IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2024

PRONOUNCED ON : 14.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.18126 of 2009

The Assistant General Manager,
State Bank of India,
Region – II, Zonal Office,
Madurai. ... Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial,
Tribunal cum Labour Court,
First Floor, 26, Haddow Road,
Shastri Bhavan,
Chennai – 600 006.

2.B.Ramar ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 1st respondent, namely, the Presiding Officer, Central Government Industrial Tribunal, The Labour Court in award dated 30.3.2009, in I.D. No.12 of 2007 and quash the same as illegal, arbitrary and opposed to law.

For Petitioner : Mr. S.Ravindran, Senior Counsel
for M/s.S.Bazeer Ahmed

For R1 : Court

For R2 : Mr.Balan Haridas

ORDER

This Writ Petition has been filed to call for the records on the file of the first respondent, namely, the Presiding Officer, Central Government Industrial Tribunal, The Labour Court Award, dated 30.3.2009, in I.D. No.12 of 2007 and quash the same as illegal, arbitrary and opposed to law.

2.The case of the petitioner is that second respondent joined the petitioner's Bank as a sub-staff and was promoted as a Clerk. While working in Sivakasi Branch of State Bank of India during 2002, second respondent had committed certain irregularities causing huge loss to the Bank. Disciplinary proceedings were initiated against him on the following charges.

Charge No.1:

You have failed to incorporate the name of the ledger of the instrument in the LOCL register in the column "For credit of/payment to" and the account numbers were also not written/not written legibly in many cases, which facilitated Shri A.Jayachandran Assistant, Sivakasi Town Branch to *alter the account number in LOCL register and substitute credit vouchers of his choice to defraud the Bank.*

Charge No.2:

The undernoted customers complained that they made cash remittances in the Cash Receipts Counter manned by you, but the remittances were not accounted for in the books of the Bank.

Sl.No.	***Name of the Customer***	***SB Account No.***	***Date of Remittance***	***Amount Remitted (Rs.)***
1	K.Subbulakshmi	01190005922	07.08.2002	55,000.00
2	S.Natarajan	01190006015	19.04.2001	1,00,000.00
3	D.Padmavathi	01190006013	19.04.2001	1,00,000.00
4	P.Palraj	01190006014	17.04.2001	2,00,000.00
5	V.Dharmaraj	01190006016	17.04.2001	2,00,000.00
6	S.Jeyanthi	01190008100	12.05.2001	1,72,000.00
7	N.Venkatesan	01190008069	24.04.2001	2,00,000.00

Charge No.3:

You have introduced your friend Shri.S.Mathivanan of S.Tharaikudi village to Shri A.Jeyachandran, Assistant and arranged loan to the extent of Rs.2 Lakhs to Shri A.Jeyachandran from Shri Mathivanan for the business activities of Shri A.Jeyachandran without informing the Bank.

3.By a reply dated 30.06.2006, second respondent gave a reply making bald denial of the charges. Not satisfied with the reply, an Enquiry Officer was appointed to conduct enquiry. Second respondent participated in the enquiry. Enquiry Officer held that second respondent was guilty of charge No.1 and part of charge No.2. He was exonerated from charge No.3. Further representation was called for from the second respondent. Thereafter, Disciplinary Authority concurred with the findings of the Enquiry Officer and a show cause notice was issued about the proposed punishment of dismissal without notice. Personal hearing was given to the petitioner. Second respondent did not attend the personal hearings scheduled on 26.06.2004 and 30.06.2004. He filed a writ petition in W.P.No.17766 of 2004 for quashing the second show cause notice. This Court disposed of the Writ Petition with an observation that the Disciplinary Authority has to consider the second respondent's objections. Then second respondent attended the hearing and submitted a letter dated 16.07.2004. After considering the enquiry report, comments of the second respondent, submissions made at the personal hearing, Disciplinary Authority imposed a punishment of dismissal without notice as per paragraph 6(a) of memorandum of settlement, dated 10.04.2002.

