IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM :
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.192 of 2017
and WMP.No.184 of 2017

V.Paramajothi ... Petitioner

-Vs-

1.State Bank of India
Rep by the Chief General Manager
Local Head Office
'Circletop House" Post Box.No.737
No.16, College Lane, Chennai – 600 006.

2.General Manager (Network 2)
State Bank of India
Local Head Office
'Circletop House" Post Box.No.737
No.16, College Lane, Chennai – 600 006.

3.Deputy General Manager (B&O)
Chennai Zone – II
State Bank Of India
Disciplinary Proceedings Cell
Administrative Office, Chennai Zone
Chennai Network-1,
86, Rajaji Salai, Chennai – 600 001.
...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of respondents 2 and 3 relating to the order dated 27.12.2013 issued by respondent 2 imposing the major penalty of dismissal on the petitioner that was forwarded to the petitioner under letter bearing No.DIS/CON/924 dated 27.12.2013 issued by respondent 3 and the records of respondent 1 relating to the order dated 07.08.2015 rejecting the appeal of the petitioner and confirming the punishment of dismissal that was sent to the petitioner along with letter bearing No.A.&R-26 dated 07.08.2015 issued by the respondent 1 and quash the same and further direct the respondents to pay the petitioner his full wages from 10.09.2013 when he placed under suspension until 02.12.20213 when he attained the age of superannuation and to pay his retirement benefits in full with effect from the date of his attainment of the age of superannuation and issue such further or other orders or directions as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.Ramapriya Gopalakrishnan.
For Respondents : Mr.S.Ravindran, Senior Counsel.
for Mr.K.Chandrasekaran for R1 to R3.

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

2. The case of the petitioner is that he worked in the respondent Bank for more than 39 years, he belong to schedule tribe community and presently impaired with 95% hearing impairment. The petitioner joined

in the respondent Bank as a Messenger on 01.06.1973 and promoted as a Clerk in the year 1980 and elevated to the post of Officer in 2008 and thereafter transferred to the post of Assistant Manager(Cash) at Chengam Branch on 10.09.2013. Subsequently, he was placed under suspension on 23.10.2013 with four charges initiating disciplinary proceeding under Rule 68(1)(i) of the State Bank of India Officers' Service Rules.

3. The following are the charges initiated by the respondents against the petitioner :-

> *(1) that on 30/10/2012 and 09/11/2012, I misused the ATM card of one P.V.Satheesh, a customer of the bank, and embezzled customers' money to the tune of Rs.37,400/-.*
>
> *(2) that I had failed to enter the PIN mailers received by me in the PIN Mailers Issued Register.*
>
> *(3) that I had failed to destroy the undelivered PIN mailers as per the bank's systems and procedures and that undelivered PIN mailers were lying with me for more than 45 days.*
>
> *(4) that I had generated a second ATM card in respect of account of P.V.Satheesh, on 17/10/2012 without the customer's request with the ulterior motive of*

misutilising it for my pecuniary benefit.

4. It is submitted that after issuing the charges the respondent without considering the explanation of the petitioner, an investigation was initiated in respect of the said charges and Shri Karthikeyan, General Manager, Villupuram Branch, was appointed to conduct the enquiry. On 07.12.2013, the enquiry officer submitted his report holding that the charges 1, 2 and 3 are proved and charge 4 was not proved. Thereafter, on 11.12.2013, the petitioner offered his objections to the acceptance of the findings in his report in respect of charges 1, 2 and 3, without considering the objections of the petitioner. On 27.12.2013, the petitioner was dismissed from service by the General Manager/Appointing Authority. Subsequently, on 08.02.2014, the petitioner preferred an appeal against the imposition of the said penalty, inturn, the Chief General Manager/Appellate Authority rejected the appeal of the petitioner on 07.08.2015 and confirmed the penalty imposed on him. Hence, the petitioner is before this Court.

