



Neutral Citation Number:2023:DHC:4683-DB

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 06.07.2023

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LPA 528/2023 & CM APPL. 33639/2023, CM APPL. 33640/2023

DHARA SINGH EX CLERK OF ANDHRA BANK

..... Appellant

Through: Mrs. Avnish Ahlawat, Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates.

versus

UNION BANK OF INDIA AND ANR

..... Respondent

Through: Mr. Rajat Arora and Mr. Niraj Kumar, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present appeal is arising out of an judgment dated 08.05.2023 passed by the learned Single Judge in W.P.(C.) No. 12285/2009 titled ***Dhara Singh Vs. Union Bank of India*** dismissing the writ petition preferred by the appellant against the order dated 22.11.2008 by which the penalty of compulsory retirement has been inflicted upon the appellant, as well as the



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order dated 22.04.2009 by which the appeal of the appellant before the Appellate Authority was also dismissed.

2. The undisputed facts of the case reveal that the appellant before this Court was an employee serving in Andhra Bank. He was subjected to disciplinary proceedings under the By-partite settlement dated 10.04.2002 (Disciplinary Regulations).

3. The facts also reveal that the Andhra Bank was amalgamated with Union Bank of India with effect from 01.04.2022.

4. The appellant at the relevant point of time was working as a clerk at R. K. Puram Branch of the erstwhile Andhra Bank and was in charge of receiving cash deposit from the customers at the cash counter.

5. On 10.04.2007, Sh. Parminder Singh – a customer who was holding Account No. 11046, deposited a sum of Rs. 5,000 in his account and an acknowledgment/ counterfoil of the pay-in-slip, was given to the customer by the appellant.

6. The appellant did not deposit the amount in the account of Sh. Parminder Singh and, on 01.05.2007, Sh. Parminder Singh came to the Bank and informed the authorities that he has deposited Rs. 5,000/- in his bank account on 10.04.2007, however, the same amount has not been credited in his account. He formally lodged a complaint and informed the Bank Manager. It is was brought to the notice of the authorities that the appellant



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did receive the amount of Rs. 5,000/- from Sh. Parminder Singh and did not deposit the same in the account of Sh. Parminder Singh nor in the sundry account maintained by the Bank.

7. The appellant, only when it was brought to the notice of the authorities that the amount has not been deposited in the account of Sh. Parminder Singh, informed the authorities that the account of Sh. Parminder Singh was inoperative. After a complaint was lodged by Sh. Parminder Singh, the appellant deposited the amount on 01.05.2007 in the sundry account.

8. On 05.05.2007, the Assistant General Manager informed the General Manager regarding the conduct of the appellant and regarding the discrepancy in the cash receipt of the appellant and the matter was in-turn forwarded by the General Manager to the Chief Vigilance Officer, Andhra Bank, Vigilance Department, Hyderabad on 16.05.2007.

9. The appellant was placed under suspension on 20.06.2007 and finally a chargesheet was issued on 22.09.2007. The appellant was granted time to file reply to the chargesheet and he did file a reply denying the charges leveled against him. The reply was filed on 03.12.2007. The disciplinary authority appointed an enquiry officer and the enquiry officer after following the principles of natural justice and fairplay submitted an enquiry report holding the charged as proved on 23.06.2008.

10. The findings of the enquiry officer were communicated on 26.11.2008



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and the disciplinary authority finally passed an order of compulsory retirement on 22.11.2008. The appellant being aggrieved by the said order preferred an appeal on 26.03.2009 before the competent Appellant Authority, and vide order dated 22.04.2009, the appeal was dismissed by the competent disciplinary authority.

11. The appellant being aggrieved by the order dated 22.11.2008 of punishment of compulsory retirement and dismissing the appeal vide order dated 22.04.2009 had preferred a writ petition before this Court and the learned Single Judge has dismissed the writ petition against which the present LPA has been filed.

12. The operative paragraphs i.e. Paragraph Nos. 34 to 40, of the order passed by the learned Single Judge read as under:

“34. The mere fact that the customer in question had deposed that since the money had been credited to his account and that he had no grievance against anyone, does not in any manner exonerate the petitioner from the misconduct committed by him. It was the responsibility of the petitioner to immediately bring to the notice of the Branch Head/his superior officers the fact with respect to the amount having been received by him, which could not be credited for the reason of the account being inoperative/ dormant.

*35. Supreme Court has emphasized time and again that a bank officer is required to exercise higher standards of honesty and integrity, as he deals with the money of the depositors and the customers. Thus, in the case of **Chairman and Managing Director, United Commercial Bank and Others Vs. P.C.***



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Kakkar, reported as (2003) 4 SCC 364, Supreme Court has held as follows:

“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.”

