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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19 / 04 / 2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NOS.28078 OF 2014 AND 28280 OF 2015
AND CONNECTED MISCELLANEOUS PETITIONS

WP NO.28078 / 2014

Assistant General Manager (Admn)
Disciplinary Authority
State Bank of India
Disciplinary Proceedings Cell
Network 2, Administrative Unit,
Kurinji Complex, State Bank Road,
Coimbatore - 641 018.

... Petitioner

Vs.

1.The Presiding Officer
Central Government Industrial Tribunal
Labour Court, Chennai.

2.G.Mathan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of Writ of
Certiorari, calling for the records of the 1st respondent in ID
No.80 of 2012 and quash its award dated 21.05.2014.

For Petitioner : Mr.S.Ravindran, Senior Counsel

For Respondent-2 : Mr.Balan Haridas

WP NO.28280 / 2015

G.Mathan

... Petitioner

Vs.

1.The Presiding Officer
Central Government Industrial Tribunal
Labour Court
Chennai.



2. Assistant General Manager (Admn)
Disciplinary Authority
State Bank of India
Disciplinary Proceedings Cell
Network 2, Administrative Unit,
Kurinji Complex, State Bank Road,
Coimbatore - 641 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the concerned records from the 1st respondent quash the award dated 21.05.2014 passed by the 1st Respondent in ID No.80 of 2012 in so far as denying 50% of the back wages, continuity of service and other attendant benefits and consequently direct the respondent to pay the full backwages, continuity of service and other attendant benefits to the petitioner along with interest at the rate of 18% per annum.

For Petitioner : Mr. Balan Haridas

For Respondent-2 : Mr. S. Ravindran
Senior Counsel

COMMON ORDER

Challenging the Award passed in ID No.80 of 2012 dated 21.05.2014 on the file of Central Government Industrial Tribunal, Labour Court, Chennai, the above writ petitions have been preferred by the Management/Bank as well as the workman.

2. The petitioner in WP No.28078 of 2014 is the Management/Bank and the petitioner in WP No.28280 of 2015 is the workman.

3. The workman joined the Bank as Gardener. While he was working as General Attendant in Kadathur Branch of the Bank, in the year 2007, he was issued with a show cause notice on the allegation that he forged the signature of one Rajan having Savings Bank Account in their Branch and withdrew the amount to the tune of Rs.41,000/- from the Savings Bank Account of the said Rajan during the period between 27.05.2005 and 31.10.2005. Having not satisfied with his explanation, a charge memo dated 03.10.2008 was issued by the Bank. After elaborate enquiry, the workman was given a copy of the enquiry report and opportunity to file his objections. On the basis of the enquiry report, the Disciplinary Authority imposed the punishment of removal from service with superannuation benefits. The appeal filed by the workman against the order of the Disciplinary Authority was also dismissed. But, in the criminal case instituted against the workman, he was acquitted of the criminal charges on 09.03.2011.



Thereafter, the workman raised an Industrial Dispute on the ground that the enquiry conducted against him was unfair and he was found guilty of the charges only on the basis of the report of the Forensic expert alone. The punishment imposed is grossly disproportionate to the charges and since he was acquitted of the criminal charges, the punishment order shall be set aside and he shall be reinstated in service, with backwages, continuity of service and all attendant benefits.

4.The Management resisted the contentions and let in oral and documentary evidence. The Tribunal had gone through the evidence and found that it is not sufficient to prove the guilty of the delinquent employee, particularly, the evidence of P.W.6, an expert from the Forensic Department has stated that the handwritings of the delinquent employee in the withdrawal slips tallies with the specimen handwriting and also held that there is no reason to reject the opinion given by P.W.6. However, non-examination of the account holder and withdrawal of money from his account was established through him and the findings of the Enquiry Officer relying on the Forensic Expert cannot be relied on fully since the delinquent employee was acquitted from the same set of charges in the criminal cases, it was held that the imposition of punishment is not correct. Relying on a judgment of this Court in CHINNADURAI VS. INSPECTOR GENERAL OF REGISTRATION, CHENNAI [2012 (2) LLN 543] and judgment of the Hon'ble Supreme Court in PAUL ANTONY VS. BHARAT GOLDMINES LTD., [1999 (3) SCC 679] that the criminal cases and the departmental proceedings are based on identical set of facts and the findings of the Enquiry Officer vindicate that the charges framed against the delinquent was not proved and the delinquent having been acquitted in the criminal case by a judicial pronouncement, it would be unjust, unfair and rather oppressive to allow the findings recorded at the departmental proceedings to stand. On these grounds, the punishment order was set aside and reinstatement of the petitioner with 50% backwages was ordered. Challenging the same, the present writ petitions are filed.