4.In the Appeal, the punishment was modified from dismissal of service to discharge from service. Against the order of the Appellate Authority, second respondent raised an industrial dispute. The Central Government referred the industrial dispute to the Tribunal for adjudication on the following point, "Whether the punishment of discharge from service imposed on Shri.B.Ramar by Management, State Bank of India, Madurai is legal and justified? If not, to what relief the workman is entitled to?". Second respondent filed a claim statement before the Central Government Industrial Tribunal in I.D.No.12 of 2007 and the petitioner filed a reply statement. The Presiding Officer of the Tribunal, without considering the contentions of the Bank, set aside the findings of the Enquiry Officer regarding charge No.2 and set aside the punishment of discharge imposed against the second respondent. The Presiding Officer upheld the findings of the Enquiry Officer regarding charge No.1 and imposed the punishment of bringing down by one stage in the time scale of pay for one year without cumulative effect. It was further ordered to reinstate in service with back wages and continuity of service with attendant benefits. Against the said order, this Writ Petition is filed.

5.It is submitted by the learned counsel for the petitioner that after receiving the charge sheet dated 07.06.2023, second respondent has submitted his reply dated 30.06.2003. In the said reply, he has not made any specific denial of the charges made against him. Infact for charge No.2, his reply was that *"I am surprised to read the charges and I totally deny the allegations"*. No specific denial of charge No.2 was made. During the enquiry, second respondent has not produced any oral evidence, not even the second respondent examined himself in support of his explanation. On the other hand, petitioner examined seven witnesses and produced 18 documents. It is not a case of no evidence. There is sufficient evidence produced by the petitioner before the Enquiry Officer and on the basis of the evidence produced, Enquiry Officer found charge No.1 and part of charge No.2 were proved and charge No.3 was not proved. The Tribunal, however proceeded to consider the matter, without there being any evidence in support of the arguments. Arguments without evidence should not have been considered. Only in case where there is no evidence or relevant materials are not considered or extraneousness materials were considered, there is scope for interference with the findings of the Enquiry Officer. The entire order of the Presiding Officer of the Tribunal shows that the Presiding Officer has discussed the case merely on the basis of the submissions without the support of evidence. Even the points which were not pleaded by the second respondent has been discussed in the order. The oral or documentary evidence produced in this case were not referred in the order. When the second respondent has not disputed that he was not handling the cash counter, when the remittance of the amounts were admitted, there is no need for identifying the person, who received the cash in the cash counter and for insistence for the production of counterfoil. Second respondent has not given any evidence that he has not received the cash in the cash counter. Despite the findings of the Enquiry Officer based on the evidence, the learned Tribunal has not accepted the findings of the Enquiry Officer with regard to charge No.2. The application of Section 7 (c) Bipartite settlement is not correct.

6.It is his further submission that the second respondent had admitted not writing the names of the account holders and account numbers of the account holders. It facilitated the commission of offence by the other staff A.Jayachandran. If second respondent claims that he has not manned the cash counter and received the cash remitted, he should prove his case. In support of this submission, he pressed into service the judgment in ***Orissa Mining***

Corporation Vs.Ananda Chandra Prusty reported in 1996 (11) SCC 600. The powers under Section 11-A of the Industrial Disputes Act has to be exercised judicially and judiciously in a convincing manner and not in arbitrary manner. However, the findings of the learned Tribunal is based on conjectures and surmises. In support of this submission, he pressed into service the judgments in ***(i)Standard Chartered Bank Vs.R.C.Srivastava*** reported in ***2021 (6) LLN 428.*** The relevant portion of the judgment is extracted hereunder:

