

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPEAL FROM ITS CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APO 66 of 2022
WPO 52 of 2019
IA No. GA 1 of 2022
PUNJAB NATIONAL BANK
VS.
AVIK KUMAR SINHARAY AND ORS.**

WITH

**APOT 134 OF 2022
WPO 52 of 2019
AVIK KUMAR SINHARAY
VS.
PUNJAB NATIONAL BANK AND ORS.**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant PNB : Mr. R.N Majumder, Adv.
Mr. S.M. Obaidullah, Adv.

For the Respondent in : Mr. Soumya Majumdar, Adv.
APO 66 of 2022 & Md. Zohaib Raut, Adv.
APOT 134 of 2022 Mr. Ajitesh Pandey, Adv.

Hearing concluded on : July 30, 2024
Judgment on : August 08, 2024

DEBANGSU BASAK, J. :-

Signed By :
SUBHA
KARMAKAR
High Court of
Calcutta
8 th of August
2024 12:51:55 PM

1. Two appeals have been heard analogously as they emanate out of the same impugned judgement and order.

2. The appeal of the employer has been numbered as APO 66 of 2022 while that of the employee has been numbered as APOT 134 of 2022.
3. Learned advocate appearing for the employer has submitted that, the employee was issued a chargesheet dated January 27, 2017 to which the employee had given a reply dated February 14, 2017. Employee had challenged the disciplinary proceeding in a writ petition being WP 21662 (W) of 2016 which was disposed of by an order dated August 8, 2017 by directing the employer to conclude the departmental proceedings upon compliance with the principles of natural justice.
4. Learned advocate appearing for the employer has submitted that the enquiry officer submitted a report dated November 15, 2017 and held all charges levelled against the employee in the chargesheet dated January 27, 2017 were proved. Employee had submitted written submissions with regard to the enquiry report. The disciplinary authority had passed an order dated December 30, 2017 imposing the penalty of dismissal from service. Employee had preferred an appeal therefrom. Employee had filed a writ petition being WP 11130 of 2018 which was disposed of on July 11, 2018 by directing the appellate authority to dispose of the appeal within

two weeks from the date of communication of the order. Appellate authority had passed an order dated August 16, 2018 confirming the order of dismissal from service.

5. Relying upon **2003 Volume 3 Supreme Court Cases 583 (Lalit Popli vs. Canara Bank and Others)** learned advocate appearing for the employer has contended that there was no violation of the principles of natural justice in the enquiry proceeding. Subsequent discharge in the criminal proceedings has no relevance in the facts and circumstances of the present case. He has also relied upon **All India Reporter 1992 Supreme Court 1981 (Nelson Motis vs. Union of India and Another)** with regard to the effect of discharge in a criminal proceeding. He has contended that, the employee did not act with devotion diligence and integrity. He has relied upon **1998 Volume 4 Supreme Court Cases 310 (Union Bank of India vs. Vishwa Mohan)** in support of such contention.

6. Relying upon **2003 Volume 4 Supreme Court Cases 364 (Chairman and Managing Director, United Commercial Bank and Others versus P.C. Kakkar)** learned advocate appearing for the employer has contended that, since there was no error in the

decision-making process, the decision taken by the employer should not be interfered with.

7. With regard to the scope of a writ of certiorari, learned advocate appearing for the employer has relied upon ***All India Reporter 1964 Supreme Court 477 (Syed Yakoob vs. K. S. Radhakrishnan and Others)***. On the aspect of exercise of powers under Articles 226 and 227 of the Constitution of India, learned advocate appearing for the employer has relied upon ***2015 Volume 2 Supreme Court Cases 610 (Union of India and Others vs. P. Gunasekaran)***. On the contention that, the quantum of punishment is within the domain of the employer, learned advocate appearing for the employer has relied upon ***1996 Volume 3 Supreme Court Cases 364 (State Bank of Patiala and Others versus S.K. Sharma)***.
8. Learned advocate appearing for the employer has relied upon ***All India Reporter 1982 Supreme Court 673 (J. D Jain vs. The Management of State Bank of India)*** for the contention that, strict rules of Indian Evidence Act do not apply in a domestic enquiry proceeding. He has also relied upon ***All India Reporter 1977 Supreme Court 1512 (State of Haryana vs. Rattan Singh)***.

