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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 19th August, 2026***# **CNR No. DLHC012935382016**+ **W.P.(C) 11213/2016****UNION BANK OF INDIA**

.....Petitioner

Through: Mr. Rajat Arora, Mr. Niraj
Kumar & Mr. Sourabh Mahla,
Advs.

versus

MAHIR HUSSAIN

.....Respondent

Through: Ms. Binisa Mohanty, Adv.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The petitioner challenges the Award dated 29.10.2015 (hereafter '**the impugned award**') passed by the learned Presiding Officer, Labour Court, holding the Respondent entitled for reinstatement with immediate effect and payment of salary with consequential benefits.

2. Succinctly stated, the Respondent was working as a Peon at the Gujranwala Town Branch of the Petitioner Bank, and was suspended on 10.08.2009. The Chargesheet dated 01.07.2009 was initially issued to the Petitioner which was withdrawn and, thereafter, another chargesheet dated 21.10.2009 was issued, alleging gross "*misconduct*" on the part of the Respondent.

3. It was alleged that he had introduced two persons for opening of



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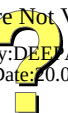
savings bank account and the bank accounts were opened by using fabricated documents. One allegation was also in regard to the stolen demand draft being used by the persons who had opened the bank accounts.

4. Pursuant to issuance of the chargesheet, Departmental Inquiry was held and the Enquiry Officer by the Report dated 26.05.2010 held that the charges against the Respondent are proved.

5. By order dated 27.07.2010, the Disciplinary Authority imposed the punishment of “*Discharge from service*”, against which the appeal is stated to have been preferred by the Respondent on 25.08.2010. While no decision was taken in the appeal and the same remained undecided, the Respondent filed a claim under Section 2A of the Industrial Disputes Act, 1947 regarding the punishment imposed.

6. The learned Tribunal *vide* order dated 31.03.2014, decided the preliminary issue with respect to the validity and fairness of the enquiry proceedings and held that though the Enquiry Officer had considered the material and there was no reason to reach a conclusion that the finding was perverse, the enquiry was tainted on the ground that the appeal filed by the Respondent against the order of punishment was not decided by the Appellate authority.

7. The said Order passed by the Tribunal was challenged before this Court in W.P.(C) 4264/2014. The said petition was, however, dismissed *vide* Order dated 31.10.2014, with observations that the appeal filed by the Respondent ought to have been decided on merits by the appropriate authority. This Order dated 31.10.2014, upholding the Order dated 31.03.2014, has also attained finality as the same was





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admittedly not challenged by the Petitioners.

8. The matter, thereafter, proceeded before the learned Labour Court and it remains undisputed that multiple opportunities were given to the Petitioner to lead additional evidence in support of his allegations.

9. However, the learned Tribunal, thereafter, noting that no evidence has been adduced by the Petitioner, set aside the order of Discharge dated 27.07.2010 and directed reinstatement of the respondent with immediate effect along with payment of salary and consequential benefits.

10. Aggrieved the present petition has been filed.

11. Learned counsel for the Petitioner submits that once the learned Tribunal, by its order dated 31.03.2014 categorically upheld the conclusions reached by the Enquiry Officer, a contrary view ought not to have been taken in the impugned order. He submits that only because the appeal filed by the Respondent against the order of discharge was not decided, this could not have been the ground for setting aside the enquiry and the order of discharge.

12. He submits that the enquiry was validly held and the order of discharge was passed after considering the evidence on record and in the absence of any contrary appreciation of the evidence, the impugned order cannot be sustained.

13. He lastly contends that once the employee has lost confidence, no order of reinstatement can be granted.

14. *Per Contra*, the Learned counsel for the respondent submits that the order dated 31.10.2014 passed by the High Court on an earlier



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round has attained finality and in the absence of any challenge to the same, the Petitioner cannot be allowed to take support of the enquiry proceedings.

15. He submits that the learned Tribunal gave ample opportunities to lead evidence and in the absence of the same, it had no option but to pass an order in favour of the Respondent.

