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W.P. No.10281-19552/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.07.2023	19.07.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.10281 & 19552 OF 2016

AND

W.M.P. NO. 16907 OF 2016

A.Savarinathan

.. Petitioner in WP 10281/16

1. State Bank of India
Rep. by its Deputy General Manager (B&O)
Chennai Zone – II, Zonal Office
Chennai 600 001.

2. State Bank of India
Rep. by its Regional Manager
(Disciplinary Authority)
State Bank of India, Region – IV
Regional Business Office
Puducherry 605 001.
19552/16

.. Petitioners in WP

- Vs -

1. The Presiding Officer
Central Government Industrial Tribunal
- cum – Labour Court
1st Floor, 'B' Wing, 26, Haddows Road



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Shastri Bhavan, Chennai 600 006.

.. R-1 in both the petitions

2. State Bank of India
Rep. by its Regional Manager
(Disciplinary Authority)
State Bank of India, Region – IV
Regional Business Office
Puducherry 605 001.

3. State Bank of India
Rep. by its Deputy General Manager (B&O)
Chennai Zone – II, Zonal Office
Chennai 600 001.

.. RR-2 & 3 in WP 10281/16

4. S.Savarinathan

.. R-2 in WP 19552/16

W.P. No.10281 of 2016 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to quash the order passed by the 1st respondent Labour Court in the preliminary point in I.D. No.95 of 2013 dated 2.3.2015 and award passed by the 1st respondent Labour Court dated 18.11.2015 in I.D. No.95 of 2013 insofar as denying the relief or reinstatement, continuity of service and all other attendant benefits as illegal, arbitrary and contrary to law and consequently direct the 2nd and 3rd respondents to reinstate me in service with full backwages, continuity of service and all other attendant benefits.



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W.P. No.19552 of 2016 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in I.D. No.95 of 2013 and quash its award dated 18.11.2015.

For Petitioners : Mr. Balan Haridas in WP 10281/16
Mr. S.Ravindran, SC, for
Mr. Bazeer Ahmed in WP 19552/16

For Respondents : Mr. S.Ravindran, SC, for Mr. Bazeer Ahmed
For RR-2 & 3 in WP 10281/16
Mr. Balan Haridas for R-2 in WP 19552/16

COMMON ORDER

Assailing the order passed by the 1st respondent and the consequential award in I.D. No.95 of 2013, while W.P. No.10281/16 has been filed by the workman for reinstatement with all other attendant benefits, W.P. No.19552/16 has been filed by the Bank insofar as modifying the punishment imposed on the workman from dismissal to one of compulsory retirement.

2. Since both the petitions are connected resulting in the award of the 1st respondent, the petitions were heard together and is disposed of by this common order. For the sake of convenience, the petitioners will be referred to as 'Workman' and 'Bank'.



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3. The facts that revolve around the filing of the present writ petitions are as under :-

4. The case as projected in the claim statement by the workman is that he was appointed as Clerk-cum-Cashier in Kallakurichi Branch of the Bank on 11.9.1997 and, thereafter, transferred to Panruti Branch in the year 2003 and was continuing in the said branch till his termination on 27.9.2012. It is the allegation made against the workman that while serving at Panruti Branch, the workman had indulged in acts such as altering the limit of overdraft facility and without authorization withdrawing amounts from various accounts of the customers; debiting the account of the customers and withdrawing amount without their authorization; credited the amounts to his account and that of his wife for pecuniary benefits; foreclosing the fixed deposit without the knowledge of the customer and credited the proceeds into the account of the customer and withdrawing the said proceeds, etc.

5. Since the workman is alleged to have committed misconducts in terms of Rule 5 (j) of Memorandum of Settlement dated 10.04.2002, enquiry



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was conducted on the charges leveled against the workman , in all running to 13 charges. After enquiry, the enquiry officer submitted his report, holding charges 1, 2 3 and 5 to 13 as proved and charge No.4 as partly proved. After affording an opportunity to the workman to submit his explanation to the abovesaid findings, and finding the explanation not satisfactory, punishment of “Dismissal without notice” from service was imposed on the workman.