5. According to the petitioner, the disciplinary proceedings were initiated one year belatedly after the alleged incidents of misuse of ATM card, at the time of his retirement from service. The action of the respondent is only to harass the petitioner and the entire proceedings are an afterthought. From the records, it is evident that the fourth charge has not been established by the prosecution and also the fact that no evidence was adduced to indicate that the PIN mailer pertaining to the disputed ATM card of P.V.Satheesh was either handed over to him or received by the petitioner. It is submitted that the enquiry officer failed to see the photographs produced by the management on the basis of CD do not contain any evidence of the petitioner's alleged role in withdrawing the customer's money from the ATM machine. The enquiry officer failed to see that no photos/videos relating to the transaction that took place on 09.11.2012 was produced by the Management. The enquiry officer failed to take into consideration the admission of the Branch Manager that PIN mailers received at the branch are not verified periodically with the register while holding charge No.2 is proved against the petitioner. The procedure of destroying the undelivered PIN Mailers after 45days is not followed in the branch and even the previous incumbent had not followed

the said procedure, proving the charge No.3 against the petitioner indicates the non application of mind on the part of the enquiry officer. The findings of the charges 1 to 3 in a one sided manner ignoring the fact that the prosecution has failed to establish the charges. The disciplinary authority also failed to see the findings are not sustainable, as they based on the deposition of the prosecution witness who is an interested witness, no statement from the customer alleged to have been marked nor the said customer was examined as a witnesses.

6. It is further submitted that during the pendency of the disciplinary proceedings, the petitioner attains the age of superannuation on 02.12.2013. On account of imposition of major penalty of dismissal, the petitioner after completing blemishless records of service for 39years and suffering from hearing disability, the petitioner was not paid with any retiral benefits and thereby causing irreparable loss and hardship to him and to his family members. Hence, the learned counsel prays for allowing the writ petition and to set aside the impugned order.

7. In support of his contention, the learned counsel for the petitioner relied upon the following judgments :-

(i) ***(2007) 4 SCC 669 – Coimbatore District Central Cooperative Bank V. Coimbatore District Central Cooperative Bank Employees Association and another***.

(ii) ***(2011) 4 SCC 584 – State Bank OF Bikaner and jaipur V. Nemo Chand Nalwaya***.

8. Per contra, the learned counsel for the respondents filed counter, wherein it is stated that the petitioner was appointed in the services of State Bank of India against a vacancy reserved for ST community. Whileso, the petitioner was working as Cash Officer, State Bank of India, Chengam Branch from 20.06.2012 to 14.09.2013, on 16.11.2012, one customer P.V.Sathish who had maintained his SB account with the branch since 2009 registered a complaint through Customer Management System (CMS) stating that some unauthorised/wrong ATM withdrawals from his savings account No.20021041206 as under :- A sum of Rs.20,000/- and Rs.7,400/- was withdrawn on 30.10.2012, Rs.5,000/-

and another sum of Rs.5,000/- was withdrawn on 09.11.2012, totally a sum of Rs.37,400/- has been withdrawn from the new ATM Card No.5196200035430023 issued to the SB A/c.No.20021041206. The customer claims that he was using an ATM card bearing No.6220180099300095603 issued to him at the time of opening the account which was operative till mid of October 2012 and it was reported that the card was inoperative as it was kept under Hot List. On verification from the respondents/Bank, it was found that the ATM card No.5196200035430023 was not issued to the customer either from the Branch or from ATM centre and there was no entry in this regard in the PIN Mailer Deliver Register maintained in the Branch. Further, the disputed transactions were traced and images of three disputed transactions were recaptured by the branch officials and the petitioner had done first three transactions at onsite ATM of Chengam branch. The fourth transaction was done at Indian Bank ATM, Chengam and the branch took up the matter with Indian Bank for sharing the images and on 08.01.2013, replied that the ATM machine has been transferred to their VIT Vellore Branch and they had taken the matter with the branch concerned.

