recorded by the Inquiry Officer and accepted by the Disciplinary and the Appellate Authority as well, to re-appreciate that evidence for its quality. Even if, two views of the evidence are possible, and the one which would lean in favour of exoneration, is a better view, we cannot substitute our opinion in this regard for that of the Inquiry Officer or the Disciplinary Authority.

28. The grounds, on which this Court, in the exercise of power of judicial review, can interfere with the findings of the Inquiry Officer or the Disciplinary Authority, are limited and reputed. These are cases, where irrelevant evidence has been taken into consideration, relevant evidence ignored, perverse conclusions drawn from the evidence or a palpable illegality committed, vitiating the findings; still more, if the decision suffers from lack of jurisdiction. We can also interfere with the

findings of the Disciplinary Authority, if the procedure followed by the Inquiry Officer is fundamentally flawed, in that, that in a major penalty matter, the burden is wrongly placed and the charge never proved by the establishment, examining witnesses and producing other evidence.

29. If there is denial of opportunity, leading to demonstrable prejudice, that would be a classical case, where our interference would be preeminently justified. In short, procedural lapses and reputed grounds alone afford authority to this Court to upset, in the exercise of powers of judicial review, the findings of the Disciplinary Authority regarding guilt of an employee, facing charges of misconduct; not otherwise. We cannot certainly act as if it were a Court of appeal from the findings of the Inquiry Officer or the conclusions of the Disciplinary and the Appellate Authority. That is a proposition too well settled to brook doubt. In this regard, reference may be made to **P. Gunasekaran** (*supra*), where the principles, on which this Court could interfere in disciplinary proceedings, were adumbrated thus:

"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."

30. It is true, as already remarked, that in the present case, so far as Allegation No.1 goes, there is hardly any direct or circumstantial evidence to prove the case of theft by the petitioner of the demand draft leaves or the mail transfer form leaves from the almirah, where they were kept. There is no evidence, direct or circumstantial, against the other charge-sheeted employee, that is to say, Netra Pal Singh, the Armed Guard. In fact, the Inquiry Officer has candidly acknowledged the fact that the most fundamental part of the misconduct attributed to the petitioner, i.e. the act of stealing of the security forms through Armed Guard from the almirah, utilizing the services of a locksmith, had no material to prove it. There is no material in the sense of any circumstance or a witness, who saw the act.

31. The circumstances to infer guilt for the petitioner about his wife's firm, being in financially embarrassed circumstances, or the petitioner and the Armed Guard being on leave during the same period of time, are no materials in themselves to connect the petitioner or the Armed Guard to the act of theft or forgery. There is no material either to show that it was the petitioner,

who facilitated the forgery. The story about a school teacher related to the petitioner, who forged the demand draft, the mail transfer forms and fabricated signatures of the Bank officials, is also without any material. But, the only materials, that support these allegations, are confessions made in police custody by the petitioner and the other charge-sheeted employee, besides the conspirators, who were outsiders. The moot question, therefore, would be if confession attributed to the petitioner or the other co-accused recorded by Bank officials, while these men were in police custody, can be regarded as valid material in support of the charges. This question is very crucial, because after all it is the confession made by the petitioner and the other charge-sheeted employee, or for that matter, the outsiders who conspired, that constitute tangible material, on the basis of which the Inquiry Officer has drawn his conclusions.

32. It is to be remembered that the rule, prohibiting the admissibility of a confession attributed to an accused while in police custody, is a rule of evidence applicable to criminal trials. It is governed by Sections 25 and 26 of the Indian Evidence Act, 1872, since repealed and replaced by the Bharatiya Sakshya Adhiniyam, 2023, where similar provisions are to be found in Sections 23(1) and 23(2). The prohibition, therefore, applies in a criminal trial held before a Court of criminal jurisdiction. The rule in the late Evidence Act or the Sakshya Adhiniyam, prohibiting admissibility of a confession made by the accused while in police custody, does not *per se* apply to the case of a charge-sheeted employee, facing a departmental inquiry, if the confession made to the Police or while in police custody, is put in evidence against him by the establishment. Of course, the Inquiry Officer and the Disciplinary Authority would have to be satisfied that the confession was voluntary and not

one made under duress. In this regard, reference may be made to the decision of the Supreme Court in **Kuldip Singh v. State of Punjab and others, (1996) 10 SCC 659**. In **Kuldip Singh (supra)**, squarely answering this issue, it was held:

"10. Now coming to the main contention of the learned counsel for the appellant, it is true that a confession or admission of guilt made by a person accused of an offence before, or while in the custody of, a police officer is not admissible in a court of law according to Sections 25 and 26 of the Evidence Act, 1872 but it is equally well settled that these rules of evidence do not apply to departmental enquiries – See *State of Mysore v. Shivabasappa Shivappa Makapur* [AIR 1963 SC 375 : (1964) 1 LLJ 24] and *State of Assam v. Mahendra Kumar Das* [(1970) 1 SCC 709 : AIR 1970 SC 1255] – wherein the only test is compliance with the principles of natural justice – and, of course, compliance with the rules governing the enquiries, if any. In this context, it is well to remember that in India, evidence recovered or discovered as a result of an illegal search is held relevant departing from the law in the United States. We may refer to the following observations of the Judicial Committee of the Privy Council in *Kurma v. R.* [1955 AC 197 : (1955) 1 All ER 236 : (1955) 2 WLR 223] , quoted approvingly by the Constitution Bench of this Court in *Pooran Mal v. Director of Inspection (Investigation)* [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] : (SCC p. 365, para 24)

"The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible is *whether it is relevant* to the matters in issue. If it is, it is admissible *and the Court is not concerned with how it was obtained.*"

11. In this sense, if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement....."

33. There is much authority on the point, which has taken a similar view, but the principle was developed and refined by the

Supreme Court in **Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570**. It would be apposite to notice the facts in **Roop Singh Negi** (*supra*), in the context of which the principle there came to be laid down by their Lordships. This can be done by noticing those facts in the words of their Lordships, as these appear in the report. In **Roop Singh Negi**, the facts read:

"2. The appellant was working as a peon in the respondent Bank. On or about 24-11-1993, a complaint was lodged by the Manager of the Bank alleging that some drafts which were presented for encashment by M/s Anil Trader and some other persons and purported to have been issued from the Mall Road Branch of the Bank had in fact not been issued therefrom.

3. A first information report (for short "FIR") under Sections 380/120-B of the Penal Code, 1860 was registered. The investigation of the said case was assigned to one Shri Janardhan Singh, Senior Inspector. He submitted a report on 11-12-1993, inter alia, opining that the integrity of the appellant who had been transferred to Rampur, Shimla was doubtful. It was concluded:

"In view of the facts stated above we are of the view that both the joint custodian i.e. Shri H.C. Grover, Manager, presently posted at BO Chandni Chowk, Delhi and Shri P.C. Gupta, AM are responsible for the loss of the drawing book since either of the two have remained one of the custodians from 1-6-1993 to 24-8-1993. The loss of drawing book could have been avoided had they taken due care and precaution.

Further, Shri Sharad Narain, Senior Manager is also responsible as he has failed to ensure compliance with laid down instructions in respect of monthly checking of security forms and also for non-submission of MC after 31-5-1993."

In the said report, various procedural lapses on the part of some officers of the Bank were also pointed out.

4. After five years of the said incidence, a disciplinary proceeding was initiated against the appellant stating that during the period 18-11-1991 and 9-10-1993, he had taken away one blank draft issue book bearing Nos. 626401 to 626425. A show-cause notice was issued. Cause was shown by him. He was found guilty by the enquiry officer. In the said proceeding, reliance was placed on the purported confession of the appellant before the police authorities in the year 1993. It was marked as

Exhibit PE-3.

