



W.A.No.2830 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 16.07.2024

PRONOUNCED ON : 25.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.No.2830 of 2021

M.Bharathkumar

... Appellant

Vs.

1. The Deputy General Manager (B & O),
Appellate Authority,
State Bank of India,
Zonal Office, Coimbatore.
2. The Regional Manager (Region IV),
Disciplinary Authority,
State Bank of India,
Region IV, Network-2,
Coimbatore, Kurinji Complex,
State Bank Road,
Coimbatore-641 018.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 15.09.2021 passed in W.P.No.10081 of 2017 and consequently, to direct the respondents to reinstate the appellant in service with full back wages, continuity of service and all other attended benefits.



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For Appellant : Mr.N.G.R.Prasad
for Ms.L.Parvin Banu
for M/s.Row and Reddy

For Respondents : Mr.C.Mohan
for Ms.A.Rexy Josphine Mary
for M/s.King and Partridge for R1 & R2

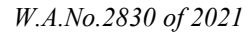
J U D G M E N T

[Judgment of the Court was made by **C.KUMARAPPAN, J.**]

The writ petitioner is the appellant. He filed a writ petition to issue a writ of Certiorarified Mandamus, calling for the records dated 22.02.2017 of the first respondent, by and in which the writ petitioner was dismissed from service.

2. The necessary facts which are require for the proper adjudication of the appeal is as follows:-

a) The petitioner was working as a Customer Assistant in State Bank of India, Udumalpet Branch. While he was serving, he has committed a misappropriation and has caused a financial loss to the Bank, to the tune of Rs.1,76,642/-. Hence, he was placed under suspension, and thereafter, served with the Charge Memorandum dated 07.09.2015 for his misconduct of misappropriation of funds from other accounts.



3. It appears that, on receipt of the said Enquiry report, the respondent has issued the copy of the enquiry report and called for further explanation from the petitioner herein. On receipt of the further explanation from the petitioner, the Disciplinary Authority imposed a punishment of dismissal against the petitioner vide order dated 31.08.2016. Aggrieved with the order of the Disciplinary Authority, the petitioner preferred an appeal before the Appellate Authority. Even the Appellate Authority did not find any merits in the appeal, and ultimately dismissed the appeal by confirming the order of the Disciplinary Authority vide its order dated 22.02.2017.

4. Not satisfying with the order of the Appellate Authority, the petitioner preferred the impugned writ petition. However, the Writ Court did not find any merit and has ultimately dismissed the same. Not satisfying



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with the said writ order, the instant Writ Appeal has been filed by the petitioner.

5. Mr.N.G.R.Prasad, learned counsel appearing on behalf of the appellant, in his usual dexterity would vehemently contend that the petitioner is a differently abled person and has got some mental ailments. It was the further contention of the learned counsel for the appellant that there was no *mens rea* on the part of the appellant, and that the amount credited from various Government accounts and other accounts cannot be construed as misappropriation, but only to be construed as a mistake in view of the disability faced by the petitioner. The learned counsel would further contend that the appellant, being a differently abled person and has got some mental incapacity due to Cerebral Palsy, he ought not to have been denied legal assistance, so as to defend his case in domestic enquiry on par like his able bodied counter part. It was the further contention of the learned counsel for the appellant that the punishment of dismissal is shockingly disproportionate to the gravity of the proved charges. Therefore, the learned counsel prayed to interfere with the order of the Writ Court. In support of his contention, the learned counsel relied upon the judgment of the Hon'ble Supreme Court of



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India in ***Ravinder Kumar Dhariwal and Another Vs. Union of India and others*** reported in ***(2023) 2 SCC 209***.

6. Per contra, Mr.C.Mohan, learned counsel for the respondents would vehemently contend that the power of this Court under judicial review is very limited. Whereas, the Disciplinary Authority as well as the Appellate Authority has found that the charges were proved, and there is no disproportionality in punishment. It was the further contention of the learned counsel for the respondents that the enquiry procedure has been scrupulously followed, and that there are no procedural irregularity. The learned counsel would further contend that the petitioner was provided with opportunity to have a defence assistance through staff of the Bank. Whereas, the petitioner did not avail the same. The legal assistance which pleaded by the appellant cannot be granted as a matter of right in a domestic enquiry. It was the further contention of the learned counsel for the respondents that though the appellant had certain disability, such disability would in no way affect his functional ability in his day to day function. It was also contended that the defence of mental ailment is pleaded first time before the Appellate Court and there are no proof for the same. It was further contended that the act of



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misappropriation to the tune of Rs.1,76,642/- cannot be dealt lightly. The learned counsel has also relied upon the following judgments in support of his contention:-

