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W.P. (MD) No.7522/2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
31.01.2023	16.02.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.7522 OF 2020
AND
W.M.P. (MD) NO. 7012 OF 2020**

S.Raghu Ram

.. Petitioner

- Vs -

1. The Managing Director
Indian Bank, Avvai Shanmugam Salai
Royapettah, Chennai – 14.

2. The General Manager/Reviewing Authority
Indian Bank, Avvai Shanmugam Salai
Royapettah, Chennai – 14.

3. The Dy. General Manager/Appellate Authority
Indian Bank, Avvai Shanmugam Salai
Royapettah, Chennai – 14.

4. The Asst. General Manager/Disciplinary Authority
Indian Bank, Zonal Office
No.9, Gandhi Road, Erode.

5. The Chief Manager/Inquiry Authority
Indian Bank, Zonal Office, Salem.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records pursuant to the impugned order of punishment imposed by the 4th respondent issued on 20.8.2018 with reference to the charge sheet No.ZOC:SAL/VIG/180/2017-18 dated 29.07.2017 and the subsequent impugned order of rejection of the appeal by the 3rd respondent vide his order dated 26.4.2019 and the impugned order of rejection of review dated 19.5.2020 and quash the same and consequently direct the respondents herein to reinstate the petitioner with backwages and continuity of service and all monetary benefits.

For Petitioner : Mr. Lakshmi Gopinathan, for
M/s.Polax Legal Solutions

For Respondents : Mr. Mohamed Imran, for
M/s. Pala. Ramasamy

ORDER

Assailing the punishment or removal from service imposed on the petitioner by the 4th respondent as confirmed by the 3rd respondent/appellate authority and the consequential confirmation of the same by the 2nd



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respondent/reviewing authority, the present petition has been filed by the petitioner.

2. It is the case of the petitioner that he joined the respondent Bank as Probationary Officer on 6.5.2013 and after serving at various branches of the Bank, was posted at Pallipalayam Branch, Salem Zone as Branch Manager on promotion and since the date of his joining, he has worked diligently to the satisfaction of his superiors, which would be evident from the fact that he was promoted and posted in a Branch, which was competing with 12 nationalised banks situated within a radius of two kilometers and that the petitioner was single handedly manning the branch, as it is a single man branch.

3. It is the further case of the petitioner that during the course of his employment, for the purpose of customer satisfaction and in order to retain the customer base by avoiding customer frustration due to stringent banking procedures, the petitioner had to take some risk. It is the further case of the petitioner that he was visited with a charge memo for certain misconducts in the transactions during the period when he was functioning as Branch Manager of



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Pallipalayam Branch vide charge memo dated 29.7.2017 in which five imputations were raised against the petitioner.

4. It is the further case of the petitioner that he submitted his explanation to the charges, but the disciplinary authority, being not satisfied with the explanation and also the documents produced by the petitioner, ordered conduct of enquiry by appointing an enquiry officer. Upon conduct of enquiry and submission of report by the enquiry officer on 3.2.2018, in which the charges leveled against the petitioner were held to be proved, the disciplinary authority issued show cause notice to the petitioner on 6.2.2018 by furnishing the enquiry report and calling for further explanation to which the petitioner submitted his explanation on 23.2.2018. However, the disciplinary authority, without properly considering the explanations, had imposed the major punishment of *“Removal from service which shall not be a disqualification for the future employment”* under Regulation 4 (i) of Indian Bank Officers & Employees (Discipline & Appeal) Regulations, 1976, vide order dated 20.8.2018.



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5. Challenging the aforesaid order, the petitioner filed appeal before the 3rd respondent/appellate authority, which appeal was rejected vide order dated 26.4.2019 and, thereafter, the review filed by the petitioner before the 2nd respondent/review authority also ended in the same fate by order dated 19.5.2020, which has prompted the petitioner to knock on the doors of this Court seeking justice by filing the present petition.

6. Learned counsel appearing for the petitioner submitted two fold contentions on behalf of the petitioner. In that, it is the submission of the learned counsel that there is gross violation of principles of natural justice as the charges leveled and the alleged misconducts do not disclose the provision of law under which the acts of the petitioner are brought within. In such a scenario, it is the submission of the learned counsel that in the absence of the charge being clear, which is mandatory in a disciplinary proceedings, the whole disciplinary proceedings stands vitiated.