5. Indisputably, the forms and other important books and documents belonging to a bank never remain in the custody of a peon. It was accepted that documentary evidences were collected by the police officers. Those documents were simply produced; they were not proved. The purported confession by the appellant was also not proved. Only because the said confession was made before the police authorities, the enquiry officer inferred on the basis thereof that the appellant had connection with those persons who had used those bank drafts, stating:

"... Therefore, the undersigned is of the opinion that Exhibit PE-4 proves that Shri Roop Singh Negi has connections with the said culprits. On examination of witness MDW 1 on 20-7-1999, he has said that according to the statement of Shri Roop Singh Negi, he has confessed that on the instructions/saying of Rajbir, Devinder alias Mental, Asif and Brahmpal, who are the residents of trans-Yamuna area he had stolen the draft book..."

It was, inter alia, concluded:

"In view of the above details/proceedings it is proved that the delinquent employee has admitted that drafts being No. QWA-626401 to 626425 have been stolen from Branch Office, Mall Road, Delhi Branch vide Page No. 25057 and has caused financial loss to the Bank but he has not admitted that he has stolen the said drafts.

As the main charge on the delinquent employee is of stealing the draft books and other documents, therefore, in such matters direct proof/evidence are not available generally and the conclusion has been arrived at on the basis of assumptions..."

6. Assumption of certain factual foundation was drawn on the basis of the documents supplied by the police as would appear from the following findings of the enquiry officer:

"1. Efforts were made to through lost Draft Book No. 626404 dated 6-9-1993 for Rs 6,90,000 was prepared the fake draft and encashed through OBC, Farukkhabad prepared through PNB Branch, Farukkhabad and again draft drawn on OBC, Delhi and encashed through CBI, Narain Branch.

2. From this Draft No. 626402 dated 24-8-1993 for Rs 5,40,000 made in the name of M/s Ajay Sales and encashed from Farukkhabad Branch.

3. From the pages, Draft No. 626415 dated 27-9-1993 for Rs 7,35,000 and Draft No. 626423 dated 1-10-1995 for Rs 8,65,000 drawn on Branch Saharanpur and encashed on Branch Khalsi Lines, Saharanpur.

4. Arresting of culprits, namely, K.K. Gupta, Rajbir, Ashok Kumar, Ravinder Pal Singh, Kante Gupta and Harvinder alias Billa with the remaining pages of the draft book by Thane Mysori (Ghaziabad) Police.

5. Stealing of draft book bearing Nos. 626401 to 626425 and other documents from Branch Mall Road, Delhi.

6. First draft was issued on 24-8-1993 from the stolen draft book which fact came to the knowledge of Mall Road, Delhi Branch from the Central Bank of India Branch Officer.

7. Before 9-10-1993 Shri Roop Singh Negi was posted in the Mall Road, Delhi Branch.

8. Bank Security Form Department is out of reach of non-bank employees/outsideers."

It was purported to have been found:

"1. Stealing of drawing book and specimen signatures of officers happened before 24-8-1993.

2. The factum of stealing the drafts came to the knowledge on 24-11-1993 while the same was done on 24-8-1993. Draft book has been stolen from Security Form Department in such a manner which fact has come to the knowledge very late. Possibly this draft book has been taken away available at the last serial nos. of the draft books.

3. From the whole embezzlement it is clear that the gang had full knowledge of the banking working or any employee was involved in this embezzlement/fraud.

4. That fraud has been committed so cleverly so that there is no direct proof or evidence available.""

34. In the context of the said fact, it was held in Roop Singh Negi:

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

the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

35. Roop Singh Negi certainly lays down a principle that the confession made to the Police, if relied upon during departmental proceedings, should be proved to the understanding of this Court. Proof of a confession made to the Police or while in police custody, would require proof by a witness, who would testify satisfactorily to the fact that the confession was indeed made by the delinquent and it was voluntary. It would just not be enough, as was the case in **Roop Singh Negi**, that the confession recorded by the Police or by someone else, while the delinquent was in the police custody, is placed before the Inquiry Officer as an idle paper, without being proved by the testimony of a witness, who saw the delinquent make it and the recording thereof. **Roop Singh Negi** was a case, where the confession was made to the Police and not to an officer of the establishment, while the delinquent was in police custody. It was just placed before the Inquiry Officer as a dead piece of papers, not proved by anyone, who had seen the confession being made or recorded. There was also a case by the delinquent in **Roop Singh Negi** that he was forced to sign the confession as he was tortured in the police station. It was in the context of these facts that their Lordships frowned upon the

Inquiry Officer and the Disciplinary Authority, acting on the basis of such an unproved confession by the delinquent while in the custody of the police.