1. *B.C.Chaturvedi Vs. Union of India and others* reported in (1995) 6 SCC 749;
2. *High Court of Judicature at Bombay Vs. Shashikant S.Patil and another* reported in (2000) 1 SCC 416;
3. *Principal Secretary, Govt. of AP Vs. M.Adinarayan* reported in (2004) 12 SCC 579;
4. *State Bank of India Vs. Ram Lal Bhaskar and another* reported in (2011) 10 SCC 249;
5. *State Bank of India and others Vs. Narendra Kumar Pandey* reported in (2013) 2 SCC 740;
6. *General Manager (Operations), State Bank of India and another Vs. R.Periyasamy* reported in (2015) 3 SCC 101;
7. *Prem Nath Bali Vs. Registrar, High Court of Delhi and another* reported in (2015) 16 SCC 415;
8. *Director General of Police Vs. Rajendra Kumar Dubey* reported in 2020 SCC OnLine SC 954;
9. *Deputy General Manager (Appellate Authority) and others Vs. Ajai Kumar Srivastava* reported in (2021) 2 SCC 612;
10. *Asstt. General Manager, State Bank of India Vs. Ashok*



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Kumar Bhatia reported in ***2021 SCC OnLine Del 5419***;

11. Unreported judgment in United Bank of India Vs. Bachan Prasad Lall.

Therefore, it is the contention of the learned counsel for the respondents that there are no scope to interfere in the well merited order of the learned Single Judge. Hence, prayed to dismiss the writ appeal.

7. We have given our anxious consideration to either side submissions.

8. From the submissions made by either side, we do not find any procedural irregularity in conducting the domestic enquiry. In the case on hand, the Disciplinary Authority has issued the charge Memorandum calling for explanation. On receipt of the explanation from the appellant, not satisfying with the same, initiated disciplinary proceedings and appointed the Enquiry Officer, who conducted the domestic enquiry. The Enquiry Officer, after issuance of notice to the appellant and also after giving the reasonable opportunity to the appellant, after full trial, has ultimately arrived at a conclusion that the charges levelled against the appellant has been proved.

9. The Disciplinary Authority, on receipt of the enquiry report, has again sought for the further explanation on furnishing copy of the enquiry report to the appellant. After considering the enquiry report and further



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explanation of the appellant, the Disciplinary Authority has concurred with the enquiry report and imposed the punishment of dismissal. Therefore, we are of the unswerving opinion that there are no procedural irregularity in conducting the domestic enquiry and in imposing the punishment.

10. It is pertinent to mention here that the power of judicial review must be exercised with restraint. In order to understand the scope of power of judicial review, this Court deems it appropriate to refer the following judgments relied by the learned counsel for the respondents.

In ***B.C.Chaturvedi Vs. Union of India*** reported in (1995) 6 SCC 749, the Hon'ble Supreme Court has held as follows. The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-

“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 is concerned 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



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*conclusion. But that finding must be based on some evidence. Neither the technical rules of 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.***

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the



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*magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.***

(Emphasis supplied by this Court)

11. In *Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava* reported in (2021) 2 SCC 612, the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same can be interfered. The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-

“25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or



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finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

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29. The Constitutional Court while exercising its jurisdiction of judicial review Under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

12. Though the learned counsel for the respondents has submitted various other judgments, we do not want to burden this judgment by quoting all of them as the position has been crystallised in the precedents, which are extracted herein above.

13. Therefore, the principles emerging from the above precedents are as follows:-

(i) Power of Judicial review is not like an appeal. But



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such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like an appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority are perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

14. Now, let us consider the scope of judicial review in the present case. We have already decided that there are no procedural irregularity. Further, the decision reached by the Disciplinary Authority is well merited and based on the available material. Even, the appellant did not deny the transfer of funds to his account from the other accounts. However, his



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contention is that there is no *mens rea*. In a departmental proceedings, the principle of *mens rea* has little significance and what we require is whether the conduct of the employee would come within the meaning of misconduct. Here, the Disciplinary Authority has found that the transferring of funds from the customers account and the Bank account to the petitioner account for his benefit construed as a misconduct. In such administrative decision, this Court has no role to interfere and such decision must be respected for the proper administration of the Bank, which deals the valuable banking transaction of many of its customers.

15. As a matter of fact, no evidence was let in to prove the absence of *mens rea*. Therefore, the contention of the petitioner is not acceptable. Further, it is the contention of the petitioner that he suffered some mental ailment. But the same has been pleaded at the first time before this Court, even for this, there are no proof. Further, for the misconduct of misappropriation, that too in a banking sector, the punishment of dismissal awarded by the Disciplinary Authority cannot be stated as disproportionate. Hence, there are no ground to interfere with the order of Disciplinary Authority under the power of judicial review.