6. Against the said order of dismissal without notice imposed on the workman, appeal was filed before the appellate authority, which was also dismissed confirming the order passed by the disciplinary authority after hearing the workman.

7. Since action of disciplinary proceedings was taken up on the workman in view of the Standing Orders and on the basis of the Memorandum of Settlement dated 10.04.2002, the said punishment, which was confirmed in appeal by the appellate authority, was put in issue before the 1st respondent by the workman by filing I.D. No.95 of 2013.



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8. The claim petition was contested by the Bank by filing counter statement, in which it is averred that the illegal and fraudulent acts of the workman has resulted in the initiation of investigation and based on the report of the investigation, 13 charges were framed and in the enquiry, apart from one charge, which was held partly proved, all the other charges were held to be proved by the enquiry officer. Therefore, the disciplinary authority, on the basis of the Standing Orders and also the Memorandum of Settlement dated 10.04.2002, has inflicted the punishment of dismissal from service, as the delinquencies committed by the workman were of such a gravity that the same warranted dismissal from service. Therefore, no interference was warranted with the said order of punishment.

9. On the side of the workman, Exs.W-1 to W-20 were marked and on the side of the Management, Exs.M-1 to M-205 were marked. Framing the necessary questions for consideration, analyzing the documentary materials available on record, the Tribunal finding that all the charges stood proved, however, on account of the fact that no loss was caused to the bank, yet the circumstances under which the workman had committed the irregularities



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having not been spoken to by the workman by entering the witness box, in view of certain charges having not been established, modified the punishment from dismissal from service to one of compulsory retirement. Aggrieved by the said order, the writ petitions have been preferred by the workman and the Bank.

10. Learned counsel appearing for the workman submitted that though the Tribunal has held that charges 1, 2, 4 and 8 alone have been proved, yet the Tribunal had failed to appreciate the materials in proper perspective, which would go to show that the charges have not been proved.

11. It is the further submission of the learned counsel that the requisite documents, which alone would establish the above charges, have not been placed before the enquiry and this clearly establishes that the enquiry was not conducted in a proper manner. It is the further submission of the learned counsel that though certain documents were called for by the workman, however, the said documents have not been given to the workman so as to enable him to prove the charge. It is the further submission of the learned



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counsel that no documents have been placed by the bank to show that the OD facility was not increased in the case of the workman and such being the case, the finding of the Tribunal that the charges stand proved is wholly misconceived.

12. It is the further submission of the learned counsel that marking of a document without the author of the document being examined to mark the document vitiates the document and the said document cannot be relied upon to hold the charge proved. It is the submission of the learned counsel that the account statement of one of the account holders, whose account is said to have been misused by the workman not being examined while the account details were marked cannot be the basis to hold the charge as proved and the Tribunal has held that procedural irregularity cannot be the basis to hold that the enquiry is bad is wholly unsustainable.

13. It is the further submission of the learned counsel that the order of the enquiry authority is cryptic in nature and it does not deal in an elaborate manner the charges framed against the workman. That being the case, the



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order passed by the enquiry officer reveals non-application of mind and necessarily the said order deserves to be set aside.

14. In fine, it is the submission of the learned counsel for the workman that charges 1, 2, 4 and 8 having been held to be proved, but not established in the manner known to law, the findings rendered by the Tribunal for the purpose of modifying the punishment is wholly arbitrary and the delinquencies having not been proved in the manner known to law, necessarily the workman is entitled for reinstatement with all consequential benefits.

15. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *K.Ramalingam – Vs – The Superintendent of Police (2009 (4) LLN 350);*
- ii) *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank – Vs – Jagadish Sharan Varshney & Ors. (2009 (1) SCC (L&S) 806);*
- iii) *A.Thangavelu – Vs – the Presiding Officer & Ors. (W.P. No.22895/2008 – Dated 25.01.2018);*



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- iv) *State Bank of India – Vs – A.Thangavelu & Ors. (W.A. No.595 of 2018 – Dated 13.04.2018); and*
- v) *State Bank of India – VS – A.Thangavelu (C.A. No.8202/2019 – Dated 22.10.2019)*

16. Per contra, learned senior counsel appearing for the bank submitted that the charges framed against the workman is three-fold, viz., (i) it related to altering of overdraft limit from Rs.2,00,000 to Rs.2,00,000, thereby, the workman had misused the overdraft facility to the extent of Rs.7,07,500/=; (ii) the workman created false loans in respect of the customers of the bank to the extent of Rs.4,00,000/= and misappropriated the said amount; (iii) the workman unauthorizedly withdrew Rs.9,28,000/- from the accounts of other customers on various occasions.

17. It is the submission of the learned senior counsel that action was taken against the workman by initiating enquiry and the report of the enquiry officer pointed proving of the charges as against the workman, which resulted in the imposition of punishment, which has since been confirmed by the appellate authority in the appeal filed by the workman.



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18. It is the further submission of the learned senior counsel that nowhere, the workman had put in issue the legality of the enquiry. The grievance expressed by the workman related to the manner in which the evidence has been appreciated by the enquiry officer to render the finding. It is the submission of the learned counsel that the scale of proof required in a disciplinary enquiry is not akin to the scale of proof required in a criminal trial as the appreciation of evidence and proof is on the touchstone of preponderance of probabilities. It is therefore the submission of the learned senior counsel that through documents, the culpability of the workman in the allegation having been established, the enquiry officer has held the charges proved against the workman.

19. It is the further submission of the learned senior counsel that mere non-examination of the customers would not be sufficient to hold the charges as not having been proved for the simple reason that the transactions were carried out in the ID of the workman and the amount was debited from the customer's account and credited to the account of the workman. When the documentary evidence clearly establish the culpability of the workman in the



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transfer of amounts illegally from the account of the customer to his account, it is not necessary that the customers should be examined.

20. It is the further submission of the learned senior counsel that the Tribunal has clearly held that for charges 3, 5, 6, 7, 11 and 12, there is ample proof that the amounts have gone from the account of the customers to the account of the workman. Similarly, insofar as charge No.9 is concerned, the amount had gone to the account of the wife of the workman. Though specific charges, aforesaid, had been alleged against the workman, the workman had not bothered to place any materials to dispute the charges nor denied the irregularities committed by him. Therefore, mere non-examination of customers in respect of transactions, which stand proved by document, would not render the findings for the said charge as arbitrary and perverse.

21. Though the Tribunal had given categorical finding to the above effect to hold that the charges against the workman stands established, yet, for no valid reason, the punishment was modified to one of compulsory retirement, which is totally unsustainable. It is the further submission of the



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learned senior counsel that though powers have been bestowed on the Tribunal u/s 11-A of the ID Act for interfering with the punishment in case some of the charges were not proved, yet it is to be exercised only depending upon the gravity of the charges. When the Tribunal itself has opined that utmost integrity and honesty is required of persons holding the post, as held by the workman, the Tribunal having rendered a finding that the workman had committed the offence, yet, for no good reason, has modified the punishment from one of dismissal to compulsory retirement, which is wholly arbitrary, illegal and without any probable material and the same deserves to be interfered with by restoring the punishment imposed by the disciplinary authority.