36. In the present case, what is noticeable is that the confession was not made to the Police directly, though it seems that it was also made to the Police, because they have recorded it in their case diary. The confession, that was acted upon here, was on the face of the document made before three officials of the Bank, to wit, Rajeev Awasthi, S.N. Vishwakarma and M.M. Lal. It was signed by the petitioner as also the three officials of the Bank. The confession on behalf of the petitioner was proved during the inquiry by R.K. Awasthi, who said that he recorded it upon dictation given to him. He was thoroughly cross-examined regarding the confession made by the petitioner as also the other conspirators, said to be with him. One of them, Chandra Bhushan Upadhyay did not sign the confession. A question was put to R.K. Awasthi, if he had recorded the statement of the petitioner by copying it from the police record (case diary), which he answered in the negative. In substance, therefore, this is not a case where the confession was made to the Police and that paper was put in evidence before the Inquiry Officer. It is a case where the statement was recorded while the petitioner was in police custody by R.K. Awasthi, an official of the Bank, in presence of two other officials, to wit, S.N. Vishwakarma and M.M. Lal. The said two officials have testified as establishment witnesses at the inquiry and verified the fact of this confession being recorded in their presence.

37. In circumstances, such as these, the rule which would exclude from consideration a statement made to the Police or while in police custody in the departmental proceedings, would

not be attracted. It would be attracted, if it was just a statement recorded in police custody, put in as a document by the establishment, but not proved by anyone. The petitioner has urged a case that the statement was recorded whilst he was in police custody under duress. The principle, as laid down in **Roop Singh Negi**, would still exclude the statement if it were involuntary and the result of duress in police custody. But, once the statement was proved by three witnesses for the establishment, that is to say, three Bank officials, saying that it was recorded in their presence, while the petitioner was in custody of the Police and quite voluntarily, the burden would shift upon the petitioner to prove that it was indeed recorded under duress. The principle in **Roop Singh Negi** would also oblige, in either case the Inquiry Officer as well as the Disciplinary Authority, to record a finding, if they thought that the confession was voluntary and not one recorded under duress. If there is such a satisfaction recorded by the Inquiry Officer and the Disciplinary Authority, would be dealt with shortly.

38. The burden that the statement/ confession was recorded under duress while in police custody, and not voluntarily, has not been discharged by the petitioner. The foremost evidence to offer about the confession being involuntary was a complaint either to the Bank Authorities or to superior officials of the police or some such Authority. There is no complaint by the petitioner about the confession being recorded coercively or under duress, while in police custody, made either to the Bank Authorities or any superior Police Authority or any other State Authority, after the petitioner was bailed out. It was a defence that was taken to the charges at the hearing before the departmental inquiry. Here too, the petitioner did not enter the witness box, though he examined a total of five witnesses.

Amongst them, one of the witnesses, who was the other employee charge-sheeted, has said that the Police beat up the petitioner to extract the confession and it was not a voluntary statement. But, the issue if that testimony of the other witness was sufficient to discharge the burden that the petitioner bore about the fact that the confession was recorded under coercion and duress, is a matter of appreciation of evidence for the Inquiry Officer and the Disciplinary Authority. If the petitioner too had entered the witness box and stated that he had been coerced into confessing by the Police, then too it would be a matter of appreciation of evidence by the Inquiry Officer.

39. Here comes the other question, if the Inquiry Officer and the Disciplinary Authority have considered the question, whether the confession was voluntary or one recorded under duress. The Inquiry Officer in his findings, that have been extracted above regarding Allegation No.1, has clearly held *vide* paragraph No.7 that the statements of the petitioner and the other charge-sheeted employee, if recorded under police pressure or threat on 02.01.1997, do not carry any explanation why the said fact was not brought to the notice of the Disciplinary Authority immediately after it was recorded by Awasthi in the presence of the other Bank officials and well before the inquiry commenced. It is opined that this fact indicates that the argument about the statement carrying the confession being recorded under police pressure, is based on an afterthought. This is appreciation enough by the Inquiry Officer about the statement being voluntary and discarding the petitioner's case about a forced confession. We cannot re-appreciate that evidence.