> *18. In the instant case, after we have gone through the record, we find that the Tribunal has converted itself into a Court of Appeal as an appellate authority and has exceeded its jurisdiction while appreciating the finding recorded in the course of domestic enquiry and tested on the broad principles of charge to be proved beyond reasonable doubt which is a test in the criminal justice system and has completely forgotten the fact that the domestic enquiry is to be tested on the principles of preponderance of probabilities and if a piece of evidence is on record which could support the charge which has been levelled against the delinquent unless it is per se unsustainable or*

perverse, ordinarily is not to be interfered by the Tribunal, more so when the domestic enquiry has been held to be fair and proper and, in our view, the Tribunal has completely overlooked and exceeded its jurisdiction while interfering with the finding recorded during the course of enquiry in furtherance of which, the respondent was dismissed from service and the High Court has also committed a manifest error while passing the judgment impugned.

19. The decision of the Labour Court should not be based on mere hypothesis. It cannot overturn the decision of the management on ipse dixit. Its jurisdiction under Section 11-A of the Act 1947 although is a wide one but it must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinize or analyse the evidence but what is important is how it does so.

(ii)United Bank of India Vs. Bachan Prasad Lall reported in ***(2022) 4 SCC 358.*** The relevant portion of the judgment is extracted hereunder:

12. In our considered view, looking into seriousness of the nature of allegations levelled *against the respondent employee, the punishment of dismissal inflicted upon him in no manner could be said to be shockingly disproportionate which would have required to be interfered with by the Tribunal in exercise of its power under Section 11-A of the 1947 Act. At the same time, merely because the employee stood superannuated in the meanwhile, will not absolve him from the misconduct which he had committed in discharge of his duties and looking into the nature of misconduct which he had committed, he was not entitled for any indulgence. The bank employee always holds the position of trust where honesty and integrity are the sine qua non but it would never be advisable to deal with such matters leniently.*

(iii)State Bank of India and Ors. Vs.T.J.Paul reported in ***1999 (4) SCC 759,*** is relied for the proposition that gross negligence is a major misconduct. The relevant portion of the judgment is extracted hereunder:

16.Taking up the definition of `gross misconduct' in para 22(iv), it is obvious that clause (h) does not apply because the charge is not one of insubordination or disobedience of specific orders of any superior officer. Coming to clause (l) of *para 22(iv), the doing of any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss is gross misconduct. In other words likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct. The Inquiry Officer's finding of `gross misconduct' on the ground of not obtaining adequate security is, therefore, correct and cannot be said to be based on no evidence as held by the High Court. This can be contrasted with para 22(vi)(c) under minor misconduct which deals with `neglect of work and negligence in performing of duties'. In our view, the contention of the learned senior counsel for the appellants Sri T.R.Andhyarujina is, therefore, entitled to be accepted.*

17.The contention of the learned senior counsel for the respondent ignores the fact that `gross negligence or negligence likely to involve the Bank in serious loss' would come under major misconduct within para 22(iv)(l). As stated above, even assuming that there is no gross negligence,* *simple negligence will come under major misconduct if accompanied by `likelihood' of serious loss and this is clear from para 22(iv)(l). Hence the finding of the Inquiry Officer regarding gross misconduct is correct and could not have been set aside by the High Court.

7.In continuation of his submission, the learned counsel for the petitioner submitted that because of the gross negligence on the part of the second respondent, Bank suffered not only huge monetary loss, but also its name and fame and it brought a discredit to the name of the Bank in the eyes of the public. Therefore, the findings of the learned Tribunal setting aside the Enquiry Officer's finding with regard to charge No.2 and imposing minor punishment with reinstatement, continuation of service and back wages are illegal.