5.Heard the submissions made on either side and perused the materials available on record.

6.The learned counsel for the Bank / Management relied on the following judgments of the Hon'ble Supreme Court, in support of his submission:

(i) MANAGEMENT OF BHARAT HEAVY ELECTRICALS LTD. VS. M.MANI AND OTHERS [2018 (1) SCC 285]

"19.Similarly, in our considered view, the Labour Court failed to see that the criminal proceedings and departmental proceedings are two separate proceedings in law. One is initiated by



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the State against the delinquent employees in criminal court and other i.e. departmental enquiry which is initiated by the employer under the Labour/Service Laws/Rules, against the delinquent employees.

20.The Labour Court should have seen that the dismissal order of the respondents was not based on the criminal court's judgment and it could not be so for the reason that it was a case of acquittal. It was, however, based on domestic enquiry, which the employer had every right to conduct independently of the criminal case.

21.This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal court is of no avail. It is held that even if a person stood acquitted by the criminal court, domestic enquiry can still be held--the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. (See Karnataka SRTC v. M.G. Vittal Rao [Karnataka SRTC v. M.G.Vittal Rao, (2012) 1 SCC 442 : (2012) 1 SCC (L&S) 171])"

(ii) STATE BANK OF INDIA VS. TARUN KUMAR BANERJEE AND OTHERS [2000 (2) LLJ 1373]

".....placed heavy reliance on non-examination of complainant, non-production of money, non-production of so-called confessional statements and non-production of any evidence which may have been available. But as far as the evidence tendered by the two witnesses is concerned who actually saw the incident having taken place in the manner referred to earlier, the charge of misconduct against the first respondent stood proved to the hilt and we fail to appreciate as to how the Tribunal could have taken any other view.

A customer of the Bank need not be involved in a domestic enquiry conducted as such a course would not be conducive to proper Banker customer relationship and, therefore, would not be in the interest of the Bank. Further, when money was



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secured a prudent banker would deposit the same in the account of the customer complaining of loss of money and, therefore, non-production of money also would not be of much materiality. When in the course of the domestic enquiry no reliance was placed on the so-called confessional statement made by the first respondent, then non-production of the same is also of no significance. Thus, in our opinion, these circumstances are irrelevant and the Tribunal could not have placed reliance on the same to reach the conclusion it did and, therefore, the learned single Judge was justified in interfering with the same. In the writ appeal the learned Judges on the Division Bench reiterated the view expressed by the Tribunal which we have found to be fallacious.

At this stage, it is necessary to notice one argument that was urged on behalf of the first respondent, namely, that in the course of the order dismissing the first respondent from service it is noticed as follows :

"In summing up after going through the issue raised by Shri Banerjee in detail, I am of opinion that a domestic enquiry like ours does not give any scope for producing all evidences whether having direct bearing in the case or not as is being done in a Court."

It is submitted that even if evidence is withheld, the conclusion of the inquiry officer would be correct is a perverse approach. We do not think so. What is stated therein is that when sufficient evidence was produced to conclude one way or the other, the evidence not produced will not be of any significance unless there was such evidence which was withheld would have tilted the evidence adduced in the course of domestic enquiry. No such evidence is forthcoming in this case. Therefore, this argument deserves to be rejected."

(iii) DEPUTY INSPECTOR GENERAL OF POLICE AND ANOTHER VS. S.SAMUTHIRAM [2013 (1) SCC 598]

"23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit



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including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so. "

(iv) GENERAL MANAGER, ELECTRICAL RENGALI HYDRO ELECTRIC PROJECT, ORISSA AND OTHERS VS. GIRIDHARI SAHU AND OTHERS [2019 (10) SCC 695]

"24. A Constitution Bench of this Court, in Syed Yakooob v. K.S. Radhakrishnan and another, has spoken about the scope of Writ of Certiorari in the following terms:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction."