16. Submissions heard and record perused.

17. The record reveals that, the Issue No. 1 with respect to the enquiry conducted against the Respondent being fair and proper, was decided in favour of the Respondent by the learned Tribunal, *vide* Order dated 31.03.2014. It was categorically held therein that though the evidence adduced before the Enquiry Officer was thoroughly considered and findings arrived at cannot be held to be perverse, admittedly the Appeal preferred by the Respondent was never decided on merits and it was merely discarded because the Appeal was not filed by the Respondent within the stipulated period of 45 days. Thus, the Respondent could never avail his statutory right of appeal which was denied to him on mere technicalities. Hence, the enquiry was found to be tainted as the Petitioner failed to follow the principles of Natural Justice.

18. This Order was assailed before this Court in W.P.(C) 4264/2014. The said petition was dismissed *vide* Order dated 31.10.2014 and it was held that the appeal filed by the Respondent ought to have been decided on merits by the appropriate authority.

19. Admittedly, this Order dated 31.10.2014, upholding the Order dated 31.03.2014, has attained finality and has never been challenged



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by the Petitioners. Though this Court is mindful of the fact that the charges against the Respondent are serious, however, judicial propriety demands that once the issue with respect to the fairness of the enquiry proceedings stands settled and decided, this Court ought not to consider any re-agitated arguments on the same issue. It does not lie in the mouth of the Petitioner to raise these issues when they consciously chose not to challenge the above order.

20. Once it was decided that the enquiry stood tainted, the evidence therein could not have been considered. Thus, the Respondents, as per settled law, were required to lead evidence in support of their allegations/ the merits of the case to prove validity of the charges. It stands admitted that no such evidence has been produced despite several opportunities being granted to the Petitioner.

21. Hence, in the peculiar facts of the case, this Court finds no reason to interfere with the approach adopted by the learned Tribunal in setting aside the Order of Punishment issued by the Disciplinary authority.

22. As regards the aspect of relief, it would be apposite to reproduce the charges and allegations against the employee which were held to be proved during the enquiry proceedings. The same read as under: -

i) "Whereas in terms of letter No.PAD:DISC:42:09:1052:2009 dated 10.08.2009, you were placed under suspension. And whereas as per the above letter dated 10.08.2009, you were further informed that the earlier charge sheet bearing No. PAD:DISC:42:09:775:2009 dated 01.07.2009 issued to you stood withdrawn and that a fresh charge sheet would be issued for reasons stated therein. Accordingly, the revised charge sheet is hereby issued for the allegation reported against you as under:



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ii) That on 22.01.2009, one Shri Kapil, whose SB Account No.7112 was introduced by you, approached you, alongwith one person named Shri Jay Chand Malik and requested you to open one SB account in the name of the latter. That you provided the Account Opening form to them and then Shri Kapil, after putting his signature as introducer returned the said Account Opening Form to you and requested to fill up the remaining column. That the party also handed over to you an amount of Rs.200.00 as initial deposit for opening the account alongwith supporting documents like one photograph, photocopies of driving licence, and PAN card in a single sheet of paper and left the branch. That you filled up the, remaining details in the Account Opening Form, affixed the photograph and handed over the set of documents to Shri Suraj Mani officiating clerk for opening the new SB account. That accordingly on 22.01.2009, the SB account bearing No.7471 in the name of Shri Jay Chand Malik with residential address 'A-340, Madipur, New Delhi 110026' and office address 'C-4/194, Shakurpuri, New Delhi 110035' was opened at the branch. That the said account was opened with zero balance, without obtaining initial cash deposit of Rs.500.00 as stipulated for new account. That you had informed Shri Suraj Mani and other connected staff members that as the case was closed for the day, you would deposit cash on the next day. That accordingly, on 23.01.2009, you deposited a sum of Rs.200.00 towards initial cash deposit in respect of the aforesaid SB account. That you affixed the date seal on the Account Opening Form of SB account No.7471 without date, which is also used by you while preparing the slip bundle dated 22.01.2009. that the above circumstances indicate that the SB Account No.7471 was opened at your instance.