9. During the course of internal investigation, it is revealed that the photo captured in the ATM in respect of the disputed three transactions are found to be the petitioner. The petitioner replied that he entered the onsite ATM on 30.10.2012 and 09.11.2012 for routine official work and withdrawal of cash from his personal account. It is also revealed from the ATM Switch Centre report that withdrawal of Rs.20,000/- and Rs.7,400/- were withdrawn from the SB A/c.No.20021041206 using ATM Card No.5196200035430023 at 10.11.00am and 10.12.28am respectively on 30.10.2012 and the cash replenishment was done by the Joint Custodian of the Branch on 30.10.2012 at 17.12pm to 17.31pm. The cash withdrawal of Rs.5,000/- had taken place on 09.11.2012 using the same card in the onsite ATM at 07.47.22am and another Rs.5,000/- was withdrawn on the same day at 20.10.09pm at Indian Bank ATM and the cash replenishment was done on 09.11.2012 at 13.03pm to 13.21pm. The aforesaid particulars were brought to the knowledge of the petitioner and the petitioner agreed the same and returned the money to the customer by transferring a sum of Rs.37,400/- from his Current Account No.1017212810 on 17.12.2012.

10. After detailed investigation conducted by the Bank, the petitioner while working as Assistant Manager (cash) in Chengam Branch had committed serious irregularities relating to misuse of ATM card of the customer and embezzlement of customer's money as state above and thereafter the petitioner was placed under suspension vide Order No..DIS/CO/472 dated 10.09.2013.

11. It is submitted that preliminary hearing was held on 12.11.2013 and the final hearing was held on 20.11.2013. The prosecution had submitted 10 documents and examined one witness and defense side marked 7 Exhibits to prove their respective versions. The petitioner was given an adequate opportunity to participate in the enquiry proceedings and after careful examination of the evidences on record, the enquiry officer filed his report on 07.12.2013 holding the charge Nos. 1 to 3 are proved and the charge No.4 was not proved. The report of the enquiry officer was served on the petitioner on 07.12.2013, and further explanation was called for by the Disciplinary Authority. On 11.12.2013, the writ petitioner had submitted his reply to the enquiry report on each charges, alleging that he was denied reasonable opportunity and also the

non examination of witnesses during enquiry. Subsequently, the disciplinary authority after examination of inquiry report and reply by the petitioner submitted a detailed report to appointing authority/2nd respondent herein. The second respondent offered a personal hearing to the petitioner 23.12.2012, wherein the petitioner has not brought any new facts. The second respondent after careful examination of all aspects and in accordance with Rule 67(j) of the State Bank Of India Officers' Service Rule, 1992, passed an order dated 27.12.2013 imposing a penalty of Dismissal from service. Against which, the petitioner filed an appeal before the Appellate Authority, after enquiry and considering the facts of the case and gravity of the lapses confirmed the penalty order and rejected his appeal by an order dated 07.08.2015.

12. The petitioner in his reply to the enquiry officer report that the CD and photographs does not contain any evidence of the petitioner's role in withdrawing the customers money from the ATM. The relevant CD was marked as Ex.No.9 containing the recordings of the images taken from onsite Chengam Branch ATM on 30.10.2012 and 09.11.2012. As per the procedures laid down by the Bank, the petitioner being the

custodian of PIN mailers is responsible for ensuring that the PIN mailers sent by the debit card vendor was received and recorded in the Custody Register. In case, the PIN mailer was not collected by the customers, the same shall be destroyed after 45days. The petitioner failed to adhere the systems and procedures of the Bank and misused it for withdrawal of customers fund and thereby misappropriated the funds from the customer's account using new ATM card. In the disciplinary proceedings, the petitioner admitted the misappropriation of customer's funds and he has refunded the said amount of Rs.37,400/- to the customer account directly from his current account on 17.12.2012.

13. It is further submitted by the counsel for the respondents that the charges No.1 to 3 framed against the petitioner have been duly proved and the allegations of the petitioner are contrary, imaginary and an afterthought. The petitioner without following the system and procedures of the Bank had misused his official position to misappropriate customer's fund for his personal gain warranting dismissal from service.

14. The learned counsel relied on the decisions laid down in

various judgments of the Hon'ble Apex Court :-

In the case of **Regional Manager U.P.SRTC, Etawah and others v. Hoti Lal and another** reported in **(2003) 3 SCC 605** wherein in paragraph 7, the Hon'ble Apex Court has referred to the judgment reported in ***(1987) 4 SCC 611*** *in the case of* ***Ranjit Thakur V. Union of India*** :-

> *"....... 33. this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] and CCSU [Council of Civil Service Unions v. Minister for Civil Service, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] tests were satisfied. In another case, in B. Chaturvedi v. Union of India [(1995) 6 SCC 749 a three-Judge Bench said the same thing as follows :*
>
> > *'18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot*

normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.'