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A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or 5 AIR 1964 SC 477 where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be 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 the tribunal, a writ of certiorari 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. Similarly, 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. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned 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, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque [AIR 1955 SC 233] , Nagendra Nath Bora v. Commr. of Hills Division and Appeals [AIR 1958 SC 398] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168])."



(Emphasis supplied)

(v) EMPLOYERS IN RELATION TO MANAGEMENT OF WEST BOKARO COLLIERY OF M/S.TISCO. LTD., VS. CONCERNED WORKMAN, RAM PRAVESH SINGH [2008 (2) LLN 42]

"15. This Court in Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane [(2005) 3 SCC 254], held that: -

From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh [(1977) 2 SCC 491] is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh has since been followed by this Court in Devendra Swamy vs. Karnataka SRTC [(2002) 9 SCC 644]

16. In U.P. State Road Transport Corporation vs. Vinod Kumar [2007 (13) SCALE 690], this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the Enquiry Officer or the punishment awarded by the Punishing Authority.

17. After going through the order of the Industrial Tribunal, we are of the opinion that the Tribunal has interfered with the findings recorded by the domestic Tribunal as if it was the Appellate Tribunal. There was evidence present on record regarding indecent, riotous and disorderly behaviour of the respondent towards his superiors. The Management witnesses who were present at the scene of occurrence have unequivocally deposed about the misbehaviour of



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the respondent towards his superiors. Their evidence has been discarded by the Tribunal by observing that in the absence of independent evidence, the statements of the workmen who were present at the scene of occurrence could not be believed. Industrial Tribunal fell in error in discarding the evidence produced by the Management only because the independent witnesses were not produced. It is nobodys case that the independent witnesses were available at the scene of occurrence and the Management had failed to produce them. It is possible that at the time of occurrence, only the workers of the Management and the persons who were trying to put up the construction unauthorizedly were the persons present and no independent evidence was available. Statements of the fellow workmen had established the misconduct of the respondent. Enquiry Officer accepted the testimony of the witnesses produced by the Management who had clearly implicated the respondent. It was a legitimate conclusion which could be arrived at and it would not be open to the Industrial Tribunal to substitute the said opinion by its own opinion.

18. Findings recorded by the Tribunal that the workman had left the place of duty at 12.25 P.M. and, therefore, could not have reached the place of occurrence at 12.30 P.M. after collecting his other associates, is not based on any evidence. The case of the Management is that the respondent had left his place of duty at 12.05 P.M. and reached the place of occurrence at 12.30 P.M. after collecting his fellow workmen. There was sufficient time for the workman to reach the place of occurrence within half an hour as the distance between the place of duty and the place of occurrence was only 1 k.m. The duty of the respondent- workman was upto 1.00 Oclock. Even if, it is accepted that he left the place of duty at 12.25 P.M., then also, he left the place of duty during his duty hours.

19. Tribunal has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the



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acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.

20. Learned Counsel for the respondent cited two cases The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. The Management & Ors. [(1973) 1 SCC 813] and South Indian Cashew Factories Workers Union vs. Kerala State Cashew Development Corpn. Ltd. & Ors. [(2006) 5 SCC 201], to contend that the Labour Court in exercise of its jurisdiction under Section 11A could have come to a different conclusion. There is no quarrel with this proposition of law. The Labour Court could have awarded lesser punishment in the given facts and circumstances of the case. In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic Tribunal by substituting its opinion in place of the opinion of the domestic Tribunal.

21. Labour Court fell into the factual as well as legal error in setting aside the findings recorded by the domestic Tribunal. Learned Single Judge as well as the Division Bench have simply affirmed the findings recorded by the Tribunal."

(vi) J.D.JAIN VS. MANAGEMENT OF STATE BANK OF INDIA AND OTHERS [1982 (1) SCC 143]

"7. In an application for a Writ of Certiorari under Article 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. In the case before us, according to the Tribunal, as Kansal was not examined, the evidence before it was hearsay and as such on the basis thereof the



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appellant could not be legally found guilty.

....
10. The next question is, is the evidence in the domestic enquiry really hearsay, as held by the Tribunal ?

The word 'hearsay' is used in various senses. Some times it means whatever a person is heard to say; some times it means whatever a person declares on information given by someone else. (See Stephen on Law of Evidence).

The Privy Council in the case of Subramaniam v/s. Public Prosecutor, observed: "Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of that is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made."

