

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17495 of 2011

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Raj Kishore Prasad, Late Mahadeo Sah, resident of R.M.S. Colony, Urdu Bazar, Bhagalpur, Dist. Bhagalpur.

... .. Petitioner/s

Versus

1. The General Manager, Central Bank of India, Patna Zone, Zonal Office, 2nd Floor, Maurya Lok, Patna-1
2. The Assistant General Manager- Cum- the Appellate Authority, Central Bank of India, Patna Zone, Zonal Office, 2nd Floor, Maurya Lok, Patna-1.
3. The Regional Manager-cum-Disciplinary Authority, Central Bank of India, Regional Office, Gaya.
4. The Branch Manager, Central Bank Of India, Khagaul Branch, Dist. Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prakash Chandra, Advocate
For the Respondent/s : Mr. Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 15-04-2019

Heard learned counsel for the petitioner and learned counsel for the respondents.

In this case, the petitioner is challenging the final order of the Disciplinary Authority dated 04.02.2008 by which the petitioner has been dismissed from service in terms of Clause 6 (A) of Memorandum of Settlement dated 10.04.2002 (Annexure-12). Against that order, the petitioner filed an appeal before the Assistant General Manager-cum-Appellate Authority, who, after giving the personal hearing, has dismissed the appeal of the petitioner by speaking order vide order dated 24.04.2010 (Annexure-15).



The petitioner, at the relevant time, was posted as Head Cashier in the Khagaur Branch of Central Bank of India in the district of Lakhisarai. The Branch Manager of the said branch lodged an FIR making allegation that on 22.06.2006, in a mysterious manner, some employees of the Bank had stolen Rs. 5,10,000/-. It has been alleged that on 21.06.2006, Thursday, R. K. Prasad, Head Cashier and Narendra Kumar, Special Assistant, under the joint signature closed the vault of Bank. On 22.06.2006, Devendra Singh, Deputy Manager, who was on leave joined the Branch, Narendra Kumar, temporary in-charge of the key, handed over the same to the Devendra Singh, before opening the vault. R. K. Prasad requested Devendra Singh for joint operation, in turn, Devendra Singh requested to open the vault by petitioner as he was not feeling well, handed over the second key and conduct the business of the Bank, accordingly, the present petitioner opened the vault, took out the money, when he was in the currency counter, Rs. 10,000/- was misplaced, when no clue was found, the main Head Cashier left the Branch saying that he would be coming back within half an hour, when he returned and vault was opened, there was deficit of Rs. 5,00,000/-, in total Rs. 5,10,000/- has been dislocated, showing apprehension that some employees of the Bank in



mysterious manner have taken out money, he reported the matter to the Regional Office and the Regional Officer was sent to submit detailed report about the incident, he gave correct story in detail having found that along with the petitioner other person were also found involved in dislocation of the money, whereupon, on the basis of the vigilance report, the Regional Manager vide Memo dated 24.06.2006 placed the petitioner under suspension with immediate effect, would be entitled to subsistence allowance and vide letter dated 17.08.2006 (Annexure 5) the petitioner was called upon to show cause as to why disciplinary action should not be initiated against him and reply should reach to the Regional Office within 7 days, he responded and gave explanation that he was nowhere involved in dislocation of Rs. 5,10,000/-, but the Disciplinary Authority was not satisfied, a charge sheet was served upon him in which allegation has been made as follows:

“A theft of sum of Rs. 5,10,000/- was committed in the branch on 22.06.2006 while Shri R K Prasad was the Head Cashier of the branch.

On 22.06.2006 at the time of the start of the business Shri R K Prasad single handedly opened the cash vault and brought out cash to carry out the day's business. One set of keys of the vault was always with him and the theft was committed, when he was in possession of the cash keys and was also dealing with the depts.



It is evident from the above facts that the sum of Rs. 5,10,000/- was stolen in connivance with Shri Raj Kishore Prasad.

The above act of Shri Prasad is a gross misconduct under provisions made out in clause 5 (j) of Disciplinary Action Procedure (DAP) dated 27th May 2002 which is applicable on Shri Prasad.”

The petitioner filed his written defence and participated in the inquiry, the Inquiry Officer has submitted its report and found that the charges were proved against the petitioner of dereliction of duty and, on that account, the Bank incurred the loss of Rs. 5,10,000/-. The inquiry report was served upon the petitioner called upon him to file his objection, if any, to the inquiry report, the petitioner filed his objection, which was dealt with by the Disciplinary Authority and after discussion of entire material has found the charges proved against him and communicated the same vide letter dated 31.12.2007 (Annexure 11). In the said letter, the petitioner was called upon to show cause on the question of punishment, which the petitioner filed, after consideration of the material available on record passed the order of dismissal, that too has been affirmed by the Appellate Authority.