Similar view was taken in Indian Oil Corpn. Ltd. v. Ashok Kumar Arora [(1997) 3 SCC 72 that the Court will not intervene unless the punishment is wholly disproportionate."

15. In the case of **Regional Manager U.P.SRTC, Etawah** (cited supra), the Hon'ble Apex Court has held in paragraphs 8 to 10 which is reproduced hereunder :-

*"**8.** In Om Kumar v. Union of India [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] it was observed as follows : (SCC p. 412, para 71)*

"71. Thus, from the above principles and decided cases, it must be held that where an

administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the court is confined to Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

9. *The decision in U.P. SRTC case [(2000) 3 SCC 450 : 2000 SCC (L&S) 356] was really in a different factual background making it distinguishable from the facts of the present case, and has no application. In Karnataka*

SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469] it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a three-Judge Bench in Regional Manager, RSRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : (2002) 1 LLJ 234] where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and bus conductors who by their actions or inactions cause financial loss to the corporations are not fit to be retained *in service.*

__10.__ It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] .] A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the *court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."*

16. The learned counsel referred to the judgment of the Hon'ble Supreme Court in the case of ***Chairman and Managing Director,***

United Commercial Bank and others V. P.C.Kakkar reported in ***(2003) 4 SCC 364*** and placed reliance on the paragraphs 14 and 15 of the judgment which are reproduced hereunder :-

"*14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting* *and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.*

15. It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed : (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at."

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in the criminal *case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application."*

17. In yet another case of the Hon'ble Apex Court reported in ***(2005) 10 SCC 84 Damoh Panna Sagar Rural Regional Bank and another V. Munna Lal Jain***, the relevant paragraphs is extracted hereunder :-

"***17.*** *A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja*

Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] , there is no defence available to say that there was no loss or profit resulting in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

18. In view of the aforesaid judgments and the facts and circumstances of the case, it is seen that the petitioner had worked in the Bank for more than 39years has not come out with clean chit. On 07.12.2012, a sum of Rs.37,400/- was transferred from the Current Account No.1017212810 belonging to the petitioner to the customer's account. A memorandum issued to the petitioner would show that he was given opportunity to defend himself and he has not chosen to produce any materials to prove his innocence. It is also seen that the

Court has to consider the cases in open mind. A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. Here is the case, the petitioner employed in Bank, the petitioner dealing with the cash and he cannot state that he is doing the work with proper application of mind.

19. In the case of **Bharat Heavy Electricals Ltd., V. M.Chandrasekhar Reddy and others** reported in **(2005) 2 SCC 481**, wherein it is held that without a finding based on records, that fact of loss of confidence or quantum of punishment is so harsh as to be vindictive or shockingly disproportionate, interference with the award of punishment in a domestic enquiry is impermissible. The relevant paragraph is extracted hereunder :-

> *"**26.** That apart, the reasons given by the Labour Court to reduce the penalty are reasons which are not sufficient for*

the purpose of reducing the sentence by using its discretionary power. The fact that the misconduct now alleged is the first misconduct again is no ground to condone the misconduct. On the facts of this case as recorded by the Labour Court the loss of confidence is imminent and no finding has been given by the courts below, including the Labour Court, that either the fact of loss of confidence or the quantum of punishment is so harsh as to be vindictive or shockingly disproportionate. Without such finding based on records, interference with the award of punishment in a domestic inquiry is impermissible."

