



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) Nos.2782 and 2783 of 2011

S.Karupiah

... Petitioner in both W.Ps.

Vs.

1.The Chairman and Managing Director,
Indian Bank, Head Office,
No.66, Rajaji Salai,
Chennai - 600 001.

2.The General Manager/Reviewing Authority,
Head Office,
Indian Bank,
No.66, Rajaji Salai,
Chennai - 600 001.

3.The Deputy General Manager/
Appellate Authority,
Vigilance Department,
Head Office,
Indian Bank,
No.66, Rajaji Salai,
Chennai - 600 001.

4.The Assistant General Manager/
Disciplinary Authority,
Circle Office, Indian Bank,
Trichy - 01, Trichy District. ... Respondents in both W.Ps.

5.The Chief Manager (HRM),
Indian Bank, Head Office,
HRM Department - Settlement Section,
No.66, Rajaji Salai,
Chennai - 600 001. ... 5th Respondent in
W.P.(MD)No.2782 of 2011

Prayer in W.P.(MD)No.2782 of 2011 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in HO/HRM/SETT dated 18.11.2010 on the file of the respondent No.5 and quash the same as illegal and consequently to direct the respondents No.1-5 to provide all service benefits namely the Provident Fund under the Bank's Contribution, Gratuity Amount, Privilege Leave Encashment, Encashment of Half Pay Sick Leave and other monetary benefits to the petitioner within a time stipulated by this Court.



Prayer in W.P. (MD)No.2783 of 2011 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in TCO: DP:O:20:204:2008-09 dated 11.11.2008 on the file of the respondent No.4 and subsequent order of the appellate authority in Ref:Co/VIG/APP/3071/TRY/2009-10 dated 30.10.2009 on the file of the Respondent No.3 and the order of the Reviewing Authority in 170/REV:TRY:VG:2010-11 dated 12.08.2010 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the respondents No.1-4 to provide all the consequential service benefits and other costs and charges to the petitioner.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.Jayesh Dolia, Senior Counsel,
For M/s.Aiyar & Dolia for RR-2, 3 & 5
No appearance for RR-1 and R4.

COMMON ORDER

Both the Writ Petitions have been filed by the very same petitioner and the issue involved in both the petitions being interconnected, they are disposed of by this common order.

2.The case of the petitioner is that he was appointed as Clerk in the respondent Indian Bank at Pudukkottai in the year 1975. The petitioner was promoted as Assistant Manager and then to the post of Manager. Between 18.04.2001 and 16.06.2005, the petitioner was working as Branch Manager at Woraiyur Branch, Trichy, whereinafter, the petitioner was transferred to Rock Fort Branch, Trichy. Thereafter, the petitioner was working as Senior Manager on deputation from August 2006.

3.While so, the petitioner received a show cause notice dated 05.05.2007 from the fourth respondent stating that he had committed certain procedural lapses in pre-sanction appraisal and post-sanction follow-up relating to 67 Home Loan Accounts sanctioned by him. The petitioner gave his reply dated 28.05.2007. Thereupon, the fourth respondent issued another show cause notice dated 18.08.2007 calling upon the petitioner to submit his reply for the same charge on the ground that salary certificates of the borrowers were bogus. The petitioner submitted a detailed explanation for the same to the fourth respondent stating that he had sanctioned home loans to the salaried class employees/the captioned borrowers on the production of their original salary certificates. In the meanwhile, he was suspended from service on 04.02.2008 in terms of Regulation 12(1) of Indian Bank Officer Employees' (Discipline and Appeal) (Amendment) Regulations, 1985. Four charges were levelled against

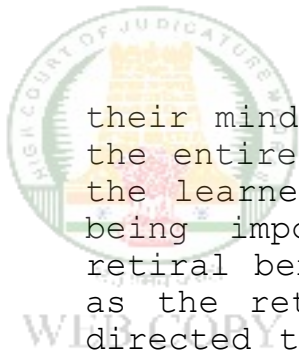


the petitioner. He denied all the allegations made against him vide explanation letter dated 28.02.2008. Thereafter, the fourth and fifth respondents were appointed as Inquiry Officer and Presenting Officer.

4.The inquiry officer conducted enquiry and submitted his report on 11.08.2008 holding all the charges proved. Subsequent to the submission of the enquiry report, another show cause notice dated 09.09.2008 was issued to the petitioner calling upon him to give his reply to the findings recorded in the enquiry proceedings to which the petitioner submitted his explanation dated 27.09.2008. The fourth respondent, being not satisfied with the said explanation, vide order dated 11.11.2008, passed the order of compulsory retirement on the petitioner. Aggrieved by the said order, the petitioner preferred an appeal before the third respondent, which was dismissed and the review before the second respondent was also rejected and challenging the same, the writ petitioner filed W.P.(MD)No.2783 of 2011.