Learned counsel for the petitioner submits that there is no allegation that the petitioner has misappropriated the money of the Bank, but the allegation has been made of negligence in



discharging the official duty and on that account the Bank has suffered loss of Rs. 5,10,000/-. The petitioner was occupying the post of trust that of Head Cashier and always for opening the vault, the Bank maintains two keys, one remains with the hand of Head Cashier and another remains with the Branch Head and the vault will be opened when both the key were put to the lock and vault can be operated by the joint key, one of the key will be of no held to operate the vault. The defence of the petitioner, it appears that Rs. 10,000/- was missing from his counter, which he has tried to locate, three to four persons came to his counter, but could not trace out any material connecting with the disappearance of Rs. 10,000/-, whereafter counsel for the petitioner submits that he left the Branch and in his absence Devendra Singh opened the vault with assistance of 3-4 persons, money in the vault was counted, found missing of Rs. 5,00,000/-. He said that in his absence, Devendra Singh and others should not have opened the vault and, on that account, loss has been caused to the Bank.

Learned counsel for the Bank submits that there is no dispute that the petitioner was Head Cashier, it was his solemn duty to keep the cash of the Bank in his safe custody as he was one of the person operating the vault, without using the key of



the petitioner, vault could not be reopened, even presuming the statement of the petitioner that he had handed over the key to Branch Head and, in his absence, the vault was opened, in no circumstance, the petitioner should have shared the key with any person, so it is a case of serious dereliction of duty and, on that account, the Bank has suffered loss of Rs. 5,10,000/-.

Having considered the rival contention of the parties, in the judicial review, this Court would not act as a Court of Appeal and will not re-appreciate the materials which have already been examined by the Disciplinary Authority or the Appellate Authority. Only the Court can interfere when the findings are perverse and material which were to be taken into consideration has been left out, or the enquiry officer has taken into consideration the material fact which were not required to be taken, finding recorded by the enquiry officer is perverse, in sense there is no material connected to prove the alleged misconduct committed by the delinquent officer. In judicial review, the higher Court has to ensure the compliance of natural justice, there should not be any extraneous consideration, extraneous material is not be taken into consideration for arriving to a finding that the authority may not be influenced by irrelevant and extraneous consideration, the conclusion must be based on



the material available on record and not to be exercised as arbitrary and capricious manner, such finding should be recorded that no reasonable persons could even have arrived at such a conclusion. The Disciplinary Authority should not admit the inadmissible evidence which may influence the finding, inasmuch as the finding should not be based upon no evidence. It has further been said that the Court should not re-appreciate the evidence and may not see the adequacy and reliability of the evidence available on record, if some legal evidences are there, which is the basis for arriving to such finding, the Court would not interfere in the matter unless the finding is suffered from grave error of fact, the Court in the matter of punishment can only interfere with the order of punishment when shocks its conscience. This principle has been formulated in number of cases, it will be relevant to place reliance upon the latest judgments reported in *AIR 1996 SC 484 (B.C. Chaturvedi Vs. Union of India and Ors.)*, (2015) 2 SCC 610 (*Union of India & Ors. Vs. P. Gunasekaran*), (2017) 4 SCC 507 (*Central Industrial Security Force and Ors. Vs. Abrar Ali*), 2019 SCC Online SC 383 (*S. Sreesanth Vs. Board of Control For Cricket in Indian and Ors*) and (2015) 2 SCC 610 (*Union of India & Ors.*



Vs. P. Gunasekaran). It will be relevant to quote paragraphs 26 to 35 of the judgment reported in *S. Sreesanth case (supra)*.

“26. Both the issues being inter-related, are taken together.

27. In the show-cause notice the charge which was levelled on the appellant of spot fixing and other allegations have been noticed. The allegations made against the appellant as contained in paragraph 8 has already been extracted above. In the substance, the allegation was that in the match played on 09.05.2013 between Rajasthan Royals and Kings XI Punjab at Mohali in exchange of sum of Rs. 10 lakh, the appellant agreed to concede 14 or more runs in the second over of bowling spell and in order to confirm the fix, appellant was required to place a hand towel in his visible pocket while ensuring there was no such towel during the first over. In support of this, audio conversation between Jiju Janardhan and Chandresh Patel was referred to in the Preliminary and Supplementary Reports. It is on the basis of the conversations between Jiju Janardhan and Sreesanth dated 06.05.2013 at 1740 hrs. and 2032 hrs., the allegation of charge of receipt of Rs. 10 lakh was sought to be proved. The conversation between Sreesanth and Jiju which took place on 06.05.2013 where Jiju on telephone informed that Rs. 10 lakh was available out of which Rs. 7 lakh will be given to the appellant, has not been satisfactorily explained by the appellant before the disciplinary committee. The disciplinary committee in its order has relied on the telephone



conversation between Jiju Janardhan and Sreesanth dated 06.05.2013. It was also noted that Delhi Police along with the charges had given copy of the transcripts to the appellant. In paragraph 12 of the order the disciplinary committee has come to the following conclusion:

“12. Even if Sreesanth wants to distance himself from the said audio recording which he was not privy, there is a cross reference to this conversation on record at 17.40 hours on 6.5.2013 between Jiju Janardhan and Sreesanth. In the said conversation, Jiju Janardhan admits being in possession of Sreesanth's money Jiju Janardhan is head referring to receipt of Rs. 10 Lacs of which he would give 7 lacs to Sreesanth and retain 3 lacs for himself. Jiju Janardhan further proposes to use some money of Sreesanth for purchase of mobile phones. The circumstantial evidence clearly indicates that this Rs. 10 Lacs is part of the amount deposited with Jiju Janardhan for influencing Sreesanth for underperforming in the second over of the match.”

