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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1973 OF 2013.

Milind Madhusudan Dharmadhikari Petitioner.
V/s.

The General Manager (PBG)
& Competent Authority
IDBI Bank Ltd and Ors Respondents.

Mr Dushyant S. Pagare for the Petitioner.

Mr Vishal Talsania i/by Ms Kanchan Pamnani for Respondent Nos. 1 to 3.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : 11th January, 2017.

P.C. :

1) The Petitioner's Advocate was absent on the earlier occasion. Since this is a old writ petition on our file and yet not admitted, we did not dismiss it for want of prosecution on the earlier date. We posted it under the caption "For Dismissal".

2) However, the Petitioner's Advocate apologizes for his absence on the earlier occasion. He agrees that the matter can be heard for admission

today.

3) We have with the assistance of the Petitioner's Advocate perused the entire affidavit and the annexures thereto including the impugned order.

4) There are concurrent findings rendered with regard to the misconduct committed during the course of the service by the Petitioner. The punishment of compulsory retirement has been awarded but by protecting the pension and terminal benefits. The argument is that the findings in the Enquiry Report and confirmed by the Competent Authority in the order of dismissal are based on a footage derived from the close circuit TV which is hardly a piece of evidence. The events and happenings, which are witnessed by later on viewing such a footage, cannot be a substantive piece of evidence. There is no corroboration of the allegations that the petitioner abused the official position and took out Rs.5,000/- which was deposited in excess by the customer Shri Jay Prakash Yadav. Secondly, it is submitted that the Competent Authority as also the Appellate Authority failed to note that the Petitioner did not have any opportunity to controvert the allegations inasmuch as the complainant himself has changed his version. That was not consistent. It is in these

circumstances that it is submitted that this Court should interfere with the concurrent orders.

5) We are unable to agree with the Petitioner's Counsel for more than one reason. There were about ten hearings conducted by the Enquiry Officer. The Petitioner participated in the enquiry. The Petitioner not only cross-examined the complainant and other witnesses but also adduced evidence in support of his defence. The charge of misconduct is based on lack of integrity, devotion and diligence. It was the allegation that a depositor who had account with the Bank came to deposit money in currency notes. The cash details were entered on the pay-in-slip. However, the complainant handed over more currency notes than the cash amount sought to be deposited. The excess amount ought to have been returned to the complainant for it was clear from the pay-in-slip that he did not deposit Rs.15,000/- but 10,000/-. Therefore retaining Rs. 5,000/- with himself is a gross misconduct and which brings the Bank in disrepute. It is on such charges that the petitioner was proceeded against. His defence was that the complainant left the counter and the notes were counted and recounted by the Petitioner. The CCTV footage does not show that they were recounted as claimed by the Petitioner. Thus, the CCTV footage was

unclear. The Bank should have called an explanation from the Service Provider (the CCTV Operator). The next argument was that the Management witnesses have confirmed that cash tallied with the system on 5th January, 2011. There was no financial loss or damage to the Bank.

6) Upon above allegations and the defence as noted, the Enquiry Officer and the Competent Authority agreeing with him found that he repeatedly counted the notes and kept the same notes on the table top and again recounted them. Thereafter, those excess notes ought to have been returned but were not returned. The retention of such excess money by the Petitioner was found to be an act subversive to discipline. That clearly pointed towards lack of integrity. It is in these circumstances that the Competent Authority while holding the Petitioner guilty has also taken into consideration his long service of 27 years, the punishment of Compulsory Retirement without depriving him pension and terminal benefits, is awarded by taking a over all view. It is these findings of the Competent Authority which are confirmed in the appeal. We do not think that in writ jurisdiction we can re-appraise this material. From the detailed orders passed by both these Authorities, we are of the opinion that they have applied their mind to the relevant and germane factors. They

have not ignored any additional vital evidence. The appreciation and appraisal of the materials placed on record is consistent with the settled legal principles. In Departmental/Disciplinary Enquiries the degree of proof is not as strict as in criminal proceedings. If the test is of preponderance of probability and not proof beyond reasonable doubt, then, the appreciation and appraisal of the evidence on record cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. Even the award of penalty / punishment is consistent with the settled principles. In such circumstances, the writ petition has no merit. It is dismissed.

[B.P. COLABAWALLA, J.]

[S.C. DHARMADHIKARI, J.]