20. In ***State Bank of India and others V. Ramesh Dinkar Punde*** reported in ***(2006) 7 SCC 212*** wherein it is held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every employee and in particular the bank officer so that the confidence of the public/depositors is not impaired, if the bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently. The relevant paragraph is reproduced hereunder :-

> ***"21.*** *Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance such submission. As already said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently."*

21. In the case of ***Union of India and others V. M.Duraisamy***

reported in ***(2022) 7 SCC 475,*** the relevant paragraphs are reproduced hereunder :-

*"**15.** Merely because the respondent employee had worked for 39 years and in those years, there was no punishment imposed and/or that he voluntarily deposited the defrauded amount along with penal interest and therefore there was no loss to the Government/Department cannot be a ground to interfere with the order of punishment imposed by the disciplinary authority and substitute the same from removal to that of compulsory retirement. Neither the Tribunal nor the High Court have, in fact, considered the nature and gravity of the misconduct committed by the delinquent officer. Therefore, both, the Tribunal as well as the High Court had exceeded in their jurisdiction in interfering with the quantum of punishment imposed by the disciplinary authority.*

__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 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."*

22. In ***Tomaso Bruno and another V. State of Uttar Pradesh – 2015 (7) SCC 178,*** it is held that reliance on an electronic device, such artifice must be certified in consonance with the provisions of Section 65 of the Indian Evidence Act, without which, the evidence cannot be relied upon. The Indian Evidence Act will not apply to Labour laws in its

entirety and the judgment rendered by the Apex Court and relied upon by the Employee, with regard to Section 65 of the Indian Evidence Act was one relating to a criminal case. A part of the CCTV recordings can be looked into for the purpose of coming to the conclusion, where charges have been duly proved.

23. In ***Shafhi Mohammad vs. The State of Himachal Pradesh,*** reported in ***(2018) 2 SCC 801***, it is held that the requirement of producing a certificate under Section 65B(4) is procedural and not always mandatory. A party who is not in possession of the device from which the document is produced cannot be required to produce a certificate under Section 65B(4). The Court was of the view that the procedural requirement under Section 65B(4) is to be applied only when electronic evidence is produced by a person, who is in control of the said device, and in a position to produce such a certificate. However, if the person is not in possession of the device, Sections 63 and 65 cannot be excluded.

24. It is suffice to refer to the rulings of the Hon'ble Apex Court in

State of ***Andhra Pradesh V. Sree Rama Rao – AIR 1963 SC 1723*** as follows:-

> "*The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.*"

25. Here is the case, the Court has to look into the aspect of past

experience of the Bank allowing two notorious persons to escape from this Country by evading payment of huge amount received as debts from Bank. It is also further held that the debit voucher and the credit voucher also produced wherein the petitioner himself signed in the voucher for payment of Rs.37,400/- from his current account to the credit of Customer's account.

26. On 23.10.2013, a memorandum was issued to the petitioner seeking to offer his explanation, hence, there is no delay in conducting the investigation which takes longer time to come to a conclusion, as the information sought for with regard to other bank ATM. The charges 1 to 3 were proved against the petitioner and the charge No.4 was not proved. The appointing authority after enquiry passed an order dated 27.12.2013 , imposing a penalty of dismissal from service. Against which, the petitioner approached the appellate authority, by confirming the penalty order and by rejecting the claim of the petitioner.

27. The findings of the misconduct is undoubtedly based on the documents and evidences and based on the statement of witnesses recorded by the Enquiry Officer during the course of enquiry. The

statutory Rules governing the conduct of the disciplinary enquiry also scrupulously followed and there is no perversity or violation. The findings consequently are based on the documents and evidences. The modus through which such offences were committed was also grave in nature, affecting the institutional integrity of the respondents/Bank and thus, this Court is of an opinion that the punishment of dismissal from service cannot be construed as disproportionate to the gravity of the proved charges and for all these reasons, this Court is unable to find any acceptable reason for the purpose of interfering with the orders impugned passed by the Disciplinary Authority and Appellate Authority.

28. Accordingly, the writ petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2023

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Index: Yes/No
Speaking order/Non Speaking order

Neutral Citation: Yes/No

To
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3.Deputy General Manager (B&O)
Chennai Zone – II
State Bank Of India
Disciplinary Proceedings Cell
Administrative Office, Chennai Zone
Chennai Network-1,
86, Rajaji Salai, Chennai – 600 001.

V. BHAVANI SUBBAROYAN, J.

tsh

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