11. In the instant case, the alleged misconduct of the appellant was that he forged documents, withdrew Rs. 1,500. 1,000 in excess of the amount he was authorised to do and misappropriated the excess amount of Rs. 1,000. With regard to the fact whether the appellant manipulated the documents, withdrew excess amount and misappropriated it, there is, of course, no direct evidence of any eye witness except the appellant's 'confession' referred to above. The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence, namely, the authority letter containing the admitted interpolations by the appellant in his own handwriting in different ink, and the addition of the digit "1" before 500. The evidence of Kansal would have been primary and material, if the fact in issue were whether Kansal authorised the appellant to make the alterations in the authority letter. But Kansal's complaint was to the contrary. For the purpose of a departmental enquiry complaint certainly not frivolous, but substantiated by circumstantial evidence, is enough. What the



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respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to the withdrawal of excess money by the appellant in presence of the four witnesses, namely, Wadhera, Gupta, Ramzan and Sarkar, aforesaid, against his advice. On the complaint of Kansal, the evidence of these four witnesses is direct as the complaint is said to have been made by Kansal in their presence and hearing; it is therefore, not hearsay. As the respondent has succeeded in proving that a come plaint was made by Kansal on the evidence of the above-named four witnesses, the respondent has succeeded. No rule of law enjoins that complaint has to be in writing as insisted by the Tribunal."

(vii) SHASHI BHUSHAN PRASAD VS. INSPECTOR GENERAL,
CENTRAL INDUSTRIAL SECURITY FORCE AND OTHERS [2019 (7) SCC 797]

"19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of 'preponderance of probability'. Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered



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by the High Court in the impugned judgment in detail and needs no interference by this Court. 20. The judgment in M. Paul Anthony case (supra) on which the learned counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under:

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date,



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so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

21. It may not be of assistance to the appellant in the instant case for the reason that the charge levelled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different sets of facts and evidence having no nexus/co relationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the Inquiry Officer had held him guilty, he was punished with the penalty of dismissal from service.

22. The judgment in G.M. Tank case(supra) on which the learned counsel for the appellant has placed reliance was a case where this Court had proceeded on the premise that the charges in the criminal case and departmental enquiry are grounded upon the same sets of facts and evidence. This may not be of any assistance to the appellant as we have observed that in the instant case the charge in the criminal case and departmental enquiry were different having no nexus/co relationship based on different sets of facts and evidence which has been independently enquired in the disciplinary proceedings and in a criminal trial and acquittal in the criminal proceedings would not absolve the appellant from the liability under the disciplinary proceedings instituted against him in which he had been held guilty and in sequel thereto punished with the penalty of dismissal from service."

(viii) U.P.STATE BRASSWARE CORPN. LTD., AND ANOTHER
VS. UDAY NARAIN PANDEY [2006 (1) SCC 479]

"22.No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to



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contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act. "

45.The Court, therefore, emphasized that while granting relief application of mind on the part of the industrial court is imperative. Payment of full back wages, therefore, cannot be the natural consequence. "

(ix) NOVARTIS INDIA LIMITED VS. STATE OF WEST BENGAL AND OTHERS [2009 (3) SCC 124]

"21.There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premises that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1972. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 4 and 16 of the Constitution of India in cases of public employment; etc.

22. It is also trite that for the purpose of grant of back wages, conduct of the concerned workman also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right."

(x) P.KARUPPAIAH (D) THROUGH L.Rs. VS. GENERAL MANAGER, THIRUVALUVAR TRANSPORT CORPORATION LTD., [2018 (2) LLN



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"12. On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The Courts have also applied in appropriate cases the principle of "No work-No pay" while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case. "

7.The learned counsel for the workman relied on the following judgments, in support of his contention:

(i) Judgment of the Hon'ble Supreme Court in G.M.TANK VS. STATE OF GUJARAT AND OTHERS [2006 (5) SCC 446]

"30.The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has



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not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

32. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8.2.1979 and got subsistence allowance of Rs.700/- p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February, 1986. On the basis of the same charges and the evidence, the Department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him on 30.1.2002. However, as the Criminal Court acquitted the appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension."