7. The second limb of the contention of the learned counsel on behalf of the petitioner is that the Memorandum of Settlement, which provides for two



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types of punishment, viz., Major and Minor Punishment, as found in para-5 and para-07 of the Settlement, the acts alleged against the petitioner falls only within para 7(d), thereby, the act is a minor misconduct necessitating only a minor punishment and imposition of a major punishment on the petitioner is wholly disproportionate to the charges leveled against the petitioner and definitely warrants interference at the hands of this court.

8. It is the further submission of the learned counsel for the petitioner that the customers, whose accounts were alleged to have been handled by the petitioner without their permission, have categorically deposed before the enquiry officer that the handling of their accounts by the petitioner was only on the permission given by them and, therefore, the allegation of misappropriation or loss of income to the bank is wholly fictitious and does not survive.

9. It is the further submission of the learned counsel that the identical nature of charge Nos.1 and 3 should have resulted in a similar finding by the enquiry authority and departure from the same reveals total non-application of mind on the part of the enquiry officer. It is the further submission of the learned



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counsel that insofar as Charge No.4, the transactions made in the SB Account of the petitioner cannot be the basis of any charge against him. Further insofar as the transactions under charge No.2 is concerned, those transactions are purely personal transactions between the petitioner and his friends, which cannot be the basis for any alleged misconduct fastened on the petitioner. In the case of charge No.5 as well, the action having been done at the behest of the employee, who had deposed before the enquiry officer, non-consideration of all the aforesaid materials by the enquiry officer resulting in a report, which is wholly illegal and arbitrary. All the charges, being vague and no specific violation of specific provision in each and every charge having been shown, the charges cannot be allowed to survive and definitely the impugned order and the consequential orders warrant interference at the hands of this Court.

10. Per contra, learned counsel appearing for the respondent bank submits that the charges have not been disputed by the petitioner and what is sought to be projected by the petitioner is only justifications for his acts. It is the further submission of the learned counsel for the respondent bank that though the petitioner has justified that the procedures prescribed have been scrupulously



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followed, however, it has not been borne out by record, as is revealed in the findings recorded by the enquiry officer, who has held the charges proved. It is the further submission of the learned counsel that the petitioner has not raised any grievance with regard to the conduct of the enquiry and appreciation of evidence in the case of departmental proceedings is within the domain of the disciplinary authority on the basis of the findings recorded by the enquiry officer and so long as there is no violation of principles of natural justice, the disciplinary proceedings being proceeded on the touchstone of preponderance of probabilities, the Court, in exercise of its inherent power under Article 226 of the Constitution shall not interfere with the order passed by the disciplinary authority.

11. It is the further submission of the learned counsel for the respondent bank that merely because the individual charges do not contain the provision of law under which the charges have been premised cannot be the basis to hold the charges as unsustainable and illegal. It is the further submission of the learned counsel that the Articles of Charge clearly disclose the breach of Regulation 3 (1) and that the acts of the petitioner constitute misconduct under Regulation 21,



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which have been spelt out in the charge and, therefore, the contention of the petitioner that the provision of law has not been spelt out is *per se* erroneous.

12. It is the further submission of the learned counsel that the petitioner has transferred funds from various customer accounts to his account without any written authority and has closed other branch accounts without transferring the same to his branch and without obtaining original receipt. Further the petitioner has also carried out various transfer transactions between his account and various other staff accounts without proper authentication and that there are huge cash transactions in his savings bank account, which is disproportionate to his known source of income and that he has entered into financial dealings with customers by transferring funds from/to his account with that of the other customers, thereby violating the laid down systems and procedures and in violation of the service regulations of the bank. In effect, the petitioner has run a parallel bank through his account. It is the further submission of the learned counsel that the Memorandum of Settlement clearly speaks about gross misconduct and the acts perpetrated by the petitioner would constitute gross misconduct. It is further submitted that sub-clauses (j) and (m) of clause 5 of the



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Memorandum of Settlement clearly takes within its fold the delinquencies committed by the petitioner and, therefore, infliction of major punishment is just and legal and does not suffer the vice of any illegality.

13. It is the further submission of the learned counsel that the records also reveal independent application of mind by the appellate and reviewing authorities and such being the case, this Court shall not interfere with the order and equally so long as the punishment imposed is not disproportionate and shocking the conscience of this Court, the Court shall not interfere with the punishment and, accordingly, prays for dismissal of the petitions.