- 9.** Learned advocate appearing for the employee has referred to the list of dates. He has contended that the employee was working as Senior Manager (Information Technology) (IT) of the employer and was deputed to a regional rural bank of which the employer was a sponsor on August 10, 2015. Employee had made a complaint under the Whistleblower Policy of the employer bringing to the notice of the Vigilance Authorities about bank loan fraud and looting of loan in the credit operations department and loan monitoring department. General Manager Human Resources (HR) had been alleged to be one of the persons involved. After such complaint employee had been suspended on July 13, 2016. Chargesheet had been issued subsequently.
- 10.** Learned advocate appearing for the employee has pointed out to the charges levelled against the employee. He has contended that, the first charge of unauthorised access to the data server of the bank was not proved due to answers given by the prosecution witnesses. One of the prosecution witnesses had categorically stated that, it was not possible to have unauthorised access to the data server of the bank. Creation of fake email ID which is the 2nd charge has not been proved since, the employee issued the complaint under the Whistleblower Policy of the employer using

such email ID. In any event, the employee is accepting that such email ID is his and as such the question of the employee having created any fake email ID does not arise. The 3rd charge is with regard to arriving at the head office of the rural bank on June 18, 2016 and being instrumental in changing the Central Processing Unit (CPU) of the computer set allotted to the manager which employer could not prove.

11. Learned advocate appearing for the employee has referred to various irregularities in the enquiry proceeding. He has contended that, such irregularities had vitiated the enquiry proceedings. He has referred to the order of punishment. He has contended that, the penalty order was issued from Assam whereas the draft order was prepared in Kolkata in the HR department which was headed by General Manager HR who was one of the accused in the complaint lodged by the employer under the Whistleblower Policy.

12. Learned advocate appearing for the employee has contended that, both the central government as well as the Reserve Bank of India had intervened on the basis of the complaint of the employee. RBI had written to the employer to review the disciplinary proceedings against the employee on May 30, 2018, and August 29, 2018. Central Government had written a letter dated September 19,

2018 with regard to the punishment of dismissal meted out to the employee.

13. Learned advocate appearing for the employee has pointed out that the complaint of the employee against the officers lead to disciplinary action against 28 officers of the employer including the General Manager HR.
14. Learned advocate appearing for the employee has contended that, the entire disciplinary proceedings including the decisions taken therein stand vitiated due to administrative malice and personal bias against the employee.
15. Learned advocate appearing for the employee has contended that, the order of dismissal from service being bad in law has been correctly set aside by the learned Single Judge. However, learned single judge instead of awarding full back wages along with all attending benefits, had erred in directing only half of the back wages to be paid. He has contended that, the employee was prevented from discharging his services and therefore he should be compensated with full back wages. He has relied upon **2013 Volume 10 Supreme Court Cases 324 (Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.)** and **2022**

Volume 11 Supreme Court Cases 794 (Gowramma C. vs. Manager (Personnel) HAL) in this context.

16. Learned advocate appearing for the employee has relied upon **2006 volume 4 Supreme Court Cases 713 (Narinder Mohan Arya vs. United India Insurance Co. Ltd.)** and **2017 Volume 2 Supreme Court Cases 308 (Allahabad Bank & Ors. Vs. Krishna Narayan Tewari)** for the proposition that a court can interfere with a departmental proceeding when the enquiry report is based on no evidence. He has contended that, fairness in procedure is a principle of natural justice.
17. On the aspect of mala fide exercise of power and the meaning of mala fide learned advocate appearing for the employee has relied upon **All India Reporter 1964 Supreme Court 64 (Union of India vs. HC Goel)** and **2020 Volume 3 Supreme Court Cases 86 (Rajneesh Khajuria vs. Wockhardt Limited & Anr.)**.
18. Learned advocate appearing for the employee has relied upon **1981 Volume 1 Supreme Court Cases 722 (Ajay Hasija vs. Khalid Mujib Sehrawadi)** for the proposition that, where a party does not deny allegations contained in an affidavit then such allegations should be accepted as true.

- 19.** Employee while working with the employer on deputation to a rural bank had made a complaint to the Central Vigilance (CPC) on April 4, 2016 in terms of the whistle blower policy of the bank.
- 20.** Employee had been suspended on July 30, 2016. A chargesheet had been issued by the employer on January 27, 2017. Employee had submitted a reply to the chargesheet on February 14, 2017 and enquiry proceeding had commenced as against the employee. Inquiry Officer had submitted a report dated November 15, 2017 finding the employee guilty of all the three charges levelled against him.
- 21.** Employer had given a opportunity to the employee to submit a reply to the enquiry report which the employee did on December 29, 2017. Disciplinary Authority had issued an order of punishment dated December 30, 2017 directing dismissal from services.
- 22.** Employee had preferred an appeal to the Appellate Authority on January 6, 2018. By a letter dated May 30, 2018, RBI had asked the employer to review the decision in the disciplinary proceedings. However, Appellate Authority had concurred with the finding of the Disciplinary Authority by the order dated August 16, 2018.