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(ii) Judgment of the Hon'ble Supreme Court in UNION OF INDIA VS. NAMAN SINGH SHEKHAWAT [2008 (4) SCC 1]

"24. In the departmental proceeding the appellant was bound to comply with the principles of natural justice. Copies of some documents were not supplied. Services of a legal practitioner, may not be a matter of right, but he was atleast entitled to the effective assistance of the departmental representative, Shri Madhukar Sharma. The same was also for all intent and purport denied.

The Tribunal in this behalf opined :-

" It is undisputed fact that Shri Mool Singh was examined although his name was not in the list of witnesses. The applicant's request to call Shri Jumma as defence witness was not allowed. Not only this but in the absence of the departmental representative Shri Madhukar Sharma, the applicant was compelled to cross-examine Shri Mool Singh who was cited as main witness in this case. It is also not disputed that the Inquiry Officer himself has cross-examined the applicant which was the duty of the departmental representatives. It appears that the conduct of the Inquiry Officer in this case has been throughout biased and it appears that he has acted with predetermined notions which should have caused prejudice to the applicant."

We are in general agreement with the said observations.

....

35. It is not a case where a mere benefit of doubt had been given to the respondent in the criminal proceeding. The criminal court has given a positive finding that the prosecution has not been able to prove that the accused had misappropriated the goods. His visit to the border for discharging his duties did not tantamount to misuse of the post or the authority. No evidence has been presented that he did not have the authority to go to the border side on official duties and even the department had not forbidden him from going to that place. It was held that as misappropriation of the property has not been proved, the question of any criminal conspiracy did not arise. No evidence had been adduced to bring



home the charge of criminal conspiracy, which is an independent crime."

(iii) Division Bench judgment of this Court in KALYANASUNDARAM VS. THE MANAGEMENT OF TAMIL NADU STATE TRANSPORT CORPORATION (KUMBAKONAM DIVISION-1) LTD., AND ANOTHER [W.A.NO.5 OF 2011 DECIDED ON 30.11.2011]

"10. In the case of the Capt. M. Paul Anthony vs. Bharat Gold Mines Limited reported in (1999) 3 S.C.C. 679, the Supreme Court observed as hereunder :-

26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including Govt. of India and the State Governments. [See: for example, Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules]. Even under the General Clauses Act, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss.

27. The order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only Subsistence Allowance which is less than his salary [See: State of M.P. vs. State of Maharashtra, (1977) II S.C.C. 288].



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29. Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of Subsistence Allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilized and the salary is also paid to him at a reduced rate under the nick name of 'Subsistence Allowance', so that the employee may sustain himself.

Their lordships further observed thus :-

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles there from.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings



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recorded at the ex-parte departmental proceedings, to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

(iv) Judgment of this Court in THE DEPUTY GENERAL MANAGER, STATE BANK OF INDIA VS. A.MADANABALAN AND ANOTHER [WP NO.11042 OF 2007 DECIDED ON 05.06.2012]

"(j)The CGIT found that the Management of the State Bank of India has not filed the admitted documents prior to the incident or any contemporary documents. Under such circumstances, neither the Enquiry Officer nor the Disciplinary Authority could not have come to the conclusion that the initials or the signatures found in the counterfoils were that of the workman. The CGIT also found that none of the witnesses were deposed that they deposited the amount only to the workman or they have obtained entries in the passbook only through the workman. Hence, it cannot be said that the amounts received from the customers were misappropriated. The CGIT also found that it is an admitted fact that none of the payments alleged to have been made by the customers were found entered in the day book or cashier scroll. Under the said circumstances, the burden is upon the Bank to establish that it was only the workman who was acting as a Cashier on the alleged dates. Even though he made initials or signatures in the counterfoils, he had not made any entries in the books of accounts of the Bank. The Bank also failed to establish these facts as satisfactory evidence. Under the said circumstances, it found that the findings given by the Enquiry Officer were perverse and without any material, for the un-approved charges, the dismissal was to shock the conscience of the CGIT. Though the Bank pleaded that they lost confidence in the workman, the



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CGIT refused to accept the said contention, as the charges were never proved and the question of reposting confidence will not arise. It is in that context, the CGIT granted reinstatement with continuity of service and all other attendant benefits, but with 50% backwages, as noted above.