22. In support of his submissions, learned senior counsel placed reliance on the following decisions :-

- i) *Orissa Mining Corporation – VS – Ananda Chandra Prusty*
(1996 (11) SCC 600);
- ii) *Stte Bank of India – Vs – Tarun Kumar Banerjee & Ors.*
(2000 (8) SCC 12);
- iii) *Tara Chand Vyas – Vs – Chairman & Disciplinary Authority*
& Ors. (1997 (4) SCC 565);



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- iv) *State Bank of India & Anr. – Vs – Bela Bagchi & Ors. (2005 (7) SCC 435);*
- v) *Disciplinary Authority – cum – Regional Manager & Ors. – Vs – Nikunja Bihari Patnaik (1996 (9) SCC 69);*
- vi) *Karnataka Bank Ltd. – Vs – A.L. Mohan Rao (2006 (1) SCC 63);*
- vii) *Standard Chartered Bank – Vs – R.C.Srivastava (2021 (6) LLN 428 (SC)); and*
- viii) *State of Haryana & Ors. – Vs – Rattan Singh (1977 (2) SCC 491)*

23. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the learned counsel for the parties.

24. The Hon'ble Supreme Court, in ***B.C. Chaturvedi – Vs - 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



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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



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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 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/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)

25. The above view has been reiterated by the Hon'ble Supreme Court in ***Principal Secy. Govt. of A.P. - Vs - 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



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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."



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26. 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*



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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*



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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



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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



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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*



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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)

27. 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 authority and whether the same is in accordance with law. This Court is to test only the



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correctness of the decision arrived at by the authority on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

28. In the case on hand, the punishment that has been imposed by the disciplinary authority, as confirmed by the appellate authority has been modified by the Tribunal by invoking its powers u/s 11-A of the ID Act. Incidentally, this Court has to address whether the invocation of powers by the Tribunal is just and reasonable as the order of the Tribunal is assailed both by the workman as well as the Bank.

29. Keeping the ratio laid down in mind, this Court would now analyze the contentions, which branch on the following two heads, to find out the just and reasonableness of the impugned order and whether interference is warranted with the same :-

- ii) Infliction of major punishment, which is against the Memorandum of Settlement; and*
- ii) Disproportionality of punishment with reference to the delinquency alleged against the petitioner.*



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30. 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.

31. 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



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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.

32. 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*



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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.

33. It is to be stressed that the Court 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 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. 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



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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.

34. In the case on hand, the appellate authority, in the appeal, after granting an opportunity of hearing to the workman, had sailed along with the view of the disciplinary authority by confirming the punishment imposed on the workman. Against the said order, the Tribunal was approached by the workman, which is the second appellate authority. Therefore, it becomes



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necessary for this Court to see the manner in which the Tribunal has dealt with the issue.

35. A careful perusal of the order passed by the Tribunal reveals that the Tribunal, in extensor, has dealt with all the facets of the arguments which have been advanced on behalf of the workman as well as the Management, before coming to a conclusion that the workman had committed the delinquencies as alleged by the Bank. Though the workman had pleaded that the documents sought for by him have not been given so as to enable him to put forth his case in a proper manner, yet, it is to be pointed out that more than 205 exhibits have been marked by the Bank to show the manner in which the workman had performed his duties.

36. The words of eminent jurist V.R.Krishna Iyer, J., resonates loud, where His Lordship (as he then was), had stated that *“The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way,*



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sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny”.

37. In the case on hand, it is to be pointed out that certain documents have been sought for by the workman, yet, a cursory look into the documents sought for reveal that they relate to filing of complaints, if any, by such of those customers, whose accounts have been tampered with by the workman. It is not the case of the Bank that the proceedings were initiated based on complaints that emanated from the customers. Merely because no complaint has been given by any customer, with regard to acts of culpable nature committed by the workman, the same would not render the Bank powerless to initiate any proceeding against the workman.

38. Further, the documents, which the workman had marked, which is alleged to have been not taken note of by the enquiry officer pertains to certain affidavit, which the workman had obtained from the customers, whose accounts are alleged to have been tampered with. The act of the workman is the crux of the issue and not whether any complaint has been given by the



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individual customers. The whole gravamen of the allegation against the workman by the Bank is the act of the workman in the discharge of his duties.

39. Be that as it may. The workman has not attacked the enquiry in any other manner other than the above, in which the documents offered to be marked by the workman have not been marked by the enquiry officer. Apart from the above, the workman had not alleged any illegality or violation of principles of natural justice in the conduct of the enquiry.