40. It is no doubt true that the Disciplinary Authority, in passing the impugned order, has not written a detailed order

carrying reasons and has agreed with the findings of the Inquiry Officer, without expressing his own mind. If that were the only order, perhaps it might have required some consideration of the matter, but the petitioner appealed the order by a departmental appeal and the Appellate Authority has recorded relevant findings giving reasons and accepted the findings of the Inquiry Officer on valid grounds. He has also considered the question about the confession attributed to the petitioner being one recorded under duress at the police station or it being a voluntary act. On the point, the Appellate Authority has concluded furnishing sound and valid reasons to the effect that the confession is voluntary. The relevant findings of the Appellate Authority read:

"1. The contention of appellant is not correct, the statement of appellant was taken in the premises of Hapur Police station in presence of three bank officials. During the course of inquiry it was deposed by witnesses that no police officer was present during the course of statement of the appellant. Moreover, the statement of appellant was taken by the Investigating Officer on 02.01.1997 whereas the Charge Sheet was issued upon him on 13.08.1999, during the intervening period no intimation was given by the appellant to the Disciplinary Authority or Higher Authorities of Bank that his statement taken by the Investigating Officer was under duress. The contention of appellant is an after thought.

2. The contention of appellant is an after thought, on perusal of the document produced during the course of enquiry we observe that confessional statement (containing three pages) signed by the appellant, his signature is just below the line of statement ending and clearly shows that the statement was dictated by the appellant and noted by the Investigating Officer independently in presence of two bank officers and got the same authenticated by the person who has given the statement. The documents does not show any sign that the blank signed paper was taken in advance and statement is written thereafter. Further, in support of his contention appellant could not produce extract of copy of police case diary in order to substantiate his claim. However, the management witnesses have deposed that the statement was given by the appellant and at the time of deposition/ confessional statement no police officer was present and this was not given under any duress."

41. There is, thus, no ground for this Court to interfere with the findings of the Inquiry Officer or the conclusions reached by the Disciplinary and the Appellate Authority. The Inquiry Officer has considered the charges under the heads of two other allegations, marked as Allegations Nos.2 and 3. These allegations read:

"Allegation No. 2 : You in connivance with the said Armed Guard and certain outsiders misutilised stolen DD leaf no. 781146 and got it fraudulently drawn for Rs 50,000.00 on Hapur Branch for opening a fictitious account in the name of M/s. Parveen Hide Co., thereby committing fraud. Rs.35,000.00 was withdrawn out of above 50,000.00 from above account fraudulently."

"Allegation No. 3 :

You, in the same manner as alleged at 2 above fraudulently got blank stolen MT leaf no. 0997 drawn on Hapur Branch for Rs 8,50,000.00 for getting it credited to the aforesaid fictitious account of M/s. Parveen Hide Co., thereby attempting to defraud the Bank."

42. Both these allegations have been held proved by the Inquiry Officer more or less on the same evidence as Allegation No.1, except for some further documentary evidence regarding Bank transactions. So far as these allegations go, the challenge before this Court cannot be sustained, because the Inquiry Officer, the Disciplinary Authority and the Appellate Authority have drawn plausible conclusions from the material or evidence on record and there is no perversity about it.

43. The findings on these three sets of allegations, which cover the entire gamut of the four charges, formally framed, have been held proved by the Inquiry Officer, whose findings have, as already said, been accepted by the Disciplinary Authority and the Appellate Authority for good and valid reasons assigned.

44. For all these reasons, we do not find that there is any illegality, much less a manifest one, to occasion an interference

by this Court with the orders impugned in the exercise of our jurisdiction under Article 226 of the Constitution.

45. In the result, this writ petition fails and is hereby **dismissed**.

46. Let the original records be returned to the respondent Bank through Mr. P.K. Sinha, learned Counsel appearing for the Bank **forthwith**.

Order Date :- 17.4.2025
Anoop

(J.J. Munir)
Judge