

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

Judgment reserved on: 20.02.2023.

% **Judgment delivered on: 22.02.2023.**

+ LPA 129/2023

T D MAKHIJA THROUGH LRS Appellant

Through: Dr. Ashwani Bhardwaj with Mr. Akhil
Sharma, Advs.

versus

UNION BANK OF INDIA Respondent

Through: Mr. O.P. Gaggar with Mr. Sachindra
Karu, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA is arising out of the judgment dated 13.09.2022 passed in W.P.(C.) No. 14314/2005 titled *T. D Makhija Vs. Union Bank of India* under Clause X of Letters Patent.

2. The undisputed facts of the case reveal that the Appellant before this Court was an employee serving the Union Bank of India was subjected to disciplinary proceedings, and after holding a detailed departmental enquiry,

the Disciplinary Authority has inflicted a punishment of dismissal from service.

3. A review petition was preferred, the same was also dismissed in the matter.

4. The Appellant, thereafter, preferred a Writ Petition before the Learned Single Judge and the same was dismissed by an order dated 13.09.2022, and a subsequent review petition preferred in the matter has also been dismissed by the Learned Single Judge by an order dated 09.12.2022.

5. The facts of the case reveal that the Appellant before this Court became employee of Respondent Bank in the year 1972, and, thereafter, participated as a departmental candidate for the post of Officer Grade-I in the year 1977. He was promoted as Officer Grade-I in December, 1977.

6. The misconduct on the basis of which the Appellant has been removed dates back to his posting while he was serving as a System Administrator, SSI, Okhla Branch for certain acts of omission and commission, and he was placed under suspension by the Competent Disciplinary Authority with effect from 10.08.1999. The Respondent Bank also lodged a First Information Report (FIR) against the Appellant and one Sohanlal.

7. The Disciplinary Authority issued a Show Cause Notice to the Petitioner as to why disciplinary proceedings should not be initiated against him and a detailed and exhaustive charge-sheet was issued on 13.03.2000.

The article of charges annexed along with charge-sheet are detailed as under:

“ARTICLES OF CHARGE

Shri T. D. Makhija while working as System Administrator, SSI, Okhla Branch, has committed certain acts of omission and commission.

Shri Makhija, in association with Shri Sohan Lal and Shri Umesh Garg, manipulated the Computer System, with a motive to do the fraud. Due to their fraudulent acts, they were able to withdraw unauthorisedly cash to the tune of Rs. 23.38 lacs, from SSI Okhla Branch, New Delhi.

Shri Makhija also indulged in the following acts:

He authorized the Local-branch Debit Advices for which he is not competent:

He authorized Local-branch Credit Advice of Rs. 4.45 lacs, against unclear effect without the permission of Competent Authority.

He credited Clearing on 30.3.98, lodged to Service Branch on 30.3.98 to be credited in the respective account on 30.3.98.

He debited Inward Clearing return in Suspense A/c D.N.R. instead of party A/c and manipulated this head to hide out the misdeed.

Shri Makhija is informed the above acts of omission and commission on his part constitute the following misconduct and he is hereby charged of the same:-

1. Failure to perform his duties with utmost, devotion, diligence, honesty and integrity.

2. *Failure to take all possible steps to ensure and protect the interest of the Bank.*

3. *Doing acts unbecoming of a Bank Officer.*

4. *Acting otherwise than in his best judgment in the performance of his official duties.*

Shri Makhija is further informed that the details of his fraudulent activities are given in the enclosed statement of allegations.

Shri Makhija is hereby called upon to submit his statement of defence within 10 days from receipt hereof by him as to why appropriate disciplinary action should not be taken against him for the aforesaid lapses on his part, if he fails to submit his explanation within the above-stipulated period, it will be deemed that he has nothing to say in the matter and the same will be proceeded with further on that basis. Shri Makhija has the permission of undersigned to visit SSI Okhla Branch for inspection of records, if he so desires, to facilitate submission of his statement of defence.”

8. The Appellant did submit a reply to the charges leveled against him and also took a plea that it was the Appellant who himself reported the matter to the Chief Manager, the moment it came to knowledge on 06.08.2000, and, in fact, he is a whistleblower and cannot be punished for reporting the illegalities and irregularities which took in the Bank.