40. Punishment has been inflicted on the workman, on the basis of the report of the enquiry after affording an opportunity of hearing. The punishment has been imposed based on the Memorandum of Settlement. The said fact is not disputed by the workman and also violation of principles of natural justice is also not pressed into service by the workman. The only ground on which the workman assails the order is the length of service put in by the workman vis-a-vis the punishment imposed on the workman. In this regard, the decision in *Thangavelu's case* is pressed into service. However, it is to be pointed out that the facts and circumstances in the said case are



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totally different from the one in the present case. In fact, in the said case, it was only the proportionality of the punishment that was pressed by the petitioner therein contending that the punishment of removal from service with superannuation benefits did not have any meaning, which was accepted by this Court, both by the single Judge as well as the Division Bench. However, in the case on hand, the service of the workman is only to the extent of about 15 years and considering the gravity of the charges, which stood proved, the workman had been dismissed from service without notice.

41. It is to be pointed out that while the Tribunal had held charges 1, 2, 4 and 8 as proved, insofar as charge Nos.3, 5, 6, 7, 11 and 12, there was clear evidence that the account of the customer was debited and the account of the workman was credited. Even in respect of charge No.9, the account of the customer was debited while the account of the wife of the workman was credited. There is a clear finding rendered by the Tribunal that inspite of opportunity given to the workman in respect of the charge, no explanation worth the piece of paper written on, has been given by the workman except giving a mere denial, as evidenced by Ex.W-3.



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42. True it is that it is the duty of the Bank to prove the charges against the workman, which the bank, through documentary materials, has established. The enquiry officer is to assess the evidence on the touchstone of preponderance of probability and not on the premise of proof beyond reasonable doubt. This has been the consistent ratio laid down by the Courts in the matter of disciplinary enquiry, which has been reiterated by the Apex Court in *Srivastava's case*, wherein the Apex Court has held as under :-

“18. In the instant case, after we have gone through the record, we find that the Tribunal has converted itself into a Court of Appeal as an appellate authority and has exceeded its jurisdiction while appreciating the finding recorded in the course of domestic enquiry and tested on the broad principles of charge to be proved beyond reasonable doubt which is a test in the criminal justice system and has completely forgotten the fact that the domestic enquiry is to be tested on the principles of preponderance of probabilities and if a piece of evidence is on record which could support the charge which has been levelled against the delinquent unless it is per se unsustainable or perverse, ordinarily is not to be interfered by the Tribunal, more so when the domestic enquiry has been held to be fair and proper and, in our view, the Tribunal has completely overlooked and exceeded its jurisdiction while



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interfering with the finding recorded during the course of enquiry in furtherance of which, the respondent was dismissed from service and the High Court has also committed a manifest error while passing the judgment impugned.”

43. In the case on hand, there are overwhelming materials which unerringly point to the illegalities committed by the workman. Though there may not be any complaint from the customers, but the Bank, being the custodian of the money belonging to the customers, the employees, employed by the Bank, should exhibit utmost integrity and honesty, which alone would make the bank thrive in the present economic conditions and also safeguarding the money of its customers. Merely because the customers have not given complaint cannot be the basis to hold that the workman had not committed any illegality or that the illegality committed by the workman has not been proved. The documents, which have been tabled before the enquiry officer, which have been duly taken into consideration by the disciplinary authority, the appellate authority as well as the Tribunal, has resulted in the decision to impose punishment upon the workman, which cannot be said to be perverse, irrational or arbitrary. As held by the Apex Court in *Rattan Singh's case*, there were enough evidence, which clingingly point to the



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nefarious acts perpetrated by the workman, which definitely deserved punishment at the hands of the disciplinary authority.