8.With regard to back wages, it is the submission of the learned counsel for the petitioner that back wages is not automatic. There must be proper pleadings and evidence to prove that the second respondent was not gainfully employed during the period of his non employment. However, there is no evidence to prove that second respondent was not gainfully employed during the period of his non employment. When there is no work, possibly, there could be no pay. In addition to the other points canvassed against the award, the learned counsel for the petitioner submitted that the second respondent is not entitled for any back wages. He relied on the following judgment in this regard. ***P.Karupaiah (Dead) through legal representatives vs. General Manager, Thruuvalluvar Transport Corporation Limited*** reported in ***(2018) 12 SCC 663.*** The relevant portion of the judgment is extracted hereunder:

> *11. Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his rejoining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.*
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> *12. On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The Courts have also applied in*

> *appropriate cases the principle of "No work-No pay"while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case.*

9.In reply, the learned counsel for the second respondent submitted that second respondent joined the Bank as a sub-staff. He was promoted as Assistant (Record keeper cum Cashier) in the Sivakasi Town Branch. However, the Branch Manager instructed the petitioner to work in the Clerical seat without giving proper training and exposure. Petitioner was asked to work pertaining to local clearing and outward clearing as and when required. Being a Messenger promotee, without sufficient educational qualification and training, he had to do the work as directed by the Branch Manager. He had been writing the ledger pertaining to the local clearing and outward clearing as per the branch practice. As per the branch practice, only account number was written in the register and petitioner has done this with the knowledge of the Branch Manager. Branch Manager should not have asked the second respondent to do the work of a Clerk. The first charge is vague and the charge does not contain the details of the transactions, where the names of the account holders were not written and other relevant details. One A.Jayachandran working as a Clerk in the Bank was running parallel banking by collecting money from the customers known to him. After collecting money from the customers, he had not remitted the money in the Bank, but made entries in the pass book of the customers as if money had been remitted in the Bank. He was arrested and criminal proceedings were launched against him. Second respondent has no role in the fraud committed by A.Jayachandran. That is why second respondent was not criminally prosecuted. For adopting a practice followed in the Bank, second respondent cannot be penalised.

10.Though the findings of the Enquiry Officer against charge No.1 is not correct, unfortunately, second respondent has not challenged the findings. With regard to the findings of the Enquiry Officer against charge No.2, Enquiry Officer extracted some portion of the evidence to come to a conclusion that part of charge No.2 was proved against the second respondent. The reading of the evidence of the witnesses in case of the remittances for which charges are said to have been proved shows that those witnesses have not identified the second respondent as a person to whom they paid cash. That apart, none of the witnesses have produced the counterfoil. It is a material piece of evidence to implicate the petitioner with charge No.2. When it is not produced, it cannot be conclusively held that second respondent had committed the offence. In the absence of this crucial evidence, the findings recorded by the Enquiry Officer that part of charge No.2 was proved is against the evidence and not in accordance with law. It is pertinent to note that the second respondent participated in the enquiry and none of the witnesses had identified to the Enquiry Officer, the second respondent as a person to whom they paid money. Those witnesses have not identified the person to whom they paid the money. Therefore, the finding of the Enquiry Officer that part of charge No.2 was proved is not correct and therefore, it was rightly set aside by the Presiding officer of Industrial Tribunal.

11.In support of his submissions, the learned counsel for the second respondent relied on the following judgments:

(i)The Management of Amalgamations Repco Ltd. Vs. The

Presiding Officer, Principal Labour Court, Chennai and one another, is relied for the proposition that it is impermissible while exercising writ jurisdiction, to re- appreciate the evidence and drawing conclusions on pure questions of fact. The relevant portion of the order is extracted hereunder:

> *13.Similar view has been expressed in the Judgment of the Hon'ble Supreme Court in the case of Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and another reported in (2000) 4 SCC 245. The Hon'ble Supreme Court in paragraph No.17 held as follows:*
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> *"17.The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of*

having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken."

(ii)Union of India and others Vs. Harjeet Singh Sandhu reported in ***(2001) 5 SCC 593*** is relied for the proposition that if two views are possible, the court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power. The relevant portion of the order is extracted hereunder:

42.......If two views are possible, the court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power.

(iii) Syed Yakoob Vs. K.S.Radhakrishnan and Ors. reported in ***AIR 1964 SC 477*** is relied for the proposition that an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. The relevant portion of the judgment is extracted hereunder:

7.The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An *error of law which is apparent on the face of the record can be corrected by a writ, but not an error of tact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the. Tribunal had. erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the*

High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3).