iii) That on 24.01.2009, a Demand Draft (DD) bearing No.6904370 dated 17.01.2009 for Rs.1,41,000.00 issued in favour of Jay Chand Mallick' drawn on State Bank of Bikaner and Jaipur, Kolkata, Brabourne Road branch was sent for collection under OCCF No. 17/2009 for credit of SB account :No.7471. That on 05.02.2009, a cheque book containing 10 leaves bearing cheque leaves No.420011 to 420020 was issued in the SB Account No.7471. That though an entry was made to this effect in the cheque book issued Register of the branch by you, the cheque book in question was delivered without obtaining signature of the account holder towards acknowledgement.

iv) That on 06.02.2009, an amount of Rs.5000..00 came to be withdrawn from the aforesaid SB account through cheque leaf No.420011, leaving a balance of Rs.1.36 lakh. That on 09.02.2009,



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Kolkata service Branch informed Delhi Gujranwala Town branch that the purchaser of the aforesaid DD had lodged a complaint with State Bank of Bikaner and Jaipur, Ghantol branch informing loss of the said DD and requested to exercise caution. That the purchaser of the DD also filed a police complaint in this regard. That on the basis of the said information, the aforesaid SB account was freezed by the branch. That, on 10.02.2009 the branch Manager discussed the matter with the officials of the branch and also perused the account Opening Form pertaining to SB Account No.7471, which was in tact alongwith the photograph of the account holder. That on the same day, evening the Branch Manager informed all the staff members of the branch about the DD incident and at that time, he found the Account Opening Form tampered with someone replacing the photograph of the account holder with certain other photograph and also by removing photocopy of the PAC card and driving licence held with the Account Opening Form.

v) That on 14.02.2009, at about 9.00 p.m., you telephonically requested Shri Jai Pal, Officer of the branch to receive on closed cover containing certain documents from one Madan, a tea vendor, whose shop is located close to Delhi Gujranwala Town branch premises. That to collect the cover, when Shri Jai Pal, Officer approached Shri Madan on 15.02.2009, he refused to hand over the same to him. That, however, after getting confirmation from you over telephone, Shri Madan delivered the cover to Shri Jai Pal. That the said cover bears a single sheet of paper containing photocopies of both driving licence and PAN card in the name of Shri Jay Chand Malik. That verification of the said paper disclosed that the photograph, date of birth, PAN number and address as appearing on the said two documents are different from the details on record in the Account Opening Form of SB Account No.7471. that these circumstances go to show your involvement in opening SB account No.7471.

vi) That on verification of records, it came to light that the SB account No.7471 was opened with fictitious address and the account was opened fraudulently. That the proof of address of Shri Kapil, the introducer and furnished to the bank was also fictitious. That the account opening form bear an unidentifiable initial of someone alongwith the seal of the Branch for having permitted the opening of the said account. That the purchaser of the aforesaid DD demanded refund of the amount as the amount was wrongly credited to some other account than that of the payee. That in the circumstances. Bank was compelled to settle the claim of the



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purchaser of the DD by making payment of Rs.1,41,000.00 by incurring a financial loss of Rs.5000.00 in the matter.