44. On the above findings, this Court holds that there is no infirmity or error in the disciplinary authority deciding to impose punishment on the workman and this Court is in agreement with the view taken by the disciplinary authority to impose punishment subsequently modified by the Tribunal. Therefore, the writ petition in W.P. No.10281/2016, filed by the workman does not merit acceptance and the same deserves to be dismissed.

45. The Bank attacks the impugned award on the question of disproportionality of the punishment, which has since been modified by the Tribunal from dismissal to one of compulsory retirement by exercising its powers under Section 11-A of the ID Act.

46. To appreciate the contention and also to find out whether the interference with the punishment by the Tribunal is justified or not, it is but



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necessary to advert to Section 11-A of the ID Act to find out whether the power has been properly exercised by the Tribunal.

47. Section 11-A of the ID Act, for better appreciation is quoted hereunder:-

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”



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48. Even a bare reading of Section 11-A, supra, reveals that where in the course of adjudication the Tribunal feels that the punishment of dismissal or discharge imposed was not justified, it may direct reinstatement of the workman or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal.

49. In the case on hand, the Tribunal has gone on to render a finding that charges 1, 2, 4 and 8 have been proved. The Tribunal has also gone on to hold that insofar as charge Nos.1, 3, 5, 6, 9, 11 and 12, there is a quirk about the debit and credit entries from the account of the customer to the account of the workman and also the account of the wife of the workman. However, there is no explanation forthcoming from the workman with regard to the specific charges framed against the workman but for a curt denial.

50. Though the workman had curtly denied the allegations in respect of the aforesaid charges, curiously, the workman had taken a stand that the order passed by the enquiry officer is a cryptic order, which, even on a cursory



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glance is not so, as the order of the enquiry officer is a detailed one. May be what the workman expected in the order, may not have found place in the said order, but his necessities in the order is not what the enquiry officer is required to write. So long as the enquiry officer has clearly spelt out the reasons for coming to a finding, even if the order is a short one, that would suffice for the purpose of record as well as for the purpose of disciplinary authority to act upon.

51. The Memorandum of Settlement provides for taking disciplinary action against the workman and also for imposition of punishment, with which there is no quarrel. However, the imposition of punishment, which has since been modified by the Tribunal, is put in issue before this Court by either side.

52. However, pausing here, the Tribunal, except for holding that charges 1, 2, 4 and 8 stands proved, has not spelt out that the other charges have been proved. However, equally, the Tribunal has not held that the charges have not been proved and that the workman stood exonerated. However, considering the fact that dismissal casts a stigma, while compulsory



retirement does not cast a stigma, on the basis of the long relationship of employer-employee between the workman and the bank, the Tribunal, by exercising its power u/s 11-A had thought it fit to modify the punishment from one of dismissal to that of compulsory retirement.

53. In ***Boloram Bordoloi – Vs – Lakhimi Gaolia Bank & Ors. (2021 (3) SCC 806)***, the Supreme Court had occasion to consider a similar issue relating to procedural lapses in the discharge of duty by the appellant therein, as Manager of the bank and in the said context held as under :-

“13. The manager of a bank plays a vital role in managing the affairs of the bank. A bank officer/employee deals with the public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. If an officer/employee of the bank is allowed to act beyond his authority, the discipline of the bank will disappear. When the procedural guidelines are issued for grant of loans, officers/employees are required to follow the same meticulously and any deviation will lead to erosion of public trust on the banks. If the manager of a bank indulges in such misconduct, which is evident from the charge memo dated 18.06.2004 and the findings of the enquiry officer, it indicates that such charges are grave and serious. In spite of proved misconduct on such serious charges, disciplinary authority itself was liberal in imposing the punishment of compulsory retirement. In that view of the matter, it cannot be said that the punishment imposed in the disciplinary



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proceedings on the appellant, is disproportionate to the gravity of charges. As such, this submission of the learned counsel for the appellant also cannot be accepted.”