5.Pursuant to the order of compulsory retirement, the petitioner made representation dated 30.07.2020 for disbursement of the retirement benefits viz., the Provident Fund under the Bank's Contribution, Gratuity Amount, Privilege Leave Encashment, Encashment of Half Pay Sick Leave and other monetary benefits, which were withheld by the respondents.. The same was denied by the respondents by way of the impugned order dated 18.11.2010, which is under challenge in W.P.(MD)No.2782 of 2011.

6.The learned counsel appearing for the petitioner submits that the sum and substance of the four charges relate to improper pre-sanction appraisal; entertaining middle-men; failure to receive adequate security for the property; not making thorough independent verification relating to the value of the property; accepting valuation of the properties facilitating borrowers to encash the loan amount and failure to ensure verification of completion of the stage of the construction of plot before disbursal of the entire amount. It is the submission of the learned counsel that the records in lieu thereof have not been looked in proper perspective by the inquiry officer, though the petitioner has followed all the guidelines, which were alleged to have been violated. It is the further submission of the learned counsel for the petitioner that maximum of the loan amount was recovered during the tenure of the petitioner. It is the further submission of the learned counsel for the petitioner that the other officers, who were equally liable in the approval process relating to the loans were not proceeded with and the petitioner alone was proceeded with imposed with major punishment of compulsory retirement, which has been 90 days prior to the date of superannuation. The third respondent without considering the contentions raised in the appeal, mechanically rejected the appeal and the review petition has also been disposed of in a mechanical manner and the said authorities have not applied

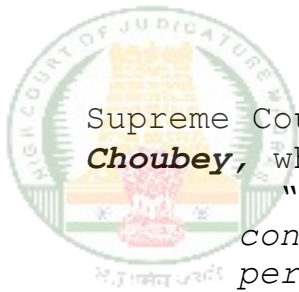


their minds to the materials available before them and, therefore, the entire order stands vitiated. It is the further submission of the learned counsel for the petitioner that the petitioner, though being imposed with a punishment of compulsory retirement, his retiral benefits have not been paid to him, which is impermissible, as the retiral benefits are not a bounty and the same should be directed to be paid to the petitioner. Accordingly, he prays for allowing the petitions.

7. Learned counsel appearing for the petitioner, in support of his plea that gratuity and other retiral benefits ought to be paid to the delinquent on the conclusion of the disciplinary proceedings, relied on the decision in **Union Bank of India v. C.G.Ajay Babu ((2018) 9 SCC 529)**, wherein it has been held as under :-

"Under sub-Section (6)(a), also the gratuity can be forfeited to only to the extent of damage or loss caused to the Bank. In case, the termination of the employee is for any act or wilful omission or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the gratuity by way of forfeiture. Whereas under sub-Clause (b) of sub-Section (6), the forfeiture of gratuity, either wholly or partially, is permissible under two situations (i) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment. Thus, sub-Clause (a) and sub-Clause (b) of sub-Section (6) of Section 4 of the Act operate in different fields and in different circumstances. Under sub-Clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under sub-Clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Sub-Clause (b) operates either when the termination is on account of- (i) riotous or (ii) disorderly or (iii) any other act of violence on the part of the employee, and under Sub-Clause (ii) of sub-Section (6)(b) when the termination is on account any act which constitutes an offence involving moral turpitude committed during the course of employment."

<https://hcservices.courts.gov.in/hcservices/> was also placed on the decision of the Hon'ble



Supreme Court in **Chairman Cum Managing Director Vs. Sri Rabindranath Choubey**, wherein it is held as under:-

"The first question which is posed for the consideration of this Court is, whether is it permissible in law for the appellant employer to withhold the payment of amount of gratuity payable to the respondent employee, even after his superannuation from service, because of the pendency of the disciplinary proceedings against him? The second question which is posed for the consideration of this Court is, where departmental enquiry had been instituted against an employee while he was in service and continued after he attained the age of superannuation, whether the punishment of dismissal can be imposed on being found guilty of misconduct in view of the provisions made in Rule 34.2 of the CDA Rules?