5.Mr.S.Sethuraman, learned counsel for the petitioner filed additional typed-set and took this Court to the minutes of the enquiry. But he was unable to assail the findings rendered by the CGIT. As rightly observed by the CGIT, the Management did not lead best evidence to hold that it was the workman, who had received the amount by briefing the signature in the counterfoils and the customers also did not identify the workman as the person who had received the money from them. On the other hand, there was a confusion in identifying the workman by the witnesses. Therefore, in the absence of any satisfactory evidence, this Court do not think that any case is made out to interfere with the findings rendered by the CGIT."

(v) Judgment of this Court in P.V.SARGURU VS. TAMIL NADU ELECTRICITY BOARD AND ANOTHER [WP NO.13816 OF 2008 DECIDED ON 03.11.2016]

"18. In yet another judgment of a Division Bench of this Court in Writ Appeal No.5 of 2011 in Kalyanasundaram Vs The Management of Tamil Nadu Transport Corporation and another the Division Bench observed as follows:-

"9. Admittedly, the appellant was exonerated by the criminal court from the charges of negligent driving by judgment dated 20.06.1991. The criminal court held, on the basis of evidence, that the appellant was not guilty of rash and negligent driving of the vehicle. The judgment of the criminal court was passed during the pendency of the departmental enquiry and the said fact was brought to the notice of the authority concerned, but on the basis of the evidence produced by the Management, the order of termination of the appellant from service was passed on 07.10.1993 without full opportunity of hearing."



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19. The Division Bench of this Court in the above said judgment, by relying upon the judgment of the Supreme Court in the case of Capt.M.Paul Anthony Vs.Bharat Gold Mines Limited reported in (1999) 3 S.C.C.679 has ultimately concluded that the appeal has to be allowed and holding that the departmental proceedings and criminal case against erring officer are operating in different fields. Merely because the criminal case is pending or initiated that would not prejudice the employer to proceed departmentally against the erring person and in that view of the matter, law is well settled. However once the criminal case ended in conviction and the departmental proceedings were initiated and concluded on the basis of the said criminal charges alone with same set of facts and same witnesses, then much credence has to be given to the findings rendered in the criminal case before taking a decision in the departmental proceedings.

20. Here, in the case on hand, though initially the criminal case ended in conviction, ultimately it was reversed and the petitioner has been set free in criminal case by this Court on 10.03.2015. However, even before such findings are given by this Court, the departmental proceedings were concluded and an order of dismissal was passed on 09.05.2005. Therefore, one cannot find any fault with the respondents for proceeding against the petitioner in the departmental proceedings and it was concluded with an enquiry, which ended in punishment. However, this Court must give credence to the findings of the Court in the criminal proceedings where the learned Judge has considered the entire materials and findings of the trial Court which has given a finding to the effect that the main witness who was the complainant before the trap case, was an interested person and the demand itself was not proved and also the acceptance of gratification was also not proved. When there is a categorical finding of this nature by this Court in the said criminal appeal, the same can be pressed into service in respect of the present case where the petitioner is challenging the departmental proceedings and its ultimate order of dismissal.



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21. Following the principles and ratio laid down by the Hon'ble Apex Court as well as this Court in the judgments referred to above and also taking into consideration the categorical findings given by this Court in Criminal Appeal No.212 of 2008 dated 10.03.2005, this Court is of the considered view that atleast some lenient view should be shown to the petitioner. Moreover, the petitioner had served in the respondent Board from 1967 till the date of dismissal on 09.05.2005 without any remark or black-mark. Since the petitioner has already been under suspension on 31.12.2003 some lenient punishment would meet the ends of justice. Therefore, this Court has no hesitation to interfere with the impugned order dated 09.05.2005, by modifying the same to the extent of compulsory retirement instead of removal from service.

22. In the result, the writ petition is partly allowed. Impugned order dated 09.05.2005 is modified to the extent that the petitioner shall be placed under compulsory retirement as a punishment and in view of the same, all service benefits for which the petitioner is entitled to, in the relevant rules of the respondent-organization, shall be given to the petitioner and the needful shall be done within a period of three months from the date of receipt of a copy of this order...."

(vi) Judgment of this Court in THE DEPUTY GENERAL MANAGER, STATE BANK OF INDIA VS. A.MADANABALAN AND ANOTHER [WA NO.2870 OF 2012 DECIDED ON 02.04.2018]

"6. After careful consideration of the arguments, the point that arises for our consideration is whether the matter requires revisit, in the light of the evidence of PW4 and consequently, the order of the learned single Judge needs interference or not.