9. The Disciplinary Authority not being satisfied with the reply received from the Petitioner to the charge-sheet, appointed an Enquiry Officer and Presenting Officer and a detailed Departmental Enquiry took place in the matter.

10. Keeping in view the Union Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976, the Enquiry Officer submitted a report on 05.01.2001 and copy of Enquiry report along with Show Cause Notice was also served to the Petitioner on 16.01.2001.

11. The Petitioner did reply to the Show Cause Notice dated 16.01.2001 and the Competent Disciplinary Authority after due application of mind and that too after taking into account the reply to the Show Cause Notice passed an order of dismissal on 24.03.2001. The order passed by the Disciplinary Authority dated 24.03.2001 is reproduced as under:

“This has reference to the inquiry conducted by Shri R. Venkatramaiah, Senior Manager (P), Nodal Regional Office, New Delhi into the charges / allegations levelled against Shri T.D. Makhija, System Administrator (u/s), SSI Okhla Branch, New Delhi in terms of Articles of Charge no: CO:IRD:OS:VIG: 160 dated 13.03.2000 based upon statement of allegations thereto.

I have perused the Articles of Charge issued to Shri Makhija, his explanation thereto, the inquiry proceedings, exhibits, findings of the Inquiring Authority, submissions of Shri Makhija on the findings and all other relevant papers on record.

I observe that Shri Makhija was one of the key players in perpetrating a fraud of Rs.23.38 lacs at SSI Okhla branch by manipulating the systems and laid down procedures. The fraudulent transactions were authorised and verified by Shri Makhija wilfully and knowingly with fraudulent intentions.

He purchased cheques drawn on local branch without the approval of competent authority though he was not

entrusted with the duties of Bills Department. He signed paying-in slips, local branch debit advices, credit advices related to the fraud though he was not competent to do so and without ascertaining the genuineness of the transactions. He failed to ensure that local branch cheques were sent in clearing and not by way of sending local branch debit advices. He failed to ensure whether the competent authority had permitted purchase of cheques drawn on SDA Branch, that too involving staff / relatives of staff. He did not ascertain from SDA Branch whether sufficient funds were available to cover the cheques purchased. He was hand in glove with Shri Sohan Lal Computer Operator in manipulation of local branch account to the extent of Rs.8.00 lacs over a period of time.

Shri Makhija did not ensure whether the local branch debit advices sent to SDA Branch were responded in time or not. He had also allowed credit of clearing cheque of Rs.5.00 lac on the same day without waiting to know the fate of the instrument sent in clearing. He debited inward return cheque of Rs.5.00 lacs in Suspense Account DNR instead of the party's account and manipulated the said to hide his misdeeds. He cancelled cheques in the account of M/s. Unik Cargo Movers Pvt. Ltd., when one Director instead of two had signed the cheque. He failed to ascertain the basis and the purpose for which Shri Sohanlal was withdrawing Rs.55,000/- from the CD account of M/s. Unik Cargo Movers Pvt.Ltd., against effect of clearing cheque.

He extended undue favours to M/s. Jorgy International and group accounts. As on 06.08.1999, he allowed an excess of Rs.3,14,694.62 in the account of M/s. Computer Components (I) Pvt. Ltd., a group account of M/\$. Jorgy International. Shri Makhija had debited the account for retirement of import documents. Shri Makhija had some signed loose cheques of

M/s. Jorgy International, and group accounts which he misutilised to withdraw cash from these accounts and to manipulate the computer system to delete the unauthorised transactions. He withdrew cash to the tune of Rs.12.10 lacs fraudulently in the account of M/s. Jorgy International. He tampered with evidence and removed cash payment cheque dated 13.11.98 for Rs.60,000/- pertaining to CD account no: 20010 and a torn piece of cheque was found in his possession.

He abused his position as System Administrator by utilising the pass word / TBA prompt to delete debit entries in current accounts after day end so that the balances would remain unaffected. He did not generate daily statements to hide his misdeeds. In collusion with Shri Sohan Lal, he cancelled withdrawal forms / cheques for huge amounts in the S.B. Account of Shri Sohan Lal and perpetrated fraud of Rs.23.38 lacs over a period of time.

It is evident that Shri Makhija exploited the mutual trust and confidence reposed in him by his colleagues and indulged in fraudulent transactions with malafide intentions and for pecuniary gains.