(iv)Workmen of M/s.Firestone Tyre and Rubber Co. of India Pvt. Ltd Vs.The Management and Ors. reported in ***1973 (1) SCC 813*** is relied with regard to the scope of Section 11 A of the Industrial Disputes Act. The relevant portion of the judgment is extracted hereunder:

65.We have already expressed our view regarding the interpreta- tion of -section 11A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal, had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it These limitations on the *powers of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years,' had recognised certain managerial rights in an employer. We have pointed out that this position has now been changed by section 11 A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by' an employer as well as the punishment imposed by him. Hence in order to make the section applicable even to disputes, which had been referred prior to the coming into force of the section, there should be such a clear, express and manifest indication in the section. There is no such express indication. An inference that the section applies to proceedings, which are already pending, can also be gathered by necessary, intendment. In the case on hand, no such inference can be drawn as the indications are to the contrary. We have already referred to the, proviso to section 11A which states 'in any proceeding under this section'. A proceeding under the section can only be after the section has* *come into force. Further the section itself was brought into force some time after the Amendment Act was passed. These circumstances as well as the scheme of the section and particularly the wording of the Proviso indicate that section 11A does not apply to disputes which had been referred prior to 15-12- 1971. The section applies only to disputes which are referred for adjudication on or after 15-121971. To conclude, in our opinion, section 11A has-no application to disputes referred prior to 15-12-1971. Such disputes have to be dealt with according to the decisions of this Court already referred to.*

(v)M.V.Bijlani Vs. Union of India and Ors. reported in ***2006 (5) SCC 88*** is relied to explain the jurisdiction of the Court in the matter of judicial review. The relevant portion of the judgment is extracted hereunder:

25.It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial *function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.*

26.The report of the Enquiry Officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the appellate authority which are based on the said Enquiry Report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the Appellant. The Tribunal also, thus, failed to discharge its functions properly.

(vi) Roopsingh negi Vs. Punjab National Bank and Ors. reported in

2009 (2) SCC 570 is relied for the proposition that the Enquiry Officer has to consider the materials brought on record by the parties during the course of enquiry and not the materials collected during investigation. The relevant portion of the judgment is extracted hereunder:

> *14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.*
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> *15.We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made*

by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

(vii) SBI Vs. A.Madanabalan and Ors.reported in ***2012 SCC Online Mad 1855*** is relied for the proposition that charges must be specific and it should not be vague. The relevant portion of the judgment is extracted hereunder:

6.Mr.Balan Haridas, learned counsel for the workman referred to the judgment of the Honourable Supreme court in Union of India V.Gyan Chand Chattar [2009 (12) SCC 78] for contending that serious charges of bribery cannot be proved on a mere probabilities or hearsay *evidence. In paras 21 and 30 of the judgment, it was observed as follows:*

21.Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the concerned employee. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

30.Charge No. 6 was basically based on hearsay statement and it is difficult to assume as to whether enquiry could be held on such a vague charge. The Charge No. 6 does not reveal as who was the person who had been asked by the respondent to pay 1% commission for payment of pay allowances. It is an admitted position that if a charge of corruption is proved, no punishment other that dismissal can be awarded.

(viii) SBI Vs. A.Madanabalan and Ors. in ***W.A.No.2870 of 2012 dated 02.04.2018*** is relied for the proposition that mere identification of the person in the counter on the day when the amount was deposited is not sufficient to conclude any person guilty of misappropriation. The relevant portion of the judgment is extracted hereunder:

> *7. On a careful look at the records, as pointed out by the learned counsel appearing for the Bank, we find some evidence stated to be the deposition of PW4. However, such evidence of PW4, who is a public, cannot be a conclusive proof to come to a conclusion that the first respondent/workman committed misappropriation, as a public will not be aware of internal correspondence of the Bank and whether the person in the counter has credited the amount in the account of the customer in the ledger book or not. Therefore, mere identification of the person who stated to be in the counter on the day when the amount was deposited is not sufficient to conclude any person guilty of misappropriation. Thus, the Bank ought to have enquired the staff of the Bank who would have the knowledge of bank transaction. Failure on the part of the Bank to enquire their staff in this regard would not substantiate the contention raised by the Bank. Thus, the point that arises for our consideration is answered in negative.*

(ix) Indian Overseas Bank and Ors. Vs. Om Prakash Lal Srivastava

reported in ***2022 (3) SCC 803*** is relied for the proposition that if there is no jurisdictional error or violation of natural justice or error of law apparent on the face of the record, there is no occasion for the High Court to get into the merits of the controversy as an appellate court. The relevant portion of the judgment is extracted hereunder:

> *17. We would like to emphasise at the threshold that there are certain inherent legal limitations to the scrutiny of an award of a Tribunal by the High Court while exercising jurisdiction under Article 226 of the Constitution of India. We may refer to the judgment of this Court in GE Power India Ltd. (Formerly Known as M/s. Alstom Projects Ltd.) v. A. Aziz2. If there is no jurisdictional error or violation of natural justice or error of law apparent on the face of the record, there is no occasion for the High Court to get into the merits of the controversy as an appellate court. That too, on the aspect of an opinion formed in respect of two sets of signatures where the inquiry was held by an officer of the bank who came to an opinion on a bare comparison of the signatures that there is a difference in the same. It has been looked at from the perspective of a "banker's eye". This is, of course, apart from the testimony of the sister- in-law of the respondent.*

12.Considered the rival submissions and perused the records.

13.It is a case where the Management, aggrieved against the order passed by the Tribunal, filed this Writ Petition. We have seen that second respondent had been charge sheeted on three counts. Of the three charges, third charge was not proved and therefore, we are not concerned about the third charge. The first charge is that the petitioner failed to write the name of the ledger of the instrument in the LOCL register in the column "For credit of/payment to" and the account numbers were also not written legibly in many cases, which facilitated A.Jayachandran Assistant, Sivakasi Town Branch to alter the account number in LOCL register and substitute credit vouchers of his choice to defraud the Bank. This charge was held proved by the Enquiry Officer and that was confirmed by the Presiding Officer of the Industrial Tribunal.

14.The Tribunal found that 1st charge amounts to minor negligence under clause 7 (c) of the Bipartite settlement i.e., neglect to work and negligence in performing the duties. This is challenged by the learned counsel for the petitioner that the act of the second respondent in not writing the names of the ledger and the account number properly amounts to gross misconduct under clause 5(j) of memorandum of settlement. That is, doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss. The punishment of bringing down by one stage in the time scale of pay for one year without cumulative effect was awarded for charge No.1. According to the learned counsel for the petitioner it is not correct and the second respondent should have been punished for committing gross misconduct under clause 5(j) of memorandum of settlements. We will take up this issue later.

Charge No.2 reads as follows:

Charge No.2:

The undernoted customers complained that they made cash remittances in the Cash Receipts Counter manned by you, but the remittances were not accounted for in the books of the Bank.

Sl.No.	***Name of the Customer***	***SB Account No.***	***Date of Remittance***	***Amount Remitted (Rs.)***
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3	D.Padmavathi	01190006013	19.04.2001	1,00,000.00
4	P.Palraj	01190006014	17.04.2001	2,00,000.00
5	V.Dharmaraj	01190006016	17.04.2001	2,00,000.00
6	S.Jeyanthi	01190008100	12.05.2001	1,72,000.00
7	N.Venkatesan	01190008069	24.04.2001	2,00,000.00

15.As per this charge, when the aforesaid customers remitted the cash noted against their names in the account to the second respondent, the remittances were not accounted. But in the books of the Bank, of the remittances made by the aforesaid persons, the Enquiry Officer found evidence in support of the charge, only in respect of accounts maintained by S.Natarajan, P.Palraj and V.Dharmaraj. In case of others, he found that there was no evidence available to prove the charge of their remittances and not accounting in the books of Bank.