36. The defence on behalf of the petitioner that the petitioner lacked proper knowledge about the banking and computer environment, was rightly rejected by the Enquiry Officer. As held by the Enquiry Officer, the petitioner having so many years of experience, cannot take shelter under such a plea. The Enquiry Officer has categorically held that it was the responsibility of the petitioner, being the Cashier to adhere to the laid down procedures and system. The Enquiry Officer has further held that if the petitioner had any difficulty, then the petitioner ought to have sought the assistance of other



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colleagues at the branch, instead of keeping the cash with him. The petitioner ought to have reported to the Branch Manager, so that the amount in question could be accounted for.

37. *Once the enquiry has been held properly and Principles of Natural Justice have been followed, then this Court while exercising its jurisdiction under Article 226 of the Constitution of India, would not sit as an appellate authority over the findings of the departmental authorities. Thus, Hon'ble Supreme Court in the case of **Pravin Kumar Vs. Union of India and Others**, (2020) 9 SCC 471 has held as follows:*

“25. The learned counsel for the appellant spent considerable time taking us through the various evidence on record with the intention of highlighting lacunae and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by constitutional courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome. [State of A.P. v. Mohd. Nasrullah Khan, (2006) 2 SCC 373, para 11 : 2006 SCC (L&S) 316]

26. These principles are succinctly elucidated by a three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC



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749, para 12 : 1996 SCC (L&S) 80] in the following extract: (SCC pp. 759-60, paras 12-13)

“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 concerned is 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 the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the



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finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR pp. 728-29 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

27. These parameters have been consistently reiterated by this Court in a catena of decisions, including: (i) State of T.N. v. S. Subramaniam [State of T.N. v. S. Subramaniam, (1996) 7 SCC 509 : 1996 SCC (L&S) 627] .

(ii) Lalit Popli v. Canara Bank [Lalit Popli v. Canara Bank, (2003) 3 SCC 583 : 2003 SCC (L&S) 353] .

(iii) H.P. SEB v. Mahesh Dahiya [H.P. SEB v. Mahesh Dahiya, (2017) 1 SCC 768 : (2017) 1 SCC (L&S) 297] .

28. It is thus well settled that the constitutional courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put



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differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority.”

38. *There is another aspect of the matter. Pursuant to the findings of the Enquiry Officer, the bank lost confidence in the petitioner inasmuch as he had retained the amount of the customer for a period of 20 days and had returned the same only when the customer approached the bank subsequently. Though the petitioner contended that there was no malafide on his part and that he never intended to retain the amount, however, the fact remains that the amount was retained by him.*

39. *Thus, Supreme Court in the case of **State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya**, (2011) 4 SCC 584 has held that if the enquiry has been conducted fairly and properly and the findings are based on evidence, the question of adequacy of evidence will not be a ground for interfering with the findings of the departmental enquiries. Further, it has been held that in dealing with cases of termination of bank employees, the loss of confidence by the bank in the employee, will be an important and relevant factor. Thus, it has been held as follows:*

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting



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reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

8. When a court is considering whether the punishment of “termination from service” imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from “dormant” to “operative” category (contrary to the instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be the account-holder was an impostor, the bank cannot be found fault with if it says that it has lost confidence in



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the employee concerned. A bank is justified in contending that not only the employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.”

40. In view of the aforesaid detailed discussion, the present writ petition is found without any merits. Accordingly the same is dismissed.”

13. The order passed by the learned Single Judge dated 08.05.2023 dismissing the writ petition reveals that an order was passed by the disciplinary authority of the erstwhile Andhra Bank under clause 6(c) of the By-partite settlement dated 10.04.2002, whereby, a punishment of compulsory retirement was imposed upon the appellant herein and was upheld by the authority vide order dated 22.04.2009.

14. The learned Single Judge has arrived at a conclusion that the charge against the appellant was proved. He kept the money with him for 20 days. No entry was made in the Books of Account. The amount was not deposited in sundry account of the Bank nor in the account of the account holder. It is only when the account holder lodged a complaint in the matter, the appellant deposited the amount after 20 days.

15. The learned Single Judge after minutely scanning the enquiry records has arrived at a conclusion that enquiry proceedings were held in accordance with law in a just and fair manner and the principles of natural justice and fairplay have been adhered to.