14. In support of the aforesaid contentions, learned counsel appearing for the respondents placed reliance on the following decisions :-

- i) *Boloram Bordoloi – Vs – Lakhimi Gaolia Bank & Ors. (2021 (3) SCC 806); and*
- ii) *Union of India & Ors. – Vs – M.Duraisamy (2022 (7) SCC 475)*



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15. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

16. 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 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,



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

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from



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patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

(Emphasis Supplied)

17. 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 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.

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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."

18. 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, adverting 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.



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*In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.*

*These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court*



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exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

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

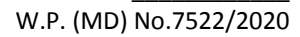
*In a recent judgment delivered by this Court in the **State of Rajasthan & Ors. v. Heem Singh** this Court has summed up the law in following words :*

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This



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is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a



*In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable*



person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

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

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

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based;*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience."*

(Emphasis Supplied)

19. 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



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the same is in accordance with law. This Court is to test only the 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.

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

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

21. It is borne out by record and not disputed by the petitioner as to the delinquencies, which formed the basis of the charge. However, the stand of the petitioner is that the delinquencies were the off-shoot of the pressure of work and the necessity for retaining the customers with the bank as the bank, which is



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a single man branch, is surrounded by 12 Nationalised Banks within the radius of two kilometers.

22. It is to be pointed out that the petitioner has not assailed the delinquencies imputed against him; rather, the reason for such violation has been pointed out by the petitioner. Therefore, it is manifestly clear that the delinquencies alleged by the respondent bank against the petitioner cannot be said to be without any basis and in the aforementioned scenario, the respondent bank is well within its power to proceed against the petitioner departmentally.

23. The first of the attack is mounted by the petitioner on the ground of violation of principles of natural justice; in that the petitioner alleges that the provision of law under which the acts of the petitioner were subjected to be misconduct have not been spelt out, thereby disabling the petitioner to put forth his case properly and this vitiates the entire proceedings.

24. A perusal of the Articles of Charge, which have been framed against the petitioner reveals that five imputations have been leveled against the



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petitioner of which charges 1 and 3 relate to certain credit and debit entries in the various customer accounts carried out by the petitioner, without proper authorization and without obtaining the relevant request receipts from the customers; charge No.2 relates to abnormal credit and debit entries in the staff account, while charge No.5 pertains to closure of a staff account without following the laid down procedure, as mandated by the bank.

25. The charges, from a careful reading, are precise and clear to the point. There is no law, which mandates that the provision under which the imputations are made are to be carried out with each and every charge. The Regulation which is invoked to frame the charges against the petitioner have been spoken to in the Articles of Charge, where it is clearly stated that for breach of Regulation 3 (1), the charge sheet is being issued and that the misconducts, which have been leveled against the petitioner falls under Regulation 24, which has also been spelt out in the Articles of Charge. That being the case, the stand of the petitioner that the provision of law which is said to have been breached by the petitioner has not been spelt out in the Articles of Charge is an attempt in vain on the part of the petitioner to detach himself from the delinquencies. Therefore, the stand of the



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petitioner that the provision of law has not been shown in the charges so as to enable the petitioner to effectively defend his case, cannot be sustained. Further, this Court would like to point out that each and every charge is not required to carry the legal provision under which the said charges are framed. The charges should be clear in imputing the nature of misconduct committed by a delinquent. The charges need not speak about the provision of law as it is not within the ambit of the enquiring authority to find out whether the charges have been properly framed. Nevertheless it is to be stated that the Articles of Charges clearly speak of the Regulation under which the breach is alleged to have been committed and also the provision of law under which the misconduct falls. Inasmuch as the Articles of Charge clearly portray the misconducts as well as the breach of particular Regulation, which is to be adhered to by the employee, the contention advanced on behalf of the petitioner does not merit acceptance and the same deserve to be dismissed.

26. The issues relating to second and third of the contentions canvassed by the petitioner could be dealt with together, as it is on the basis of the



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Memorandum of Settlement in and by which punishment is imposed consequent upon the disciplinary proceedings.

27. According to the petitioner, major misconduct falls under Para-5 while minor misconducts are covered under Para-7 of the Memorandum of Settlement. The petitioner has been inflicted with the punishment of *“removal from service”* which falls under major misconduct. But according to the petitioner, the punishment is highly disproportional as the delinquency of the petitioner, even if accepted, would fall only within Para-7 (d) relating to minor misconduct and the infliction of major punishment is wholly arbitrary and reveals non-application of mind on the part of the disciplinary authority.