54. The workman officer holding the post of trust reposed on him by the bank, is required to maintain the highest standards of probity and integrity and is bound to follow the procedures prescribed, which are in the interest of the bank. The Supreme Court in ***Union of India & Ors. – Vs – M.Duraisamy (2022 (7) SCC 475)*** had considered issue in similar lines, where the lapses were tried to be off-set post the disciplinary proceedings and in the said context, it was held as under :-

“17. Being a public servant in the post office, the delinquent officer was holding the post of trust. Merely because subsequently the employee had deposited the defrauded amount and therefore there was no loss caused to the department cannot be a ground to take a lenient view and/or to show undue sympathy in favour of such an employee. What about the loss caused to the department by way of goodwill, name and fame of the department and its reliability amongst the public? By such a misconduct/act on the part of the delinquent officer, the reputation of the department had been tarnished. Therefore, in the facts and circumstances of the case, both, the Tribunal as well as the



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High Court have exceeded in their jurisdiction in interfering with the quantum of punishment imposed by the Disciplinary Authority and to substitute the same to that of compulsory retirement.”

55. Further, in *Duraisamy’s case (supra)*, the Supreme Court had also considered the proportionality of the punishment inflicted on the delinquent by adverting to the decision in ***V.S.P. – Vs - Goparaju Sri Prabhakara Hari Babu (2008 (5) SCC 569)***, and held as under:-

“12. While answering the aforesaid question/issue, the decision of this Court in the case of Goparaju Sri Prabhakara Hari Babu (supra), on the judicial review and the limited jurisdiction of the High Court on the proportionality of the order of departmental authority is required to be referred to. In the said decision, after referring to a catena of judgments of this Court, it is observed and held by this Court that the jurisdiction of the High Court on the proportionality of the order of departmental authority is limited. It is observed that it cannot set aside a well-reasoned order only on grounds of sympathy and sentiments. It is further observed and held that once it is found that all the procedural requirements had been complied with, courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. It is further observed that the superior courts, only in some



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cases may invoke the doctrine of proportionality, however if the decision of an employer is found to be within the legal parameters, the doctrine would ordinarily not be invoked when the misconduct stands proved.”

56. The precedents on the issue of interference with the punishment imposed has been oft considered by the Courts and it has been the consistent view of the Courts that it is always within the domain of the disciplinary 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 Article 226. In ***Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)***, the Supreme Court held as under :-

“20. It is a settled principle of law that once the charges leveled 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



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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)

57. 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



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proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

58. Considering the length of service of the workman and also the charges, which have been held to have been proved, vis-a-vis the charges, on which the Tribunal had noted certain ambiguities, in that the Tribunal had mulcted fault both on the workman as also the Bank, had come to a conclusion to exercise its powers u/s 11-A and modify the punishment from one of dismissal to one of compulsory retirement, which cannot be said to be erroneous or beyond the jurisdiction of the Tribunal. Therefore, on a holistic consideration of the entire materials, this Court is of the considered view that no interference is warranted with the modification of punishment. Therefore, the writ petition in W.P. No.19552/16 filed at the behest of the Bank questioning the modification of punishment also deserves to be dismissed.

59. For the reasons aforesaid, both the writ petitions fail and accordingly the same are dismissed confirming the award passed by the 1st



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respondent in I.D. No.95/2013. Consequently, connected miscellaneous petition is also closed. There shall be no order as to costs.

19.07.2023

Index : Yes / No

GLN



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To

1. State Bank of India
Rep. by its Deputy General Manager (B&O)
Chennai Zone – II, Zonal Office
Chennai 600 001.
2. State Bank of India
Rep. by its Regional Manager
(Disciplinary Authority)
State Bank of India, Region – IV
Regional Business Office
Puducherry 605 001.
3. The Presiding Officer
Central Government Industrial Tribunal
- cum – Labour Court
1st Floor, 'B' Wing, 26, Haddows Road
Shastri Bhavan, Chennai 600 006.



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W.P. No.10281-19552/2016

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.10281 &
19552 OF 2016**

**Pronounced on
19.07.2023**



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