16. The learned Single Judge has also arrived at a conclusion based upon



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the judgment delivered in the case of ***Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar***, (2003) 4 SCC 364, that the bank officer is required to exercise higher standards of honesty and integrity as he deals with the money of depositors and the customers, therefore, the order passed by the disciplinary authority does not warrant any interference.

17. The learned Single Judge has also arrived at a conclusion that based upon the findings of the enquiry officer, the Bank lost confidence in the appellant as he has retained the amount of customer for 20 days and returned the amount only when the customer approached the Bank.

18. The learned Single Judge has taken into account the judgment delivered in the case of ***Pravin Kumar Vs. Union of India and Others***, (2020) 9 SCC 471 as well as the judgment delivered in the case of ***State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya***, (2011) 4 SCC 584 while dismissing the writ petition.

19. Learned counsel for the appellant has vehemently argued before this Court that the learned Single Judge has wrongly upheld the findings of the disciplinary authority and the appellant authority without considering the evidence on record. It has also been argued before this Court that there has been violation of principles of natural justice and fairplay, and the departmental enquiry was conducted in a mechanical manner.

20. Learned Counsel for the appellant has also argued that the order



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passed by the disciplinary authority is not based upon evidence and deserves to be set aside.

21. Learned Counsel for the appellant has also argued before this Court that the appellant was not able to deposit the amount as the account was inoperative and he sought instructions from senior officers and took steps to return the amount, and, therefore, no case could have been made out for misappropriation of funds. It is also been argued that the customer even stated before the enquiry officer that he does not want any action in the matter.

22. Learned counsel for the appellant has also vehemently argued before this Court that the learned Single Judge has erroneously concluded that the Bank Manager had discovered the misappropriation after 20 days only when customer came to the Bank and, in fact, there was no misappropriation on the part of the appellant in the peculiar facts and circumstances of the case.

23. A prayer has been made before this Court by the appellant to set aside the order of punishment as well as the order passed by the appellant authority.

24. On the other hand, learned counsel for the respondent Bank has vehemently argued before this Court that the present case involves a banker who has misappropriated the amount of a customer and it was only when the customer informed the authorities that the amount has not been credited in the account of the customer, the appellant deposited the same after 20 days



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in the sundry account. Therefore, as it is a case of misappropriation by a banker the learned Single Judge was justified in dismissing the writ petition keeping in view the judgment delivered in the case of ***Chairman and Managing Director, United Commercial Bank*** (Supra) .

25. Learned counsel for the respondent bank has also vehemently argued before this Court that the question of interference in the departmental enquiry in the peculiar facts and circumstances of the case does not arise. The enquiry has been conducted fairly and properly and the findings are based on evidence. Therefore, as there is no violation of principles of natural justice and fairplay nor any statutory provisions of law, no case for interference is made out in the peculiar facts and circumstances.

26. Learned counsel for the Bank has vehemently argued before this Court that the complainant Sh. Parminder Singh had sum of Rs. 5,000/- on 10.04.2007 and a complaint was lodged by Sh. Parminder Singh on 01.05.2007 that the amount has not been deposited in his account. The appellant himself has admitted that he has later on deposited the amount in sundry account on 01.05.2007 only after a protest was lodged by the complainant Sh. Parminder Singh. Meaning thereby, the appellant himself has admitted the guilt of keeping the customer's money in his own pocket for a period of 20 days and, therefore, the question of interference in the peculiar facts and circumstances of the case does not arise.

27. This Court has heard the learned counsel for the parties at length as



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well as gone through the grounds raised by the appellant in the present appeal.

28. The undisputed facts of the case reveal that one customer Sh. Parminder Singh deposited a sum of Rs. 5,000/- in his Account No. 11046 on 10.04.2007. The amount was not credited in his account, and Sh. Parminder Singh informed the General Manager in writing on 01.05.2007 that the amount has not been deposited in his account. The aforesaid document was part of the enquiry proceedings and a translated copy of the same is reproduced as under:

*“To
The Branch Manager
Andhra Bank
R.K.Puram
New Delhi.*

Sir,

I, Parminder Singh, am an S.B. account holder of your bank and my a/c no. is 11046. Last month I had deposited an amount of Rs.5,000/- on 10.04.2007 but the amount is not credited to my account. I request you to give credit of the above amount to my account.