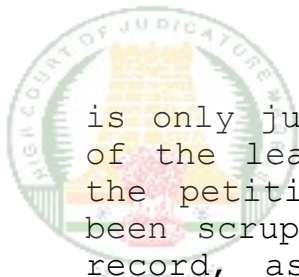
In view of the above and for the reasons stated above and in view of the decision of three Judge Bench of this Court in Ram Lal Bhaskar (supra) and our conclusions as above, it is observed and held that (1) the appellant employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings, and (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service.

To sum up, my conclusion to the question is as under:?

Que. 1?Whether it is permissible in law for the employer to withhold the payment of gratuity even after the employee has attained his superannuation from service because of the pendency of disciplinary proceedings against him?

Ans. I am in agreement with the view expressed by brother Justice Shah that in view of Rule 34.3 of the Rules, 1978, the employer has a right to withhold gratuity during pendency of the disciplinary proceedings."

9. Per contra, learned senior counsel appearing for the respondent bank submits that the charges have not been disputed by the petitioner and what is sought to be projected by the petitioner



is only justifications for his acts. It is the further submission of the learned senior counsel for the respondent bank that though the petitioner has justified that the procedures prescribed have been scrupulously followed, however, it has not been borne out by record, as is revealed in the findings recorded by the enquiry officer, who has held the charges proved. It is the further submission of the learned senior counsel that the petitioner has not raised any grievance with regard to the conduct of the enquiry and appreciation of evidence in the case of departmental proceedings is within the domain of the disciplinary authority on the basis of the findings recorded by the enquiry officer and so long as there is no violation of principles of natural justice, the disciplinary proceedings being proceeded on the touchstone of preponderance of probabilities, the Court, in exercise of its inherent power under Article 226 of the Constitution shall not interfere with the order passed by the disciplinary authority. Further, it is submitted by the learned senior counsel that the records also reveal independent application of mind by the appellate and reviewing authorities and such being the case, this Court shall not interfere with the order and equally so long as the punishment imposed is not disproportionate and shocking the conscience of this Court, the Court shall not interfere with the punishment and, accordingly, prays for dismissal of the petitions.

10. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and perused the materials placed before this Court.

11. The Hon'ble Supreme Court, in ***B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749)***, while dealing with issue relating to the power of the Court relating to judicial review of the order passed by the disciplinary authority, held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact



or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(Emphasis Supplied)

12. The above view has been reiterated by the Hon'ble Supreme Court in **Principal Secy. Govt. of A.P. v. M. Adinarayana, (2004 (12) SCC 579)**, wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior



information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

13. In a recent decision in **Director General of Police, RPF & Ors. - Vs - Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)**, the Hon'ble Supreme Court, advertent to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in Chaturvedi's case (supra), held as under :-

"12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence.

The High Court may, however interfere where the



departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed 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. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the 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 writ petition.

These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the 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.

In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha**, these principles have been consistently followed.

In a recent judgment delivered by this Court in the



State of Rajasthan & Ors. v. Heem Singh this Court has summed up the law in following words :

"33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy - deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether



the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether :

- (a) the enquiry is held by the 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 which are 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.

In paragraph 13 of the judgment, the Court held that :

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

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in the 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."

(Emphasis Supplied)

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14. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

15. In the case on hand, it is not the case of the petitioner that he has not been provided with adequate opportunity to represent his case and that there was violation of principles of natural justice in the conduct of enquiry. However, it is the case of the petitioner that the authorities have not taken into consideration his explanation in proper perspective and that the documents have not been appreciated in proper perspective, though the petitioner has followed all the guidelines and has adhered to the provisions relating to disbursement of loans, which shows non-application of mind on the part of the authorities, which makes the impugned orders liable for interference.

16. It is to be pointed out that the standard of proof required in a departmental proceedings is not in the same league as the standard of proof required to establish a charge in a criminal case. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. While the standard of proof in a criminal trial would be on the basis of the provisions of the Evidence Act and other statutes, however, in the departmental proceedings, it is only on the touchstone of preponderance of probabilities, the evidence is evaluated and, therefore, it is impermissible to equate the way in which the evidence ought to be evaluated.

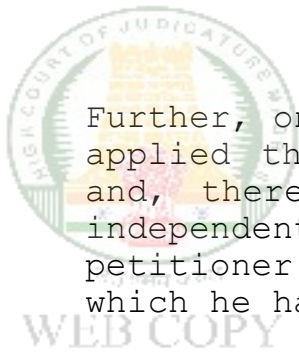
17. The Hon'ble Supreme Court, in *Rajendra Kumar Dubey's case* (*supra*), following the ratio laid down in *Gunasekaran's case* has held that the High Court, sitting under Article 226 of the Constitution, while determining its scope of interference in a departmental proceedings is only bound to determine whether (a) *the enquiry is held by the 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 which are 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.