28. *“Gross Misconduct”* is codified under Clause 5 of the Bipartite Settlement dated 10.4.2002 under the head Disciplinary Action against workmen Staff and procedure therefor and under the same, the various acts, which would constitute major misconduct finds place. *“Minor Misconduct”* is prescribed under Para-7 and in particular, reference is sought to be made to sub-clause (d) therein, which specifies that *“breach of any rule of business of the bank or instruction for*



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the running of any department". According to the petitioner only Para-7 (d) is attracted to the imputations made against the petitioner, while it is countered otherwise by the respondent by insisting that Para-5 stands attracted of which the imputations made against the petitioner fall under sub-clauses (j) and (m), which are as under :-

"(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

* * * * *

(m) Knowingly making a false statement in any document pertaining to or in connection with his employment in the bank."

29. The imputations made against the petitioner in the Articles of Charge clearly show that the said charges pertain to handling of monies and the accounts of the customers of the bank. The charges are that the petitioner has misused the accounts of the customers by making credit and debit entries without relevant vouchers and without the request of the customers. In this regard, an advert to the affidavit of the petitioner shows that at the material point of time, when the accounts of the customers were handled by the petitioner, the relevant vouchers for the purpose of making the necessary credit and debit entries in the



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accounts of the customers along with their consent thereto, were not available, and without the said material papers, the petitioner had handled the said accounts. In fact, it is the admitted case of the petitioner that all the relevant account holders came forward to give evidence and also signed vouchers and given consent letters before the enquiry officer, which clearly shows that at the relevant point of time, there was no material authorizing the petitioner to make any entries in the accounts of the respective customers.

30. Merely because consent has been given by the customers and relevant vouchers, which would have been necessary to pass credit and debit entries have been given posterior in point of time relevant to the time of the transaction, the said acts, by itself, would in no way cure the delinquencies, which have been perpetrated by the petitioner, though the petitioner claims that it is only in the interest of the bank. When procedures are contemplated in the discharge of duties, the employees are bound to follow the said procedures and it is not within their domain to infract the said procedures under the guise of improving the functioning of the bank.



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31. The act of the petitioner is not only a misconduct, but the said misconduct is of such a magnitude that the goodwill and reputation of the bank has been put at stake. Though it is the stand of the petitioner that only for the purpose of maintaining the reputation of the bank and to safeguarding its interest, the petitioner had acted in the said fashion, but the said submission does not augur well with this Court. The petitioner is entrusted with the task of handling public money and as the custodian of the said funds, great care and caution and highest standards of honesty and integrity is required from the petitioner. The petitioner, under the garb of safeguarding the interest of the bank, cannot claim immunity from any action, which has been perpetrated by him, which is not in consonance with the well accepted and long followed procedures of the bank. Even according to the petitioner, the branch is a single man branch and the petitioner is answerable for all the acts and, therefore, highest moral and ethical standards are expected of the petitioner in the discharge of his duties.

32. A perusal of the charges and the findings of the enquiry officer reveal that much to the detriment of the bank, the petitioner had acted, which would



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otherwise, on any other day, have jeopardized the interest of the bank. The act of the petitioner, though may not be of detriment to the customers, who have given their consent posterior in point of time, as in the longer run the customers stood to benefit, but definitely the said act of the petitioner is not in the interest of the bank and its reputation and goodwill and as an officer of the bank, who has been reposed with faith by the employer, the petitioner ought to have exhibited honesty and sincerity to his employer and without jeopardizing the interest of the employer, any act of the petitioner to safeguard the interest of the customers, would always be welcome. However, without following the laid down procedures in the banking industry the petitioner had taken a way, which is against the interest of the bank. In fact, the petitioner has the temerity to put on record in the affidavit that the pressure in administering a branch as a single person, has not been properly considered by the disciplinary authority as well as the appellate authority, was the genuine reason for not getting the vouchers from the customers at the relevant point of time.