I concur with the views of the Inquiring Authority and hold Shri Makhija guilty of the following charges levelled against him

Failure to perform his duties with utmost devotion, diligence, honesty and integrity;

Failure to take all possible steps to ensure and protect the interest of the Bank;

Doing acts unbecoming of a Bank Officer;

Acting otherwise than in his best judgement in the performance of his official duties

Looking to the nature and gravity of the misconduct proved against Shri Makhija, I am of the opinion that the ends of justice will be met by imposing upon him the penalty of dismissal from the services of the Bank.

Accordingly by virtue of powers vested in me in terms of Regulation 7 of the Union Bank of India Officer Employees' (Discipline & Appeal) Regulations 1976, I hereby pass the following order:

ORDER

"The major penalty of dismissal from the services of the Bank with immediate effect is hereby imposed on Shri T.D. Makhija" "

12. The Petitioner, thereafter, preferred an Appeal before the Appellate Authority and the Appellate Authority again with due application of mind had dismissed the Appeal by an order dated 28.12.2001.

13. The Petitioner, thereafter, preferred a review petition, which was also dismissed by the Competent Authority by an order dated 21.05.2005, and, thereafter, the Petitioner came up before this Court by filing a Writ Petition.

14. The Learned Single Judge after taking into account all the grounds raised by the Petitioner and the law relating to interference of Courts in departmental proceedings has dismissed the Writ Petition. Paragraphs 36 to 44 of the order passed by the Learned Single Judge read as under.

"36. The Disciplinary Authority on the findings based on evidence has come to the conclusion that from the nature of the transactions it is implicit that the same could not have been done alone by the said computer operator unless there was collusion and connivance of the Petitioner. The

Petitioner is absolving himself of the charges by thrusting whole of the responsibility on the computer operator. Mere fact that all the vouchers pertaining to the day's transactions are supervised by the Chief Manager the very next day and the Chief manager did not point out any irregularity will not aid the Petitioner in his case as on the basis of the findings by the Authorities below, it is highly improbable that the manipulations would have been carried under the eyes of the Petitioner without his involvement.

37. The Disciplinary Authority has reached the above conclusion after giving the Petitioner detailed hearing on the merits and based on evidence recorded. It cannot be said that the Disciplinary Authority has acted arbitrarily and based on extraneous considerations.

38. The Petitioner has merely claimed that no list of duties or job profile was provided to him on joining as System Administrator in response to the findings of the Disciplinary Authority that he had purchased cheques drawn on local branch without the approval of competent authority though he was not entrusted with the duties of Bills Department and he signed paying-in slips, local branch debit advises, credit advises related to the fraud though he was not competent to do so and without ascertaining the genuineness of the transactions. Moreover, the Petitioner has failed to rebut the finding that he failed to ensure that local branch cheques were sent in clearing and not by way of sending local branch debit advises.

39. According to the findings of the Disciplinary Authority, the Petitioner has purchased cheques drawn on local branch without the approval of competent authority though he was not entrusted with the duties of Bills Department. He signed paying-in slips, local branch debit advises, credit advises related to the fraud though he was not competent to do so and without ascertaining the genuineness of the transactions. He has failed to ensure whether the competent authority had permitted purchase of cheques drawn on SDA Branch, that too involving staff/relatives of staff. He did not

ascertain from SDA branch whether sufficient funds were available to cover the cheques purchased. Petitioner has merely relied on the confession statement of Mr. Sohanlal to wash away his complicity in the manipulations which have been carried. As already discussed above, this court's power to interfere in the findings of the Disciplinary Authority is limited and in the present facts and circumstances of the case, the Petitioner has wholly failed to bring his case within the parameters which allow the court to exercise its jurisdiction under Article 226 of the Constitution of India. In so far as such serious manipulations are concerned, the conclusion so reached by the Disciplinary as well as the Appellate Authority is based on evidence recorded and cannot be said to be perverse and suffering from any error apparent on the face of the record. Even assuming that the Respondent Bank has not suffered any pecuniary loss, it will not help the case of the Petitioner as non-suffering of monetary loss will not wash away the very transactions of manipulations as have been recorded by the Disciplinary Authority as well as the Appellate Authority.

