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

+ W.P.(C) 12285/2009

DHARA SINGH

..... Petitioner

Through: Mrs. Avnish Ahlawat, Mr. N.K. Singh and Ms. Aliza Alam, Advocates (Ph. 9313964463, e-mail: avnish@ahlawatassociates.in)

versus

UNION BANK OF INDIA & ANR.

..... Respondents

Through: Mr. Rajat Arora, Mr. Jagat Arora, Mr. Dipu Kumar Jha and Mr. Niraj Kumar, Advocates (Ph.9810176964, e-mail: rajat132noida@yahoo.co.in)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

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J U D G M E N T

08.05. 2023

MINI PUSHKARNA, J.

1. The present writ petition has been filed by the petitioner impugning the order dated 22.11.2008 passed by the Disciplinary Authority of the erstwhile Andhra Bank under Clause 6(c) of the Bi-partite Settlement dated 10.04.2002, whereby punishment of compulsory retirement has been imposed upon the petitioner. The said punishment of compulsory retirement was upheld by the Appellate Authority of erstwhile bank vide its order dated 22.04.2009, which has also been impugned by way of the present petition.

2. Andhra Bank was amalgamated with Union Bank of India w.e.f. 01.04.2022. Thus, Union Bank of India was substituted as respondent

in place of erstwhile Andhra Bank vide order dated 06.10.2022.

3. The brief facts relevant to the case are that the petitioner was working as a Clerk at the R.K. Puram Branch of the erstwhile Andhra Bank and he was performing his duties at the cash window. While performing his duties on 10.04.2007, one customer of the bank, namely Sh. Parminder Singh deposited a sum of Rs. 5000/- in his savings account no. 11046. The petitioner accepted the said amount and issued receipt/acknowledgment of Rs. 5000/-. Subsequently, when the petitioner tried to enter the amount in the system, he found that the account of the said customer bearing No. 11046 was inoperative. Therefore, the money could not be deposited by the petitioner in that account.

4. The said money was kept by the petitioner with himself.

5. On 01.05.2007, the said customer namely Sh. Parminder Singh came to the branch and stated that he had deposited Rs. 5000/- with the bank on 10.04.2007, but the same was not deposited in his account. On the complaint of the customer, the officials of the branch verified the records and found that there was no such cash received on 10.04.2007. When the customer showed copy of the counter foil, it contained the signature of the petitioner. The Branch Manager of the bank called the petitioner and enquired about receipt of the cash. The petitioner accepted that he had received cash from the customer and further stated that he retained the cash with him since the system did not accept the receipt, as the account was inoperative.

6. The said money was then deposited in the Sundry deposit account maintained by the bank.

7. The Branch Manager thereafter requested the customer to make his account operative. Upon the application of the customer, his account was made operative on 05.05.2007. Thereafter, the amount was transferred to his account from the Sundry Account.

8. On 05.05.2007 itself, the Branch Manager reported the matter to the Zonal office. Thereafter, the zonal office forwarded the complaint to the head office of the bank vide its letter dated 16.05.2007.

9. Petitioner was placed under suspension pending enquiry vide order dated 20.06.2007.

10. Thereafter, a charge sheet dated 22.09.2007 was issued to the petitioner. The following charges were framed against the petitioner:-

“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-I) 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 are prejudicial to the interest of the Bank and constitute gross misconduct as per clause 5(j) of Memorandum of Settlement dated 10.04.2002.

*... ..
”*

11. Subsequently, disciplinary proceedings were conducted against the petitioner. The inquiry officer by his report dated 23.06.2008 held that the allegations against the petitioner were proved. The Disciplinary Authority issued a notice dated 27.08.2008 to the petitioner for imposing punishment of compulsory retirement and

treating the suspension period as not spent on duty. The petitioner submitted a detailed reply. The petitioner was also given a personal hearing by the Disciplinary Authority on 06.10.2008.

12. Thereafter, the Disciplinary Authority by its order dated 22.11.2008 imposed the punishment of compulsory retirement upon the petitioner. Further, the entire period of suspension from 20.06.2007 was treated as not on duty.

13. Petitioner filed an appeal against the order of the Disciplinary Authority. He was afforded opportunity of personal hearing along with his defence representative on 26.03.2019. The Appellate Authority vide its decision dated 22.04.2009 upheld the punishment imposed upon the petitioner. Thus, the present writ petition has been filed.