*Thanking you,
Date: 01.05.2007*

*Yours faithfully,
-sd-
(Parminder Singh)
73, Guru Angad Nagar
(Ex Lakshmi Nagar)
Delhi-110092.”*



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29. The matter was forwarded by the Assistant General Manager to the General Manager vide letter dated 05.05.2007, and the same is reproduced as under:

**“ANDHRA BANK
RK PURAM BRANCH**

Lr. No. 431/20/116

Date: 05.05.2007

To

General Manager

Andhra Bank

Zonal Office

New Delhi

Reg: Discrepancy in cash receipt of Mr. Dara Singh, (Code 4594) Clerk

We have received a complaint from one of our clients. Mr. Parminder having SB A/c No. 11046 (inoperative) on 01.05.2007 stating that, he had deposited an amount of Rs.5,000/- in his account on 10.04.2007, and the same was not credited to his account. He also produced the counter foil of SB pay-in-slip which bears the cash receive stamp of the date and initials of Mr. Dara Singh.

On thorough verification of the days vouchers and transactions in the system it revealed that the cash receipt of Rs.5,000/- was not accounted for. On cross verification with Mr, Dara Singh he stated that the cash deposited by the customer was received by him on 10.04.2007 and since the SB Account is in inoperative status, he was unable to credit it to the SB Account. He also stated that by the time he realized this the customer had left the branch and he kept the money with him with an intention to return the amount to the customer.

On receipt of the complaint on 01.05.2007 Mr. Dara Singh has deposited the amount in sundry Creditors by preparing a SB



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Challan for the inoperative SB A/c 11046.

As the cash receipt was kept with the employee for 20 days without accounting for till the customer put up a complaint with the undersigned we suspect the foul play in the transaction and hence request you to initiate disciplinary action against the employee.

-sd-

(G SURYANARAYANA)

ASST. GENERAL MANAGER

Encl: 1 copy of the complaint dt. 01.05.2007

2. Copy of counterfoil of SB pay in slip dt. 10.04.2007 for SB A/c 11046

3. copy of pay in slip dt. 1.5.2007 of SB inoperative 11046 for Rs. 5000/-."

30. The aforesaid document which was again a part of the departmental enquiry proceedings reveals that the amount was deposited by the charged official only on 01.05.2007 i.e. after a complaint was made in the matter.

31. The appellant was placed under suspension on 20.06.2007 and a chargesheet was issued on 22.09.2007. The articles of charge dated 22.09.2007 is reproduced as under:

"ANDHRA BANK

(A Govt.of India Undertaking)

Personnel Deptt.: ZONAL OFFICE

<i>From:</i> <i>Chief Manager & Competent Authority</i> <i>Zonal Office, New Delhi</i>	<i>To</i> <i>Mr. Dhara Singh (4594)</i> <i>Clerk (U/S)</i> <i>R.K. PURAM BRANCH,</i> <i>NEW DELHI</i>
<i>Lr. No. 082/20/V/CS/2993</i>	<i>Date: 22.09.2007</i>



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Dear Sir

Reg: Charge Sheet vide Clause 5(j) of Memorandum of Settlement Dated 10.04.2002

<i>Name of Staff</i>	<i>Mr. Dhara Singh</i>
<i>Staff Code No.</i>	<i>4594</i>
<i>Designation</i>	<i>Clerk</i>
<i>Branch where irregularities committed</i>	<i>R. K. Puram (New Delhi)</i>

Articles of Charge:

It is alleged against you that while working as clerk at R. K. Puram (New Delhi) branch you have committed serious irregularities. The lapses/ irregularities that have come to light so far and detailed in the Statement of allegations (annexure-1) would indicate that:

An amount remitted by the customer, for crediting to his account, was misappropriated by you, by not accounting for the same in the books of bank.

The above acts committed by you prejudicial to the interest of the Bank and constitute gross misconduct as per clause 5(j) of Memorandum of Settlement dated 10.04.2002.

You are hereby required to submit to the undersigned, your written Statement of Defence, if any, within fifteen days from the date of receipt of this Articles of charge, failing which it will be construed that you have no defence to offer and further action will be taken accordingly.

You may, if so desire, peruse the relative records/documents at the branch to submit your reply within the said period.

Please acknowledge receipt of this letter on the extra copy enclosed.

Yours faithfully

-sd-

(AJAY BHATNAGAR)

Chief Manager &



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Disciplinary Authority.”