40. The submission of the Petitioner that the Disciplinary proceedings are vitiated because as per Regulation 6(2) read with Regulation 6(6), the Presenting Officer must be a Public Servant from outside the Respondent Bank is misconceived and misplaced. The amended rule is wrongly quoted as the rule provides that if the Disciplinary Authority wants to inquire into the truth, then it can either inquire by itself or appoint any person who is or has been a Public Servant to act as Inquiring Authority. Therefore, this argument of the Petitioner is not sustainable and will not help the Petitioner to bring his case within the exceptions as discussed above to allow this court to exercise its jurisdiction under Article 226 of the Constitution of India.

CONCLUSION

41. Applying the above principles to the facts of the present case, this Court has observed that there can be no doubt that the charges in respect of the Petitioner are proved which

were confirmed by the Disciplinary Authority as well as the Appellate Authority of the Respondent.

42. Taking into consideration the aforesaid decisions on the law as well as to the facts of this case, this Court does not find any illegality and error in order dated 24th March 2001, passed by the Disciplinary Authority as well as the suspension order dated 10th August 1999.

43. Accordingly, the instant writ petition fails being devoid of any merits and is dismissed along with the pending applications, if any.

44. The judgment be uploaded on the website forthwith. ”

15. The Petitioner not being satisfied with the order passed by the Learned Single Judge preferred a review petition and the Learned Single Judge has dismissed the same by an order dated 09.12.2022 holding that there was no error apparent on the face of record. The review petition was dismissed taking into account the judgments delivered in ***Aribam Tuleshwar Sharma Vs. Aibam Pishak Sharma & Ors.***, (1979) 4 SCC 389, ***Parsion Devi and others Vs. Sumitri Devi & Ors.***, (1997) 8 SCC 715, & ***Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius***, AIR 1954 SC 526.

16. Learned Counsel for the Petitioner before this Court has vehemently argued that the punishment awarded in the matter is disproportionate to the guilt of the delinquent, and, therefore, the order of the Disciplinary Authority to the extent dismissal has been awarded deserves to be interfered with.

17. So far as the first ground as raised by the Petitioner is concerned, the present case relates to embezzlement by a Banker and embezzlement by a

Banker who is custodian of public money is the most serious offence in Banking Sector and has to be dealt with iron hands, and, therefore, to the extent the plea of interference in quantum of punishment is concerned, this Court does not find any reason to interfere in the matter. [see: *United Commercial Bank and Others Vs. P C. Kakkar*, (2003) 4 SCC 364]

18. The Learned Counsel has also argued before this Court that it was one Sohanlal who was responsible in committing the fraud and the Petitioner has been made a scapegoat.

19. It has also been argued that FIR was lodged against the present Appellant, Sohanlal and Umesh Kumar Garg, and Sohanlal has returned the amount misappropriated by him, and, therefore, action against the Petitioner stands vitiated.

20. In the considered opinion of this Court, merely because some other person was also involved in the matter has deposited the embezzled amount, as alleged by the Petitioner, the question of exonerating the Petitioner does not arise.

21. The Petitioner was one of the key players in perpetrating a fraud of Rs. 23.38 Lakhs by manipulating system and the laid down procedure. The fraudulent transactions were authorized and verified by the Petitioner himself.

22. The aforesaid fact has been proved in the departmental enquiry, and, therefore, once the evidence on record has established the guilt of the

Petitioner, the question of interference with the departmental enquiry in the peculiar facts and circumstances does not arise.

23. It has also been vehemently argued before this Court that the Petitioner does not have any past track record of committing misconduct. There was no loss to the Bank and the entire money was deposited by Sohanlal, and, therefore, the enquiry proceedings be set-aside.

24. This Court has carefully gone through the entire record and has also taken into account the grounds raised by Learned Counsel for the Petitioner. The facts of the case further reveal that one Umesh Kumar Garg was also inflicted with the punishment of compulsory retirement and based upon the evidence on record the guilt of the Petitioner was established in the departmental enquiry and, therefore, it is not a case of perverse findings by the Enquiry Officer.