28. The explanation given by the appellant with regard to Rs. 10 lakh laying with Jiju Janardhan was found to be vague and was not acceptable. The disciplinary committee on the basis of the evidence available before it was entitled to draw its own conclusion.

29. The disciplinary committee, under the relevant Anti-Corruption Code, is primarily entrusted with the duty, after considering the reply



of show-cause notice and hearing the appellant was entitled to give a decision on various allegations made against the appellant.

30. The disciplinary inquiry conducted by disciplinary committee of BCCI is akin to disciplinary inquiry conducted against a public servant under the relevant statutory rules except few distinctions which we shall notice later. This Court has time and again considered the scope of judicial review in reference to departmental inquiry conducted against the public servant. This Court in State of Andhra Pradesh v. Chitra Venkata Rao, (1975) 2 SCC 557, had laid down the parameters of judicial review. In paragraph 21 following has been laid down:

“21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public



servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.”



31. This Court further held that jurisdiction of the High Court under Article 226 is a supervisory jurisdiction and the High Court does not exercise a jurisdiction of an appellate court. The findings of the fact reached by a tribunal as result of the appreciation of the evidence cannot be questioned in the writ proceedings. In paragraph 23 of the judgment following has been laid down:

“23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the



inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan.”

32. This Court again in Union of India v. P. Gunasekaran, (2015) 2 SCC 610, reiterated the same principles regarding judicial review of disciplinary proceedings. In paragraphs 12 and 13 following has been laid down:

“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.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v.) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;



(vii) go into the proportionality of punishment unless it shocks its conscience.”

33. To the same effect is the decision of this Court reported in Central Industrial Security Force v. Abrar Ali, (2017) 4 SCC 507. In paragraphs 13 and 14 following has been laid down:

“13. Contrary to findings of the disciplinary authority, the High Court accepted the version of the respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the disciplinary authority that the unit had better medical facilities which could have been availed by the respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to reappreciation of evidence. It is settled law that reappreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.

14. In State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, this Court held as follows: (SCC p. 587, para 7)

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence



or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India, Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature at Bombay v. Shashikant S. Patil.)””

34. There being specific allegations made against the appellant in the show-cause notice as noticed above it was incumbent on the appellant to have explained the evidence and circumstances which were sought to be relied against the appellant. In the disciplinary proceedings a delinquent has to explain circumstances and evidence relied against him. It is true that the charges have to be proved by the BCCI for taking any action under the Anti-Corruption Code. The disciplinary committee of the BCCI had jurisdiction to form its own opinion after considering the evidence on record including the telephone conversation between Sreesanth and Jiju



Janardhan and other evidence on the record. The conclusion drawn by the disciplinary committee on the basis of the material which is recorded in paragraphs 12 and 13 as noted above cannot be said to be suffering from any infirmity which may warrant judicial review by the constitutional courts. The learned Single Judge held that “If the evidence as a whole is appreciated, it can easily be concluded that Sreesanth had no direct link in spot fixing or betting”. Further, learned Single Judge held that “Assuming that Sreesanth had knowledge of such betting, this Court is of the view that the punishment already suffered by him of 4 years of the ban from all format of the cricket, nationally and internationally, is sufficient to meet ends of justice”. As noted above constitutional court in exercise of jurisdiction of judicial review of disciplinary proceedings conducted under the Code of Conduct framed by the BCCI will interfere only when conclusions of the disciplinary committee are perverse or based on no evidence. On appreciation of evidence, it is not open for the High Court or this Court to substitute its own opinion based on the appreciation of material on record on the charges proved.

35. We, thus, are of the opinion that for the decision of the disciplinary committee holding charges under Articles 2.1.1., 2.1.2, 2.1.3 and 2.2.3 and Article 2.4.1. and 2.4.2 proved, there are no grounds for this Court to take a different view. Issue Nos. 2 and 3 are answered accordingly”.



In view of the proposition as laid down by Hon'ble the Supreme Court as stated here-in-above, it is very difficult for this Court to re-appreciate the manner, the petitioner is submitting as this Court cannot re-appreciate the evidence, which were already considered by the Disciplinary Authority as well as Appellate Authority and recorded a finding against him. The petitioner was holding the post of trust that too of the Head Cashier, it was his primary and sacred duty to protect the interest and money of the Bank. The serious lapses has taken place on account of his action or inaction whereby the Bank has suffered the loss of Rs. 5,10,000/-.

In such view of the matter, this Court does not find any merit in the present writ application and, accordingly, the same is dismissed.

(Shivaji Pandey, J)

V.K.Pandey/
S. Katyayan/-

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