16. The other main and foremost contention of the learned counsel for



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the appellant is that the appellant has not been given equal opportunity so as to defend his case. In this regard, the learned counsel for the appellant has articulated his argument by relying upon the judgment of the Hon'ble Supreme Court in ***Ravinder Kumar Dhariwal***'s case [cited supra]. The ratio laid down in the above judgment is that whenever the employee has got some mental health disorder in the course of employment, the employer must be cognizance to such illness and must consider it as a mitigating factor. It was the further ratio that there is a duty cast upon the employer to provide a reasonable accommodation so as to compete with his able bodied counterpart. It was further held that the mental health disorder is a unique challenge in disability health adjudication. Therefore, the learned counsel for the appellant contended that, the principle of reasonable accommodation is a component of the Right to Equality and against discrimination. By relying upon the above principles, the learned counsel for the appellant would contend that here is a case where the appellant was suffering Cerebral Palsy, which has got significant impact in his functional ability. Whereas, in spite of making a specific request for a legally trained defence assistance in the domestic enquiry, such right has been denied.



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17. At this juncture, the learned counsel for the respondents stoutly contended that ***Ravinder Kumar Dhariwal's*** case [cited supra] will not be applicable to the facts of the present case, as it was the case where the delinquent employee developed a mental health disorder, subsequent to the appointment and that such mental condition had direct nexus with the misconduct. Only in that context, it was held that the punishment imposed on the delinquent is liable to be set aside. Here, the facts are altogether different and distinguishable from the precedents referred by the appellant.

18. In the case on hand, though the appellant had a disablement, and was suffering from Cerebral Palsy, according to the Bank Circular, the appellant is eligible and capable to function independently in the post which he was assigned. The learned counsel has also relied upon the letter of the Bank dated 23.09.2015, in which the respondent-Bank has sent a communication requiring the appellant to name the defence assistant. The appellant has miserably failed to name any of the defence assistants.

19. Therefore, the contention made by the learned counsel for the appellant that there was no equal opportunity provided to the appellant, in our respectful view cannot be accepted at all. It is well settled principle of law that providing the defence assistance through legally qualified persons



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will be at the discretion of the employer, and the employee cannot seek such assistance as a matter of right.

20. The learned counsel for the respondents relied the following judgments in respect of above aspect:-

1. ***V.Mathivanan Vs. State Bank of India*** reported in **2012 SCC OnLine Mad 478**;
2. ***Grace C.Naulak Vs. The Management of Air India Limited and another*** reported in **2015 SCC OnLine Mad 1526**;
3. ***Joy Aich Vs. Chairman & Managing Director*** reported in **2016-1-L.W.736**;
4. ***Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and another*** reported in **(2001) 9 SCC 540**;
5. ***State Bank of India Vs. Jah Developers Private Limited and others*** reported in **(2019) 6 SCC 787**;
6. ***Rajasthan Marudhara Gramin Bank (RMGB) and another Vs. Ramesh Chandra Meena and another*** reported in **2022 SCC OnLine SC 9**.

Though the learned counsel has relied as many as 6 judgments, for the sake of brevity, this Court would like to rely upon only the Supreme Court judgments.

21. In ***Indian Overseas Bank***'s case [cited supra], it has been held that the employee has no absolute right to have a right of representation through



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somebody else, unless it is provided under relevant Rules, Regulations or Standing orders.

22. In *State Bank of India's* case, In-House committee like domestic enquiry, which has been constituted to gather facts and then arrive at a result, such powers are only the administrative powers. Therefore, the lawyers have no right to appear before such administrative Committee as a matter of right.

23. In the latest judgment of the Hon'ble Supreme Court in *Rajasthan Marudhara Gramin Bank's* case, in a similar set of facts, it has been held that the delinquent employee has no absolute right to avail the services by ex-employee of the Bank as his defence representative. Therefore, what emerges here is, seeking the legally trained defence assistant is not as a matter of right. As we already discussed, here, the petitioner was provided with an opportunity to name the defence assistant, to represent on his behalf, whereas the petitioner has miserably failed to exercise his right.

24. Therefore, we have no hesitation to hold that the appellant has been provided with reasonable opportunity to have the defence assistance. But, it was the appellant did not avail such facility. Therefore, he cannot



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take advantage of his own fault.

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25. The learned Single Judge has elaborately gone into all the aspects and has found that there are no grounds to interfere with the findings recorded by the Disciplinary Authority as well as the Appellate Authority. We are of the unswerving and indubitable view that such findings of the learned Single Judge is well merited and liable to be confirmed.

26. In the result, the Writ Appeal is dismissed. No costs.

[S.M.S., J.] [C.K., J.]
25.07.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes

To

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Appellate Authority,
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2. The Regional Manager (Region IV),
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