25. In the considered opinion of this Court that the appreciation of evidence is not permissible, however, it has been done by the Learned Single Judge as the Appellant has argued a ground of perverse findings by the Enquiry Officer. The evidence on record establishes the guilt of the Petitioner and the charges have been proved with documentary evidence as well as oral evidence adduced in the departmental enquiry. Merely, some other person was inflicted with a lesser punishment; it does not mean that the Petitioner who was one of the key players in the fraud which resulted in loss to the Bank can be given a clean chit.

26. Learned Counsel for the Petitioner has vehemently argued before this Court that there has been violation of Rule 6 of the Union Bank of India Officer Employees' (Discipline And Appeal) Regulations, 1976.

27. The aforesaid statutory provision of law provides for appointment of enquiry officer and appointment of presenting officer.

28. The Enquiry Officer and the Presenting Officer were public servants, and there has been no violation of Rule 6 as argued by the Learned Counsel for the Petitioner.

29. The present case is an open and shut case, wherein, the Petitioner has been held guilty based upon the evidence on record. The Petitioner is trying to shift his guilt upon other Officers and the same does not help the Petitioner at all.

30. The findings of the Enquiry Officer which are on record are reproduced as under:

FINDINGS:

All the allegations taken up in the inquiry stand proved against Shri T D Makhija documentary evidence and duly corroborated the deposition of Management Witnesses.

The Officials of Regional Computer Cell, Delhi submitted a detailed report dated 14.08.99 (M EX 53). They traced the modus operandi and also arrived at the total fraud of Rs. 23.38 lacs involving Shri Sohan Lal and Shri Makhija. They concluded that fraudulent transactions were authorized and verified by Shri Makhija, System Administrator willfully and knowingly with fraudulent intentions. They did not include Shri Harbans Rai in the said fraud. (no evidence of The Chief

Manager, SSI Okhla branch lodged an FIR dated 02.12.97 (M.EX 51) against Shri Sohan Lal and Shri Makhija.

It is established in the inquiry proceedings that Shri Sohan Lal, Computer Operator and Shri T.D. Makhija are the key players in the fraud. They manipulated the systems and laid down Procedures for their personal gains by misutilising their positions in the bank. They had also exploited the mutual trust and confidence reposed by their colleagues.

- 1. Being a System Administrator, Shri Makhija was not entrusted with duties of Bills Department He purchased the cheques drawn on Local branch without the approval of Competent Authority.*
- 2. He had signed pay-in slips, Local Branch Debit Advices, credit advices related to for which he was not competent fraud.*
- 3. He had signed them without ascertaining the genuineness of transactions:*
- 4. He had failed to ensure that Local Branch cheques are sent in clearing and not by way of sending Local Branch Debit Advices.*
- 5. He failed to ensure whether the Competent Authority had permitted for purchase of cheques drawn on SDA Branch that too involving staff / staff relatives.*
- 6. He did not ascertain from SDA Branch whether sufficient funds are available to cover the cheques purchased. He was hand in glove with Shri Sohan Lal in manipulation of Local Branch A/C to the extent of 8.00 lacs over a period of time*
- 7. He in collusion with Shri Sohan Lal had cancelled withdrawal forms/cheques for huge amounts in the SB A/C of Shri Sohan Lal. He had perpetrated the fraud for a long time and to the extent of Rs.23.38 lacs.*

8. *He had not ensured whether the Local Branch Debit Advices sent to SDA Branch was responded in time or not*
9. *He had allowed credit of clearing cheque for Rs.5.00 lacs on the same day without waiting to know the fate of the instrument sent in clearing*
10. *Shri Makhija debited inward return cheque for Rs 5.00 lacs in suspense A/C DNR instead of party a/ c 11. and manipulated this head-to-hide-out the misdeeds.*
11. *He had cancelled the cheques in M/S Unik Cargo Movers (P) Ltd when one director instead of two directors signs the cheques.*
12. *He failed to know on what basis and purpose Shri Sohan Lal was withdrawing Rs.55,000.00 in the CD A/C of M/S Unik Cargo Movers (P) against the effects of clearing cheque*
13. *Shri Makhija abused the position as System Administrator by utilising the pass word/TBA prompt to delete the debit entries in the Current A/Cs after the day end-so the balances would remain unaffected*
14. *He has extended undue favours to M/S Jorgy international and their group accounts. As on 6.08.99 he allowed an excess of Rs.3,14,694.62 in the account of M/S Computer Components (I) Pvt Ltd, a group account of M/S Jorgy International. It was found that Shri Makhija has debited the account for retirement of import documents (M.EX*
15. *He was having some signed loose cheques in M/S Jorgy International and group accounts Which he had misutilised to withdrew cash from these accounts and to manipulate the Computer System to delete the unauthorised transactions. He had withdrew cash in*

fraudulent manner in the A/c of M/S Jorgy International to the tune of Rs 12.10 lacs (M EX 48/5)