vii) that on 09.02.2009, another cheque pertaining to the said SB account No.7471 i.e. cheque no.420012 dated 06.02.2009 for Rs.1,35,500 favouring one Shri 'Suresh Prasad, was presented through clearing by Central Bank of India, Madpur, New Delhi branch. That however the said cheque was returned unpaid, as the operations in the said SB account NO.7471 was freezeed. That it was later revealed that the payee of the said cheque, Shri Suresh Prasad was earlier staying at Madipur and was your neighbor before he shifted to MIE Lines in ;Bahadurgarh. That Shri Suresh Prasad used to take your help in conducting his bank transactions with Central Bank of India, Madipur branch. That you were knowing Shri Suresh Prasad's Bank account number, with Central Bank of India, Madipur branch. That sometimes back you telephoned Shri Suresh Prasad and informed him that you will be depositing a cheque in the name of Suresh Prasad in his account with Central Bank of India and that once the amount is collected, the same should be paid back to him. That you told Shri Suresh Prasad that obtaining the cheque in your name would result in lot of hue and cry and hence such an arrangement was resorted to. That about a week thereafter, you again telephoned Shri Suresh Prasad and advised him not to go to the bank as some one had deposited a stolen cheque in his account and that police would arrest him. That you also requested Shri Suresh Prasad not to reveal to anybody that he know you and said to him that you would sort out the issue. That later when Shri Suresh Prasad wanted to do his banking transactions and hence contacted you, you gave him copies of three letters addressed to Corporation Bank, Gujranwala Town branch by Zonal Office, Delhi and Anti Frauds Section, HO and told him that he could go to his bank and withdraw money as his name was not figuring in any of those letters. That however when Shri Suresh Prasad went to Central Bank of India, Madipur branch, he came to know that operation in his bank account was freezeed. That the Branch Manager of Central Bank of India also informed Shri Suresh Prasad to meet Manager of Corporation Bank, Gujranwala Town branch. That on 22.07.2009 Shri Suresh Prasad met the Branch Manager of Corporation Bank, Gujrawalan Town branch. That the above circumstances showed your intention to defraud the bank. That Corporation Bank, Gujranwala Town branch had not received the above referred three letters, but you provided copies of the said letters to Shri Suresh Prasad which showed that you intercepted them and deliberately, removed the above letters with a view to



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keep the branch in the dark on eh directions made in the matter.

viii) That by your aforesaid acts and omissions, you facilitated opening of a fictitious SB account No.7471 , fraudulent collection of the Demand Drat for Rs.1.41 lakh, and fraudulent withdrawal of Rs..5000.00 and dishonestly caused a financial loss of of Rs.5000.00 to the bank. That further, you also resorted to manipulation of bank records by clandestinely removing the photograph and photocopies of driving licence and PAN card from the account opening form and attempted to replace the same with certain other documents as stated earlier so as to prevent the identity of the impersonator. That you also attempted to fraudulently encash Rs. 1,35,500.00 from SB account No.7417 by arranging to present cheque no.420012 in clearing through Central Bank of India, Madipur branch for the credit of SB account of Shri Suresh Prasad. That you intercepted the above referred three letters addressed to the branch with a view to keep the branch in the dark. That you also made available copies of such correspondence to Shri Suresh Prasad, resulting in unauthorized disclosure of information regarding affairs of the bank.

ix) That your aforesaid acts and omissions are serious in nature and if proved, would be grossly detrimental to the interest of the bank and tantamount to:

- (a) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential o*
- (b) willful damage or attempt to cause damage to the property of the bank or any of its customers;*
- (c) doing any act prejudicial to the interest of the bank*

gross misconduct under clauses 5(b), 5(d) and 5(j) respectively of the Memorandum of Settlement on Disciplinary Procedure dated 10.04.2002 applicable to you."

23. Since the findings with respect to such serious charges of financial fraud were not held to be perverse and arrived at on the basis of the evidence led before the competent authority, this court finds merit in the argument raised by the Petitioner that once confidence in the employee has been lost by the department, no relief of



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reinstatement ought to have been granted. Thus, in lieu of the totality of circumstances, and the need to bring finality to a dispute which has remained alive for almost 2 decades, this Court deems it just and proper to modify the relief awarded and grant a lump-compensation of Rs. 4,00,000/-, to be paid by the Petitioner to the Respondent, within 4 weeks from date, towards full and final settlement of all the claims arising out of the Award.

24. Accordingly, the impugned award is modified and the petition along with pending application(s), if any, is disposed of.

AMIT MAHAJAN, J

AUGUST 19, 2026
“SS”