14. On behalf of the petitioner, it is contended that the Disciplinary Authority imposed a totally inappropriate punishment of compulsory retirement from service and the Appellate Authority without looking into the matter, passed an unreasoned order of upholding the decision of the Disciplinary Authority. It is submitted that the order of the Disciplinary Authority as well as the Appellate Authority is based on nil evidence and no case of any kind was made out against the petitioner by the respondents at any stage.

15. It is the case of the petitioner that by the time the petitioner realised that the account was inoperative, the customer had already left the branch. Thus, the petitioner kept the money and requested his senior officer Mr. D. Shankar for solution, who advised him to contact the senior Manager Mr. Swain, and obtain his signature on the cash

receipt and paying slip. However, he refused to sign the same. The petitioner again contacted the concerned officer Mr. D. Shankar, who, in turn suggested the petitioner to go to the customer's house and return the money.

16. It is submitted on behalf of the petitioner that he went to the customer's house at the given address but found that the customer was not residing at the given address. So, he could not handover the money to the customer. He kept the amount with him for the time being as suggested by his senior officer for passing on the money to the customer when he comes back to the branch for money.

17. It is submitted that when the account of the customer was made operative subsequently, the said amount was credited to his account. It is contended that when the money had already been credited in the account of the customer and the whole issue was over, the Assistant General Manager reported the matter to the General Manager. It is submitted that there was no misappropriation by the petitioner and the money had been deposited in the account of the petitioner.

18. It is submitted that even the customer in question, i.e., Sh. Parvinder Singh deposed in favour of the petitioner. He submitted that the amount was credited to his account and that he had no grievance against the petitioner as there was no misappropriation of his funds.

19. It is contended that the present is a case of no evidence against the petitioner. Thus, in case of no evidence against the delinquent employee, the inquiry officer cannot hold the employee guilty. It is prayed that the order dated 22.11.2008 passed by the Disciplinary Authority and order 22.04.2009 passed by the Appellate Authority

being perverse, may be set aside.

20. In support of her submissions, learned counsel for the petitioner has relied upon the following judgments:

1. ***BSM (PG) College Vs. Samrat Sharma*, (2019) 16 SCC 56**
2. ***Union of India Vs. P. Gunasekaran*, (2015) 2 SCC 610**
3. ***Sher Bahadur Vs. Union of India*, (2002) 7 SCC 142**
4. ***Kuldeep Singh Vs. Commissioner of Police & Ors.*, (1999) 2 SCC 10**

21. On the other hand, on behalf of respondent it is submitted that on 01.05.2007, when the complaint was made by the customer, the petitioner accepted that he had retained the amount with him. On that very date, the petitioner prepared a voucher and transferred the amount of Rs. 5000/- in the Sundry account maintained by the bank. Subsequently, the account of the customer was made operative on 05.05.2007 and thereafter the amount was transferred to the account of the customer on the said date.

22. It is submitted that the amount of cash deposited by the customer was not accounted for in the books of accounts, and was retained by the petitioner for a period of 20 days. It is contended that the punishment of compulsory retirement, as imposed by the Disciplinary Authority and upheld by the Appellate Authority, was rightly imposed upon the petitioner. All the dues of the petitioner pursuant to compulsory retirement stand paid. The petitioner has also reached the age of superannuation in the year 2014.

23. It is submitted that the inquiry was held in a just and fair manner and in accordance with the principles of natural justice. It is further submitted that the bank has lost confidence in the petitioner as he had retained the amount of the customer for a period of 20 days and had returned the same only after a complaint was made by the customer. The bank cannot repose any confidence in such an officer/workman who retains the amount of the customer of the bank.

