

\$~40

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 400/2020 & CM APPL. 34530/2020 (delay in filing)

RICH PAL SINGH Appellant

Through: Mr. Sunil Kumar, Advocate.

versus

ASST. GENERAL MANAGER SYNDICATE BANK ... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

%

22.02.2021

[VIA VIDEO CONFERENCING]

1. The present appeal under Clause 10 of the Letters Patent impugns the order dated 25th November, 2019 passed by the learned Single Judge in W.P.(C) 6521/2015 whereby Appellant's writ petition impugning the award of the Industrial Tribunal rejecting reinstatement in service, has been dismissed.

2. Briefly stated, the facts of the case are that the Appellant was working with the Respondent-Bank as an Attender. He was posted at the extension counter of the Bank at DTC Wazirpur Depot Extension Counter. On 27th May, 2003, a shortage of Rs. 600/- was found in one packet of currency notes of Rs. 100/- denomination, and further shortage of Rs. 700 in another packet, which the Appellant tried to cover up by mixing his own loose cash in the bundle. This led to issuance of a chargesheet dated 5th April, 2004 on

the counts of, *inter alia*, pilferage and destruction of evidence, followed by an enquiry which resulted in the report dated 19th October, 2004 holding the Petitioner guilty of gross misconduct. The said report was accepted by the Disciplinary Authority and punishment of dismissal of service was awarded to the Petitioner. This led to the petitioner raising an Industrial Dispute and the appropriate government referred the dispute for adjudication to the Industrial Tribunal. In the proceedings before the Tribunal, the preliminary issue as to whether enquiry conducted by the management was fair and just, was decided in favour of the claimant. It was held that the enquiry was violative of principles of natural justice and accordingly the Bank was given an opportunity to prove charge of misconduct against the workman before the Industrial Tribunal. Accordingly, the Bank adduced evidence and produced witnesses to prove the charges, on consideration whereof, the Tribunal held that the award of punishment of dismissal from service, does not warrant any interference.

3. In this background, the Appellant approached this Court by filing a writ petition impugning the decision of the Industrial Tribunal. The learned Single Judge examined the record and, concurring with the findings of the Industrial Tribunal, affirmed the penalty imposed.

4. Aggrieved with the aforesaid decision, the counsel for the Appellant in the present appeal argues that the Appellant has been falsely framed, and that the enquiry was not impartial or independent. Further, the Appellant was not allowed to lead defense evidence which resulted in gross miscarriage of justice. It is further urged that the senior bank officials, who were the designated Custodian and Joint Custodian, were responsible for keeping the

cash packets and have the keys of the double lock, and should therefore be held liable if a shortage was found during verification of cash. The charges leveled against the Petitioner were urged to be baseless and unfounded. It was also pointed out that the Appellant had no prior history of any such misconduct in his long service period of twenty years.

5. We have perused the record and given due consideration to the contentions of the learned counsel for the Appellant.

6. The learned Single Judge, on a detailed scrutiny of the order passed by the Industrial Tribunal, has observed that the findings of the Industrial Tribunal are in consonance with the law as well as the evidence adduced before it. Relevant part of the impugned judgment is extracted as follows:

“19. This Court is satisfied that the respondent has successfully proved the misconduct of the petitioner by examining five witnesses who are consistent in all respects. The testimony of all the witnesses of the petitioner is accepted as true. On the other hand, the testimony of the respondent and his witness does not pass the test of judicial belief. The statement of Subhash that the petitioner was beaten by Mr. Mittal and T.R. Rajgopal is false as the petitioner himself has not made such allegation against any of them. The whole case of the petitioner is base based on falsehood and is hereby rejected. There is no merit whatsoever in the contentions urged by the respondent.

20. This Court agrees with the well-reasoned findings of the Industrial Tribunal in the impugned award. This Court also agrees with the learned Tribunal that the punishment of removal from service imposed on the petitioner is commensurate with his misconduct. The penalty imposed on the petitioner does not warrant any interference. This petition is gross abuse and misuse of process of law.

21. This Court agrees with the learned Tribunal that the bank lost the confidence in the petitioner who cannot be retained in service. The law with respect to the loss of confidence is well-settled that the

*reinstatement cannot be ordered when an employee acts in a manner by which the management loses confidence in him. Reference be made to **State Bank of Travancore** (supra).”* (sic.)

7. The law relating to appreciation of evidence by writ court in matters pertaining to disciplinary proceedings is no longer *res integra*. The principles have been well-ensconced by the Supreme Court in **Union of India v. P Gunasekara**, (2015) 2 SCC 610, which are extracted as follows:

“13. 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, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 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 Article 226/227 of the Constitution of India, shall not venture into re-appreciation 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.*

Under Article 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 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.”*

8. Keeping in view the above, we have examined the decision of the Single Judge at the touchstone of the law laid down by the Supreme Court in the above judgment and find no perversity therein. It is noted that the contentions of the Appellant as pleaded before us are purely factual in nature, and cannot be dealt with by this court in appellate jurisdiction. The grounds urged herein by the Appellant are premised on the re-appreciation of evidence recorded before the Industrial Tribunal, which does not lie within the purview of this Court. The findings of the Industrial Tribunal have already been appraised and affirmed by the learned Single Judge, and cannot be interfered with lightly.

9. Further, the counsel for the Appellant has not drawn our attention to any perversity or error manifest in the impugned judgment on the basis of which a case may be made out warranting our interference in the impugned findings. In the absence thereof, upon our own perusal of the impugned order, we are unable to find any manifest or palpable error in the findings of the learned Single Judge, who has rendered concurrent findings upon agreeing with the appreciation of evidence and the determination done by the Industrial Tribunal. The law with respect to interference of this Court, while entertaining an intra-court appeal, against the decision of a learned

Single Judge in the exercise of its jurisdiction of judicial review against the orders of the Industrial Tribunal, is well established. In exercise of this jurisdiction, we cannot venture into the factual controversies and re-appreciate the evidence, just because there is another view possible. Unless we find it to be a case of gross perversity, it is not open for this Court to substitute the impugned judgment by our view.

10. Accordingly, there is no merit in the present appeal and the same is dismissed along with pending application.

RAJIV SAHAI ENDLAW, J

SANJEEV NARULA, J

FEBRUARY 22, 2021

nk