18. It is to be stressed that the Court in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceedings is not in the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the 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 writ petition. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

19. In the above backdrop, a careful perusal of the records reveal that the enquiry officer has taken into consideration the materials placed before him while recording a finding in the affirmative against the petitioner. The disciplinary authority also, on cogent and convincing reasons and on independent application of mind, has arrived at the finding finding the petitioner guilty and to impose the punishment on the petitioner.



Further, on appeal and revision, the concerned authorities have also applied their independent mind while deciding the appeal/revision and, therefore, no lacunae can be pointed out that there is no independent application of mind. Such contention on the part of the petitioner is nothing but a faint attempt to wriggle out of the mess which he has created for himself.

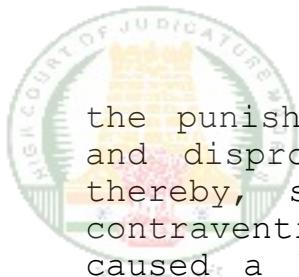
20. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

21. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that



the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules. In the case on hand, the petitioner has caused a huge loss to the bank by not carrying out his duties diligently, which has resulted in the punishment of compulsory retirement imposed on the petitioner. Though the charge is grave, however, the respondent bank, on a holistic consideration has only compulsorily retired the petitioner, which entitles the petitioner for the service benefits. Therefore, the said punishment cannot be said to be excessive, disproportionate or shocking the conscience of the Court.

22. In the present case, it is the stand of the respondent bank that the act of the petitioner has caused a loss to the tune of Rs.37 Lakhs to the bank, which the bank sought to recover it by adjusting the service benefits of the petitioner, viz., Bank's contribution to the Provident Fund, Gratuity Amount, Privilege Leave Encashment, Encashment of Half Pay Sick Leave and other monetary benefits, which were withheld by the respondents. However, it is to be pointed out that the petitioner has not been dismissed/terminated from service, but only compulsorily retired from service, which entitles him to receive service benefits. But equally it also should not be lost sight of that the petitioner has caused loss to the tune of Rs.37 lakhs to the Bank. It is the stand of the petitioner that much of the amount has already been recovered and, therefore, there is no necessity for the bank to forfeit the above service benefits of the petitioner. The said stand of the petitioner has not been countered in a voiceferous way by the respondent bank by placing any material, which would negate the stand of the petitioner. However, even according to the petitioner, amounts have been recovered, but the same has not been quantified. In such a backdrop, this Court is of the considered view that without there being quantification of the amount by either of the party, allowing the claim in full to one of the party would not be in the interest of justice. In such a backdrop, this Court is of the considered view that the respondent Bank would be entitled to forfeit the amounts towards gratuity and bank's contribution to the provident fund, but the amounts towards Privilege Leave Encashment, Encashment of Half Pay Sick Leave and other monetary benefits ought to be paid to the petitioner.

23. For the reasons aforesaid, while W.P. No.2783/2011 is dismissed, W.P. No.2782/11 is disposed of directing the respondent bank to forfeit only the amounts towards gratuity and bank's contribution to the provident fund. The respondent bank is directed to pay the amounts towards Privilege Leave Encashment, Encashment of Half Pay Sick Leave and other monetary benefits to which the petitioner would be entitled within a period of twelve weeks from the date of receipt of a copy of this order and it is made clear that the petitioner would not be entitled for any interest on the



said disbursement. There shall be no order as to costs.

Sd/-

Assistant Registrar (ADII)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.The Chairman and Managing Director,
Indian Bank, Head Office,
No.66, Rajaji Salai,
Chennai - 600 001.

2.The General Manager/Reviewing Authority,
Head Office,
Indian Bank,
No.66, Rajaji Salai,
Chennai - 600 001.

3.The Deputy General Manager/Appellate Authority,
Vigilance Department,
Head Office,
Indian Bank,
No.66, Rajaji Salai,
Chennai - 600 001.

4.The Assistant General Manager/Disciplinary Authority,
Circle Office, Indian Bank,
Trichy - 01, Trichy District.

5.The Chief Manager (HRM),
Indian Bank, Head Office,
HRM Department - Settlement Section,
No.66, Rajaji Salai,
Chennai - 600 001.

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-2240[F],2241 dated
27/01/2021)

W.P(MD)Nos.2782 and 2783 of 2011
25.01.2021

KUN(CO)

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