7. On a careful look at the records, as pointed out by the learned counsel appearing for the Bank, we find some evidence stated to be the deposition of PW4. However, such evidence of PW4, who is a public, cannot be a conclusive proof to come to a conclusion that the first respondent/workman committed misappropriation, as a public will not be aware of internal



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correspondence of the Bank and whether the person in the counter has credited the amount in the account of the customer in the ledger book or not. Therefore, mere identification of the person who stated to be in the counter on the day when the amount was deposited is not sufficient to conclude any person guilty of misappropriation. Thus, the Bank ought to have enquired the staff of the Bank who would have the knowledge of bank transaction. Failure on the part of the Bank to enquire their staff in this regard would not substantiate the contention raised by the Bank. Thus, the point that arises for our consideration is answered in negative."

(vii) Judgment of the Hon'ble Supreme Court in DEEPALI GUNDU SURWASE VS. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA (D.ED.) AND OTHERS [2013 (10) SCC 324]

"38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the



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termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden



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to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

(viii) Division Bench judgment of this Court in *THE MANAGEMENT OF ADDISON & COMPANY LIMITED VS. THE PRESIDING OFFICER* [WA NO.1946 / 2019 DECIDED ON 18.02.2010]

"9. There is no straight jacket formula for awarding the relief of backwages. If a person has been wrongfully terminated and prevented to work and he does not get any other employment, then normal rule is payment of full backwages. Unless there are circumstances which would



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compel the labour Court to deviate from the normal rule. The idea of reinstatement in case of wrongful/illegal termination is to restore an employee to the position which he held before dismissal. This implies that the Courts must ensure that employee must be restored to the same position and this can be done only if the internal backwages are paid provided the employee was not gainfully employed elsewhere whereby he was able to sustain himself and was not really affected monetarily by the termination of service. Courts never intended to give double advantage to an employee which would enable him to earn from two sources.....

8. On a perusal of the materials produced before the Court, it is found that the Tribunal has found that the Enquiry Officer in the departmental proceedings placed on reliance on the report of the Forensic expert to come to the conclusion that the workman must have withdrawn money from the account of one Rajan. Secondly, when the delinquent was tried for the same set of facts, in criminal cases and departmental proceedings, by a judicial pronouncement, it would be unjust, unfair and rather oppressive to allow the findings recorded at the department proceedings to stand.

9. At the outset, it has to be seen that whether the findings of the Enquiry Officer and the departmental proceedings are unfair, unjust and violative of principles of natural justice. In the entire pleadings, the delinquent workman has not stated he was not given ample opportunity or that the enquiry conducted was unfair and illegal. Therefore, it is only the proportionality of the punishment has to be looked into. However, the Labour Court has delved into appreciation of evidence given by the witnesses. In that view of the matter, the evidence of the Assistant Director of Forensic Department, who deposed as expert having compared the handwritings and signatures draws importance. The Forensic Expert was examined in chief and was elaborately cross examined by the delinquent's representative. He has categorically stated that the withdrawal slips, vouchers of the disputed documents were received and signatures found therein were given Serial nos.Q1 to Q10 and the handwritings were marked as Serial nos.Q11 to Q15. Thereafter, the specimen signatures of the account holder were marked as S.Nos.1 to S.Nos.22 and the signatures and handwritings of the delinquent employee were marked as S.Nos.23 to S.No.30. He has found that the specimen signature of the delinquent employee, tallies with the handwritings in the withdrawal slips, vouchers etc. But the specimen signature of the account holder marked as



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S.Nos.1 to 22 was not signed by him and that there is difference in the same and arrived at a conclusion that the specimen signature of the account holder differs from the disputed signatures found in the withdrawal slips and that specimen in handwritings of the delinquent employee tallies with the disputed withdrawal slips, vouchers etc. Hence, the handwritings found in the withdrawal slips are one and the same and the signature in the withdrawal slip does not belong to the account holder. The delinquent's representative had conducted elaborate cross examination. For the questions put by the delinquent's representative to the Forensic expert that the finding in the reasoning sheet that the signatures have been partially imitated and who has written the remaining portion is concerned, the expert has clearly explained the procedures adopted for examining the handwritings and signatures and the characters of the letters, strokes and the imitation whether fully made or partially made, were all the facts to arrive at a conclusion and has categorically explained the reasoning given by him in his report. To another question as to how many specimen signatures were given to compare the handwriting and signatures, the answer was that the specimen signature of Rajan and Mathan and one Ganesan were sent for inspection. In yet another question, he would categorically depose that he had compared the disputed handwritings and signatures with the specimen found that the disputed signatures were not made by the account holder and that the handwritings were made by the delinquent employee. Further, he would substantiate that he compared all the characters of the specimen signatures and handwritings and since they tallies during comparison without any basis differences, had given that finding and it was written by the delinquent employee.