- 23.** By a letter dated August 29, 2018, RBI had requested the employer to review the disciplinary proceeding as against the employee. By a letter dated September 19, 2018, Union of India had expressed concern with regard to the dismissal from service of the employee.
- 24.** In response thereto employer had written to the Union of India stating that the complaint of the employee had led to disciplinary proceedings against 21 employees of the employer.
- 25.** A criminal proceeding had been initiated as against the employee which was disposed of by an order dated December 10, 2019 passed by the learned Chief Metropolitan Magistrate discharging the appellant.
- 26.** Thereafter, the employee had filed a writ petition being WPO 52 of 2019 giving rise to the impugned judgement and order. In the appeal filed by the employer, an interim order was sought for, which was refused by the Appeal Court on August 17, 2022. Employer had filed a Special Leave Petition which was disposed of by an order dated April 2, 2024 staying the operation of the order of reinstatement.
- 27.** By the impugned judgement and order, learned Single Judge had exercised judicial review of a punishment awarded by a

disciplinary proceeding against the employee. On the scope of judicial review, several authorities had been cited at the bar which requires consideration.

28. *Lalit Popli (supra)* has held that where the findings of the Disciplinary Authority are based on some evidence, the Court or Tribunal cannot re-appreciate the evidence and substitute its own finding.

29. On the scope of judicial review, ***P.C Kakkar (supra)*** has held that, the scope of judicial review is limited to the deficiency in decision making process and not the decision.

30. On the scope of a writ of certiorari, ***Syed Yakoob (supra)*** has held that, writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals particularly when orders are passed without jurisdiction or in excess of it or as a result of failure to exercise jurisdiction. It has also observed that a writ of certiorari can be issued where the Court or Tribunal acted illegally or improperly or where the procedure adopted is opposed to principles of natural justice. However, it has cautioned that, Court exercising jurisdiction for issuance of a writ of certiorari is not entitled to act as an Appellate Court that is to say that, re-

appreciate the evidence and substitute its own finding with that which was reached.

31. While dealing with scope of interference under Article 226 and 227 of the Constitution of India in relation to service matters, **P. Gunasekaran (supra)** has held that, High Court is not and cannot act as a second Court of First Appeal.

32. **J. D Jain (supra)** has dealt with a writ petition challenging an award of an industrial tribunal. In such context, it has held that, a writ Court can quash an industrial award when the Tribunal has committed an error or law apparent on the face of the record or when the finding of the industrial tribunal is perverse.

33. **Rattan Singh (supra)** has held that, in a domestic enquiry, the strict rules of evidence under the Evidence Act may not apply. It has also held that, the sufficiency of evidence for proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available to the Court to look into because it amounts to an error of law apparent on the face of the record.

34. **Narinder Mohan Arya (supra)** has held that, Court can interfere in departmental enquiries where the enquiry report is

based on no evidence. Same view has been expressed in ***Krishna Narayan Tewari (supra)***.

35. Conclusion arrived at on the basis of no evidence is suggestive of mala fide. Meaning of mala fide has been explained in ***Rajneesh Khajuria (supra)***. It has held that mala fide means want of good faith, personal bias and grudge and encompassing a situation where administrative action is to object and encompassing situation where administrative action is contrary to object.

36. ***Vishwa Mohan (spura)*** in the facts of that case, has held that, the employee failed to demonstrate any prejudice against him due to non-supply of the enquiry report and therefore, the disciplinary proceeding was held not to be vitiated by breach of principles of natural justice.

37. ***S. K. Sharma (supra)*** had held that, in administrative law, no inflexible rule as to applicability of principle of natural justice can be laid down. Where natural justice has been alleged to be violated, the writ petitioner has to establish prejudice.

38. While a writ petition against an order passed in the disciplinary proceeding is maintainable, the success thereof is dependent upon the writ petitioner establishing any of the following :-

- i.* there was a jurisdictional error in arriving at the decision
- ii.* although sufficiency of evidence is not a ground for interference with the decision nonetheless absence of evidence raises an issue of law can be decided by a writ Court
- iii.* decision arrived at was in breach of the principles of natural justice which such breach caused prejudice to the writ petitioner
- iv.* impugned decision is perverse.

39. Scope of judicial review of decision taken in a disciplinary proceeding is limited. In a judicial review of a decision taken in a disciplinary proceeding Court is not required to act a Court of appeal, re-appreciate the evidence and substituted its finding with that of the one under challenge. Sufficiency of the evidence is not within the domain of the Court, if there is some evidence to arrive at the decision impugned.