16.The learned counsel for the petitioner brought to my notice the report of the Enquiry Officer, where certain portions of the evidence of the aforesaid witnesses, namely, S.Natarajan, P.Palraj and V.Dharmaraj had been extracted for reaching the conclusion that remittances made by them had not been properly accounted by the second respondent.

17.On the other hand, the learned counsel for the second respondent relied on the same the evidence to show that this evidence is not a complete or unimpeachable evidence to come to the conclusion that the customers have remitted the cash to the second respondent when he was manning the cash counter. The reason is that these witnesses have not identified the second respondent during the course of enquiry or in their evidence, as person to whom they remitted the cash. They have also not produced the counter foil containing the signature of the second respondent to conclusively establish that the second respondent received the cash sitting in the cash counter.

18.It is seen from the evidence and enquiry report that the customers did not identify the complaint letter given by them. They handled the banking transactions through some other persons. One Palraj handled the transactions through one Subburaj. These aspects were not at all considered by the Enquiry Officer. Enquiry Officer recorded that these aspects are irrelevant. These aspects cannot be considered as irrelevant for the reason that these account holders belong to one family and their accounts were handled by one Suburaj. Second respondent had given a detailed explanation narrating all these factors. It is very clearly stated in the explanation that when the customers remit cash over the cash counter, customers would receive counter foil in acknowledgment of the acceptance of cash remitted by the customers. Only then, the accounts section will make necessary entries in the pass book. Contrary to this, some of the witnesses say that they used to get pass book entries and did not bother about getting the counterfoil. This is against the procedure. The pass book bears the signature of A.Jayachandran, against whom criminal prosecution was launched.

19.On going through the findings relating to the departmental enquiry, this Court found that the Enquiry Officer extracted only a part of the evidence of the witnesses, namely, PW2 Dharmaraj, PW3 Natarajan and PW6 P. Palraj. On going though the entire evidence, this Court finds that the material evidence to implicate the second respondent with charge No.2 is not available. Perusal of the evidence of PW2 Dharmaraj shows that though he claims that he paid Rs.2,00,000/- in cash counter on 17.04.2001, he did not remember as to whether he received the counterfoil. Passbook entry is the only evidence to show the remittance. He did not know who made the entries in the pass book. PW3 Natarajan stated that he paid cash in the cash counter and he did not mind about the counterfoil for the reason that remittances were entered in the pass book. He did not remember the Cashier. PW6 Palraj stated that he paid the amount in cash counter, but he missed the counterfoil. He stated that some times, he used to do the banking transactions through Subburaj.

20.Reading of the evidence of these witnesses shows that there was no effort made to make these witnesses identify the second respondent, who was physically present during the enquiry, as the person to whom they remitted the cash in the cash counter. Counterfoil for the remittance made were also not produced. However, the Enquiry Officer proceeded to find the second respondent guilty with regard to the part of charge No.2 on the ground that second respondent was the one who was manning the cash counter. This finding was reached without any legal evidence. Failing to identify the second respondent as a person who received the cash in the cash counter, non production of the counter foil for remitting the cash in the cash counter are serious flaws.

21.True it is that the second respondent has not specifically denied in his explanation to the memo with regard to the charge No.2, after receiving the enquiry report. However, he gave a detailed explanation denying the allegations and disputing the findings of the Enquiry Officer. Merely because the second respondent did not produce evidence, Enquiry Officer cannot jump to the conclusion of finding him guilty, without legally acceptable evidence. As stated already, there is no legally acceptable evidence available in this case to conclude that second respondent received cash from PWs 2, 3 and 6 and failed to account for it in the books of accounts of the bank. This Court finds that there is nothing wrong in the finding of the Presiding Officer of the Industrial Tribunal that charge No.2 was not proved against the second respondent. Though the Presiding Officer has not discussed the oral and documentary evidence, he had taken into consideration the materials available in the record, especially, the explanation given by the second respondent in answer to the enquiry report and came to the conclusion. In the light of the discussions held above, this Court finds that the finding that there is no legal evidence available to conclude that second respondent was responsible for receiving the cash from PWs 2, 3 & 6 does not require any interference.