10.Apart from this, it is relevant to state that the charge sheeted employee during the chief examination would depose that when known persons come to Bank, he would help them by writing the vouchers. Further, he would admit to a particular question of the Presenting Officer that signatures in the withdrawal slips S.Nos.23 to 215 are the delinquent employees or not? The answer was "yes" the handwriting found in S.No.23 where it is mentioned as deposit receipts handwriting and that in 215 the amount 5000 written in words and figures also belonged to him.

11.Curiously, S.Nos.Q11 to Q15 were the disputed signatures found in the withdrawal slips and S.Nos.23 to S30 were the specimen signatures made by the delinquent employee. He would admit that handwriting found in S.Nos.21 and S23 were made by him. This admission and the clear admission of the Forensic expert has been relied on by the Enquiry Officer and the punishment was imposed by the Disciplinary Authority. The Tribunal has erred in coming to a finding that the Forensic



expert has not stated that the signatures found in the withdrawal slips belonged to the delinquent employee and therefore, the withdrawal of the money from the bank made by the delinquent employee was not proved. The finding of the Tribunal as such is perverse and unsustainable in law.

12. Secondly, the finding that the acquittal made by the Judicial Magistrate in the criminal proceedings would have an impact on the punishment imposed in the departmental proceedings is not correct and erroneous for the reason that in criminal cases, the prosecution is burdened with proving the charges and accused has a right to maintain silence. Contrary to the same, in the departmental proceedings, the charge sheeted employee is entitled to let in evidence, on par with the employer and cross examine the witnesses.

13. Here, the standard of proof in criminal proceedings is proving the charge beyond reasonable doubt, whereas, in the departmental proceedings, it is only the preponderance of probability. Charge need not be proved to the hilt. But, if it is shown in a departmental proceedings that there are preponderance of probabilities, then on the basis of the same, punishment can be imposed. Therefore, the findings of the Tribunal on this ground also is not sustainable. Since the Tribunal has not applied its mind in proper perspective with respect to the evidence and fairness of the enquiry, the Award of the Tribunal it is not sustainable and liable to be set aside.

14. Accordingly, the Award dated 21.05.2014 passed in I.D.No.80 of 2012 by the Central Government Industrial Tribunal, Labour Court, Chennai is set aside and the matter is remitted back to the Central Government Industrial Tribunal, Labour Court, Chennai, for fresh consideration. Since the matter is pending from 2008, it is just and proper to direct the Tribunal to conclude the proceedings within a limited time. Accordingly, three months time from the date of receipt of a copy of this order is granted to the Tribunal to conclude the proceedings and pass an award. It is always open to the parties, if they choose to adduce additional evidence before the Tribunal.

15. In view of the setting aside of the Award, the claim of the delinquent employee to set aside the award in respect of denial of 50% of the backwages, continuity of service and other attendant benefits and consequential direction to pay full backwages with continuity of service also does not survive.



16. In fine, W.P.No.28078 of 2014 filed by the Bank / Management is partly allowed and W.P.No.28280 of 2015 filed by the workman / employee is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Presiding Officer
Central Government Industrial Tribunal
Labour Court, Chennai.

2. The Assistant General Manager (Admn)
Disciplinary Authority
State Bank of India
Disciplinary Proceedings Cell
Network 2, Administrative Unit,
Kurinji Complex, State Bank Road,
Coimbatore - 641 018.

+2cc to Mr.S.Bazeer Ahamed, Advocate, S.R.No.26905

+1cc to Mr.Balanharidas, Advocate, S.R.No.26874 (20/06/2022)

WP NOS.28078 OF 2014 AND 28280 OF 2015

SR(CO)
SB(27/05/2022)