33. As has already been adverted to by this Court supra, the decision of the Hon'ble Supreme Court, in *Rajendra Kumar Dubey's case*, subscribes the view of



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this Court that the arm of judicial review of this Court, sitting under Article 226 of the Constitution, would definitely extend to examination of the findings of the disciplinary proceedings, only in the following circumstances :-

(a) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case;

(b) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; and

(c) 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;

34. However, in the case on hand, the affidavit of the petitioner itself galore with very many admissions as to the procedural lapses committed by him. When the petitioner, on his own, has admitted to the said procedural lapses, which resulted in the framing of charges and consequent enquiry and imposition of punishment, the stand of the petitioner, now, before this Court that there has been no loss caused to the bank and, therefore, it is mere breach of the regulation, which would attract only Para-7(d) is wholly unsustainable. Further, it is for the disciplinary authority to come to a conclusion as to the misconduct



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committed by the delinquent and this Court should not step into the shoes of the disciplinary authority to give a different finding from the one arrived at by the disciplinary authority. As held in *Gunasekaran's case (supra)*, this Court shall not go into the error of law however grave it may be or the proportionality of the punishment, but should restrict itself to the manner in which the enquiry proceedings have been conducted. In the case on hand, as aforesaid, the petitioner has not raised any finger about any violations in the conduct of the enquiry proceedings and such being the case, the punishment imposed on the petitioner is well within the domain of the disciplinary authority.

35. Further, the proportionality of punishment imposed on the petitioner by the disciplinary authority is wholly within the purview of the disciplinary authority. The High Court, in exercise of its inherent jurisdiction shall not ordinarily interfere with the punishment imposed unless the punishment is grossly disproportionate to the charges. In *Boloram Bordoloi case (supra)*, 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 :-



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“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 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.”

36. The delinquent 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 *M.Duraisamy's case (supra)* had considered issue in similar



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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 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.”

37. 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:-



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“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 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.”

38. 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



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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 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



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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)

39. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

40. In the case on hand, the act of the delinquent in making debit and credit entries not circumscribed by banking procedure runs to lakhs of rupees and though actual monetary loss has not been said to have been caused, however, the act of the petitioner has put the respondent bank in peril and the act is of such a gravity that the reputation and goodwill of the respondent bank has been subjected to a grave risk and would have caused irreparable loss of reputation to the bank. The officials of the bank are to work in the interest of the bank by



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giving such leverage to the customers, within the four corners of the procedure prescribed and which would in no way cause any prejudice to the bank. But in the case on hand, the act of the petitioner in misusing the accounts of the customers, though is claimed to be for the benefit of the customers and retaining the customer base, which in turn would benefit the bank, however, such acts cannot be condoned, when it puts the reputation and goodwill of the bank at stake. Merely because no loss has been caused to the bank cannot be a ground to hold that the act of the petitioner would not fall within the purview of grave misconduct under para-5 of the Memorandum of Settlement and that it would attract only para-7 (d). In such a backdrop, for such acts of the petitioner, which is not in consonance with the prescribed procedures, if the respondent thought it fit to impose the punishment of removal from service without it being a disqualification for future employment, the said punishment cannot be said to be harsh or excessive. Though the charge is grave, however, the respondent bank, on a holistic consideration has only imposed the aforesaid punishment, which entitles the petitioner for future employment, the said delinquency not being considered as a disqualification. Therefore, the said punishment cannot be said to be excessive, disproportionate or shocking the conscience of the Court.



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41. For the reasons aforesaid, this Court is of the considered view that the impugned order passed by the 4th respondent/disciplinary authority, as confirmed by the 3rd respondent/appellate authority and the 2nd respondent/reviewing authority, cannot be said to be perverse, illegal, arbitrary or bad and, therefore, the same requires no interference at the hands of this Court.

42. Accordingly, the writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, in the circumstances of the case, there shall be no order as to costs.

16.02.2023

Index : Yes / No

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To

1. The Managing Director
Indian Bank, Avvai Shanmugam Salai
Royapettah, Chennai – 14.
2. The General Manager/Reviewing Authority
Indian Bank, Avvai Shanmugam Salai
Royapettah, Chennai – 14.
3. The Dy. General Manager/Appellate Authority
Indian Bank, Avvai Shanmugam Salai
Royapettah, Chennai – 14.
4. The Asst. General Manager/Disciplinary Authority
Indian Bank, Zonal Office
No.9, Gandhi Road, Erode.
5. The Chief Manager/Inquiry Authority
Indian Bank, Zonal Office, Salem.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. (MD) NO.7522 OF 2020**

**Pronounced on
16.02.2023**