24. In support of his submissions, learned counsel for the respondent has relied upon the following judgments.

- I. Pravin Kumar Vs. Union of India (UOI) and Ors., (2020) 9 SCC 471***
- II. PTI Employees Union Federation of PTI Employees Union Vs. Press Trust of India Ltd., 273 (2020) DLT 109***
- III. State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya, AIR 2011 SC 1931***
- IV. BC Chaturvedi Vs. Union of India and others, (1995) 6 SCC 749***

25. I have heard ld. Counsels for the parties and have perused the records.

26. The facts on record clearly show that the petitioner was working as a clerk and was performing his duties at the cash window on the material date, i.e., 10.04.2007. One customer by the name of Parvinder Singh had come to the bank to deposit Rs. 5,000/- in his Savings Account. The petitioner accepted the said amount and issued the receipt/acknowledgement to the customer. The petitioner did not credit the said amount in the account of the customer on the ground

that it was found that the said account was dormant/inoperative. Thus, the petitioner kept the said amount with himself. However, the petitioner did not account for the said amount in the books of accounts of the bank.

27. When approximately after about 20 days on 01.05.2007, the customer visited the branch, upon the Branch Manager making inquiries, the fact of the amount having been retained by the petitioner came to light. The facts on record clearly exhibit that the petitioner did not take any steps for either accounting for the said amount, nor made any relevant entries in the books of accounts of the bank. No doubt that the account of the customer was inoperative/ dormant at the material time, however, the petitioner while performing his duties at the cash window was required to make the relevant entries in the accounts at the time of receiving the cash. The petitioner while performing his duties at the cash window in a bank was required to check the account in the system and make entries therein at the time of accepting the cash at the cash window. The petitioner could not have simply kept the cash with him without making the requisite entries in the account at the time of acceptance of the cash.

28. It was only when the customer produced the counter foil that it came to light that the petitioner herein had received the said cash amount without crediting the same in the account of the customer. There is nothing on record to show that the petitioner had accounted for the said money. Rather, it has come on record that the petitioner had kept the said amount in his own custody. The petitioner could not have retained the money of the customer with himself without

accounting for the same or bringing the same to the notice of the Branch Manager. The events were discovered by the Branch Manager only when the customer in question visited the bank subsequently after 20 days.

29. Where a person deals with public money or is engaged in financial transactions, then misconduct in such cases has to be dealt with iron hands, as held by Supreme Court in the case of ***Regional Manager, U.P. SRTC, Etawah and Others Vs. Hoti Lal & Another, (2003) 3 SCC 605***. Thus, it has been held as follows:

“10. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.”

30. The act on the part of the petitioner in retaining the aforesaid amount for a period of 20 days, and not accounting the same in the books of accounts of the bank is a gross misconduct. It has come to the fore that it was only when the customer approached the bank subsequently that the petitioner admitted to the amount deposited by the customer, being in his custody. It was only thereafter that the petitioner deposited the said amount in the “Sundry Creditors” Account by preparing a Savings Bank Challan for the inoperative

Savings Bank Account of the customer. Thus, it is evident that the petitioner had received the cash and had mis-utilized the same without accounting for the same. Thus, the aforesaid action of the petitioner constituted gross misconduct and was prejudicial to the interest of the bank. It was a serious lapse and an irregularity committed by the petitioner.

31. Departmental proceedings were conducted and the charges against the petitioner herein were found to be proved by the Enquiry Officer. The documents on record clearly show that the petitioner was granted every opportunity to defend himself during the course of enquiry proceedings. The enquiry proceedings were held in a just and fair manner and in accordance with the Principles of Natural Justice.

32. The whole concept of banking is based upon trust of the customers. The bank receives the deposits from its customers, which are to be duly accounted for in the accounts of the respective customers. In dealing with the cash amounts of the customers, a strict policy of zero tolerance has to be followed in order to ensure that the moneys of the customers are secured and are not siphoned off in any manner. Thus, the petitioner being a Cashier with the bank and dealing with large amounts of cash and conducting money dealings of the customers, was required to maintain absolute integrity and uprightness in discharge of his duties. No laxity in this regard can be tolerated or condoned.

33. Supreme Court in the case of *Deputy General Manager (Appellate Authority) and Others Vs. Ajai Kumar Srivastava, (2021) 2 SCC 612* has held in categorical terms that in banking business,

absolute devotion, integrity and honesty is a *sine qua non* for every bank employee. Thus, it held as follows:

“42. Before we conclude, we need to emphasise that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24-7-1999 confirmed in departmental appeal by order dated 15-11-1999.”

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. 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 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 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 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 [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 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 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 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.

**(MINI PUSHKARNA)
JUDGE**

**MAY 8, 2023
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