32. The appellant did file a reply, and a detailed and exhaustive enquiry took place.

33. The enquiry officer after following the principles of natural justice and fairplay arrived at a conclusion that Sh. Parminder Singh did deposit an amount of Rs. 5,000/- on 10.04.2007, and lodged a complaint on 01.05.2007 regarding the non-credit of Rs. 5,000/- in his account which he deposited on 10.04.2007. Sh. Parminder Singh lodged a complaint in the matter on 01.05.2007, and it was only on 01.05.2007, the appellant (charged official) deposited the amount in the sundry account. The findings arrived at by the enquiry officer are reproduced as under:

“7.00 ANALYSIS OF EVIDENCES:

7.04. PO through Management exhibits concluded that:

Mr. Parminder Singh is having SB A/c. No. 11046 with Ramakrishnapuram Branch, New Delhi and he has deposited an amount of Rs. 5,000/- on 10.04.2007. He possess a counter foil with initial of Mr. Dhara Singh, which was also confirmed by MW1.

Mr. Parminder Singh has lodged a complaint with the branch on 01.05.2007 regarding non credit of Rs, 5,000/- in his account, which he deposited on 10.04.2007.

After making enquiries, it came to light that Mr. Dhara Singh received the amount and the same was retained with him till 01.05.2007 i.e. the date of complaint received from the party and the amount was credited to Sundry Creditor Account.

The said amount of Rs. 5,000/- was reversed to the account holders account on 05.05.2007 after receiving



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request letter for conversion of in-operative account to operative status.

The details of the above are informed by the branch to Zonal Office and Zonal Office to Vigilance Department, Head Office, Hyderabad.

7.02. The averment of the defence is that it is only in-operative status of the SB No. 11046 and lack of proper knowledge about the banking and computer environment that has led to retention of the cash of Rs. 5,000/- with him self by CSE. The other contnetion of the defence is that the CSE has even tried in futile to contact the account holder to return back the amount and further, he has remitted the account immediately on receipt of complaint. Further, the defence witness who happened to be the complainant deposed in the enquiry proceedings that he has no grievance against the Bank. .

7.03. CSE having so many years or experience cannot take a shelter under such plea. It is the responsibility of the CSE being cashier to adhere to laid down procedures and systems. Having received cash for credit to SB A/c. No. 11046 fvg. Mr. Parminder Singh, which is in non operative status, he would have, immediately brought the matter to the notice of the branch head/ superior for changing the status of the account to "Operative" and then should have credited the amount to the account or he could have received the amount in "Customer Entry" for being dealt with by the branch appropriately.

7.04 As contended by the defence, if CSE is not equipped with adequate knowledge, he would have definitely sought the assistance of other colleagues at the branch, instead of keeping the cash with him.

7.05 The amount thus received and not accounted for in the books of the bank would have resulted in excess cash at the time of clsing of cash. Then as per the guidelines it should have been reported to the manager of the branch on the same day and credited to the Sundry Suspense Account.

7.06 In the instant case it is a fact that the amount of cash of Rs.



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5,000/- received by CSE towards credit of SB A/c No, 11046 fvg. Mr. Parminder Singh is neither credited to his account nor kept in Sundry Suspense account/ informed to higher authority instead the amount was kept with himself by CSE indicating misappropriation.

In view of the above analysis, I hold the allegation against CSE as PROVED

-sd-

(N. SATYANARAYAN)

Enquiry Officer

Date: 23.06.2008”

34. The enquiry report was supplied to the appellant and he was granted time to reply. The Appellant did submit a reply in the matter and disciplinary authority based upon the enquiry report after due application of mind has inflicted the punishment of compulsory retirement vide order dated 22.11.2008 against which an appeal was preferred and the same has been dismissed on 22.04.2009.

35. The undisputed facts of the case reveal that the misconduct committed by the appellant was proved in the departmental enquiry. The appellant is a banker and was certainly required to exercise higher standards of honesty and integrity as he was dealing with money of depositors and customers. The appellant in all fairness, in case the account of Sh. Parminder Singh was inoperative on 10.04.2007, could have deposited the amount on the same day in the sundry account. The appellant kept the money in his pocket, and it was only when the complaint was lodged by Sh. Parminder Singh who was the customer, the appellant deposited the money on 01.05.2007 in the



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sundry account. Meaning thereby, the factums of misappropriation have been established in departmental enquiry, and, therefore, the question of interference with the order passed by the disciplinary authority, appellate authority and the learned Single Judge does not arise especially in light of the judgment delivered in the case of ***Chairman and Managing Director, United Commercial Bank*** (Supra).

36. 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.

37. 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.



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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.”

38. 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,



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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



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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.”

39. 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.

40. 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



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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.”

41. 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.

42. 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



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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;*



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(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.”

43. 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.

44. 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.

45. The present LPA stands dismissed.

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SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

JULY 06 , 2023

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Signature Not Verified

Digitally Signed
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ROHELLA
Signing Date: 12/07/2023
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