40. In disciplinary proceedings, three charges had been levelled as against the employee namely,

- i.* Unauthorized access to bank server to extract data
- ii.* Creation of fake e-mail ID

iii. Arriving early at the branch on June 18, 2016 to swap the CPU of the computer set allegedly belonging to another employee.

41. With regard to the first charge in the enquiry proceedings, management witness No. 2 in answer to a question put by the employee whether from the rural bank where the employee was posted, access to the server/system/network of the employer was possible or not. Such management witness No. 2 had replied in the negative to such question.

42. Indisputably, employee had been working on deputation at the rural bank at the material point of time when it is alleged that the employee had accessed the server of the employer to extract data.

43. In view of such categorical answer in the negative given by management witness No. 2, first charge as against the employee has to be held to be not proved. Employer has failed to produce any evidence at the enquiry that access to the server of the employer was possible from the rural bank.

44. The second charge of creation of fake e-mail ID has no substance. Employee has accepted that the so called fake e-mail ID is his. Question therefore, of such e-mail ID remaining fake on the acceptance of the same as his own by the employee does not arise.

In any event, the complaint made through such so called fake e-mail ID had been acted upon by the employer. 21 officers of the employer had been proceeded against on the basis of the complaint emanating out of such so called fake e-mail ID. The substance in the allegations of the employee as contained in the complaint made through the alleged fake e-mail ID stood vindicated upon punishment being imposed against 21 of the bank officers.

45. The third charge of early arrival for the purpose of replacing the CPU of another employee concerned has not been proved at the enquiry. The CPU recovered from the relative of the employee has not been established to be the CPU belonging to the other employee of the bank.

46. Although, sufficiency of evidence in proof of a finding in a domestic tribunal is beyond scrutiny by a Constitutional Court, exercising jurisdiction under Article 226 and 227 of the Constitution, nonetheless, the same Court exercising the same jurisdiction can decide as to whether there was absence of any evidence in support of a finding on the principle that finding without evidence amounts to an error of law apparent on the record for which a writ of certiorari can be issued.

- 47.** In the impugned judgement and order, learned Single Judge had taken the pains to consider the evidence available during the enquiry in respect of the three charges. Learned Single Judge has held that there was no evidence for the Inquiry Officer to arrive at a finding of guilt in respect of any of the three charges. As noted above, absence of any evidence tantamount to an error apparent on the record triggering the jurisdiction of a Constitutional Court.
- 48.** In view of the discussions above, appeal at the behest of the employer is without merit and is dismissed, however, without any order as to costs.
- 49.** Employee has appealed against the direction contained in the impugned judgement and order with regard to payment of back wages. The impugned judgement and order has directed half of the back wages to be paid to the employee.
- 50.** ***Deepali Gundu Surwase (supra)*** has held that, in cases of wrongful termination, reinstatement with full back wages is the normal rule unless there is supervening circumstances.
- 51.** ***Gowramma C. (supra)*** has held that, if an employee is kept out of work by a decision of the employer then such employee should not be denied back wages upon the employee being vindictive.

52. Both **Deepali Gundu Surwase (supra)** and **Gowramma C. (supra)** and have held that, if the employee was kept out of work by a decision of the employer then reinstatement with full back wages is normal rule on such decision being set aside, unless there are supervening circumstances. The employee herein has been kept out of work without any justification, at the behest of the employee. In course of hearing, employee has relied on a counter affidavit filed by him in the Special Leave Petition (C) No. 17059 – 17060 of 2022 where, he has taken the stand that he was without job, and without salary for the last 5 years.
53. We have not found any supervening circumstances which allows denial of full back wages to the employee upon his reinstatement.
54. In **Nelson Motis (supra)** it has been held that, where the nature and scope of the disciplinary proceeding was different from that of a criminal case, acquittal in criminal case did not affect the disciplinary proceeding or the decision arrived thereat.
55. **Ajay Hasija (supra)** has held that in case a party does not deny allegations on affidavit then the allegation should be accepted as true.

56. Consequently, we allow the appeal of the employee being APOT 134 of 2022 by modifying the direction passed by the learned Single Judge with regard to payment of back wages to the employee. We direct that, the employer reinstates the employee forthwith with full back wages and other service benefits from the date of his dismissal from service till his reinstatement. Payments be made within four weeks from date. Employer will treat the employee to be in continuous service, as if the order of suspension and the disciplinary proceeding not occurring and will afford all consequential benefits to the employee treating him an employee as such.

57. APO 66 of 2022 is dismissed.

58. APOT 134 of 2022 is disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

59. I agree.

[MD. SHABBAR RASHIDI, J.]