22.With regard to charge No.1, it is true that the finding of the Enquiry Officer was not challenged by the second respondent. The fact remains that the second respondent was promoted from the post of Messenger. There is no material produced to show that he was given proper training before assigning the job. It is the case of the second respondent that the practice followed in the Bank is not to write the names of the customers in the LOCL register. As rightly pointed out by the learned counsel for the second respondent, the charge is not specific as to what are the accounts in which the names of the account holders are not written and how it facilitated A.Jayachandran, Assistant, to defraud the Bank. It is specifically stated by the second respondent in his response to the charge sheet that, he was hesitant to take this job, because of his lack of sufficient educational qualification and experience to work in clearing counter. However, he was persuaded by the Branch Manager to work to the extent possible. He followed the Branch practice of writing down the account numbers in the LOCL register to the best of his ability. This practice was followed by him with the full knowledge of the Branch Manager. From his reply, it appears that the practice of not writing the names of the ledgers had been in practice for quite some time. However, the Bank has not taken any steps against the second respondent or against anybody else till the fraud committed by A.Jayachandran came to light.

23.Enquiry report shows that defence representative presented an argument that “omission to mention the name of the ledger in LOCL register can be accepted, as long as there is no loss. When there is loss to the Bank, the CSE cannot hide behind the screen of normal practice/ or on the plea that others also have done similarly”. Thus, the argument of the prosecution gives an indication that there was a practice of not writing the names in the LOCL register. Since there is a loss to the Bank, now the second respondent is charged.

24.No doubt that one is expected to fill up the LOCL register with necessary details. When that was not being followed by the second respondent or for that matter anybody else, that should have been promptly addressed and rectified. It appears that this was not done in this case. Therefore, I am in agreement with the finding of the Tribunal that second respondent's conduct in not writing the names of the ledger in the LOCL register amounts to negligence in performing the duties under clause 7 (c) of memorandum of settlement. In this view of the matter, this Court also finds that the punishment of bringing down by one stage in the time scale of pay for one year without cumulative effect for charge No.1 is appropriate.

25.With regard to backwages, it is seen from the judgment of the Hon'ble Supreme Court in ***P.Karupaiah (Dead) through legal representatives vs. General Manager, Thruuvalluvar Transport Corporation Limited*** reported in ***(2018) 12 SCC 663*** that there must be proper pleadings and evidence to show that the workman was not gainfully employed during the period of non-employment. In this case, there are no pleadings or evidence with regard to the second respondent being not gainfully employed during his non employment period. Therefore, while confirming that the second respondent is entitled to be reinstated in service with continuity of service, this Court finds that the second respondent is not entitled for backwages.

26.It is now informed that second respondent had attained the age of superannuation and therefore, there is no question of reinstatement. He is entitled only for the terminal benefits as per the Rules, taking into consideration his notional reinstatement with continuity of service and terminal benefits that flow from notional reinstatement with continuity of service.

27.In fine, this Writ Petition is allowed in part. While confirming that the second respondent is entitled to be reinstated in service with continuity of service and terminal benefits, this Court finds that the second respondent is not entitled for backwages. No Costs. Consequently, connected miscellaneous petitions, if any, is also closed.

sli **14.03.2024**
Internet:Yes
Index:Yes/No
Speaking/Non speaking order
NCC: Yes/No

To:

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Tribunal cum Labour Court,
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G.CHANDRASEKHARAN, J.

sli

Pre-delivery Order in
W.P.No.18126 of 2009

14.03.2024