16.He had tampered with the evidence, he removed a cash payment cheque dated 13.11.98 for Rs.60,000.00 in CD A/C No.20010 and torn cheque piece was found in his possession (M.EX 48/3)

17.He did not generate daily statements to hide his misdeeds.

The aforesaid acts of omission and commission on the part of Shri Makhija is more than sufficient to prove the charges that he had failed to discharge his duties with devotion and diligence, honesty and integrity and failed to take all steps to ensure and protect the interest of the Bank.

His involvement in fraudulent transactions with malafide intentions and for pecuniary gains as referred above prove the charge of unbecoming of bank officer and not acted in his best judgement in the performance of official duties

CONCLUSION

The following charges taken up in the inquiring proceedings stands established against Shri Makhija by documentary evidence, which is duly corroborated by the deposition of Management Witnesses

01.Failure to perform his duties with utmost devotion, Diligence, honesty and integrity

02.Failure to take all possible steps to ensure and Protect interest of the Bank

03.Doing Acts unbecoming of a bank Officer

04.He has not acted in his best judgement in performance of his duties.

The following facts also emerged in the inquiry proceedings:

1. *The Services record of Shri Makhija prior to the present incidence was unblemished*
2. *The Bank has not suffered any monetary loss as Shri Sohan Lal/remitted the amount involved in fraud*

The inquiry report is placed before the Disciplinary Authority for kind perusal and action”

31. The findings of the Enquiry Officer establish the acts of omissions and commissions on behalf of the Petitioner which are based upon documentary as well as oral evidence and it is nobody's case that principle of natural justice and fairplay was violated at any point of time.

32. The Hon'ble Supreme Court in the case of ***R. Mahalingam v. T.N. Public Service Commission***, (2013) 14 SCC 379, has provided guidance on the scope of judicial interference in matters challenging disciplinary action. The Hon'ble Supreme Court in the aforesaid case, in paragraph 11 has held as under: -

“11. We have heard the learned counsel for the parties. The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the

disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the court.”

33. The Hon’ble Supreme Court in the case of ***Apparel Export Promotion Council Vs. A.K. Chopra***, (1999) 1 SCC 759, in paragraphs 16 & 17 has held as under:

“16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension

not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141 HL] observed:

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.”

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.”

34. The Hon’ble Supreme Court has held that in exercise of review jurisdiction, normally, there should be no interference with the factual findings in a departmental enquiry unless the Court finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/ or legally untenable.

35. The Hon'ble Supreme Court in the case of ***State of A.P. Vs. S. Sree Rama Rao***, (1964) 3 SCR 25, in paragraph 7 has held as under:

“7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition I ... under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. 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. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing 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, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on

which their 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 proceeding for a writ under Article 226 of the Constitution.”

36. In the aforesaid case, the scope of judicial scrutiny has been looked into by the Hon’ble Supreme Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

37. The Hon’ble Supreme Court in the case of ***Union of India Vs. P. Gunasekaran***, (2015) 2 SCC 610, in paragraphs 12 & 13 has held as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

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

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

38. The Hon’ble Supreme Court in the case of ***State of Karnataka Vs. N. Gangaraj***, (2020) 3 SCC 423, has taken into account the earlier judgments delivered on the subject and has reiterated that the scope of interference in departmental enquiry is quite limited. Interference in disciplinary proceedings can be done in case there is violation of principles of natural

justice and fairplay or if the findings arrived at are based on no evidence/
perverse findings.

39. In light of the aforesaid judgments and in absence of any procedural irregularity or violation of principles of natural justice and fair play, this Court does not find any reason to interfere with the order passed by the Disciplinary Authority, the Appellate Authority as well as the order passed by the Learned Single Judge.

40. The Writ Petition stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

FEBRUARY 22, 2023

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