BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A(MD)No.533 of 2024
and
C.M.P.(MD)No.4108 of 2024

1.Zonal Manager,
Punjab National Bank,
Royala Towers (Near TVS),
Mount Road,
Chennai.

2.General Manager,
Punjab National Bank,
5, Sansad Marg, New Delhi- 110 011.

3.Chief Manager,
DAC Section, Punjab National Bank,
Circle Office,
Punjab National Bank House,
Kailasapuram, Trichy – 620 014.

4.Deputy General Manager,
Circle Office, Punjab National Bank,
Punjab National Bank House,
Kailasapuram, Trichy – 620 014.

5.N.Balasubramanian
Senior Manager,
Punjab National Bank,
Main Branch, Salem.

6.Branch Manager,
Punjab National Bank,
Ramasamy Gounder Street, Erode. ... Appellants

vs

P.Jeyachandran ...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to allow the Writ Appeal and set aside the order of this Court dated 28.01.2022 passed in W.P(MD)No.14277 of 2013.

For Appellants : Mr.V.O.S.Kalaiselvam

For Respondent : Mr.R.Kavin Prasath

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**JUDGMENT**

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

The Writ Appeal is directed against the order, dated 28.01.2022 passed in W.P.(MD)No.14277 of 2013, whereby, the punishment of "dismissal without notice", imposed on the Writ Petitioner was modified to the punishment of "compulsory retirement".

**The brief facts, which are involved in the above appeal, are as follows:**

2.The Writ Petitioner was originally appointed as Clerk-cum-Cashier on 06.03.1985 in the Erode branch of the appellant Bank and thereafter, was re-designated as Computer Operator and later was posted as Head Cashier at the branch office, Brough Road, Erode. Due to some financial irregularities and misappropriation in the cash transactions committed by him, he was placed under suspension and a charge memorandum was issued on 22.08.2008. The set of charges framed are extracted hereunder:

*"Charge I:*

*(1) A/c Sandeep Industry Jamsetpur:*

*You had received cash Rs.50000- deposited in the above account on 29.11.2006; but the cash was accounted in the books of the Bank by the other Officiating Cashier Shri S Vinayagamoorthy on 05.12.2006, with the following lapses:*

| *Date of voucher* | *Amount Rs.* | *Vr.No.* | *Date accounted for in the books of Bank* |
|---|---|---|---|
| *29.11.2006* | *50000-* | *61* | *05.12.2006* |

*- The date mentioned in the voucher as 29.11.2006, has been superimposed by you as 30.11.06 by using rubber stamp, to show that the cash was received only on 30.11.2006.*

*- The voucher was brought into the books of the Bank, only on 05.12.2006 by the other Officiating cashier Shri S Vinayagamoorthy, under voucher No.61, as last receipt.*

*The voucher bears both your initials and that of Shri S Vinayagamoorthy, who officiated as Cashier on 05.12.2006.*

*The voucher was numbered by you as 4 and entered in the cashier scroll on 30.11.2006, but not accounted for that day.*

*Your OD A/c No.9400029596 was affixed on the voucher using rubber stamp, which is in no way connected to the voucher.*

*Thus, the money deposited on 29.11.2006 remained with you unauthorizedly till it was brought into the books of the Bank on 05.12.2006.*

*(2) A/c Shree Rajlaxmi Fabrics.*

*You received cash Rs.20000/- on 01.12.2006 for credit of A/c Shree Rajlaxmi Fabrics A/c No.1002271 as per the denominations in the voucher, which was verified by you. The total of the denominations amounts to Rs. 20000/-. The amount in words was correctly mentioned as Rs.Twenty thousand only. But, you have accounted the voucher for Rs.2000/- (Rupees Two thousand only) in the books of the Bank under voucher No.37, instead of correcting the wrong total in the voucher. On enquiry from the party, you have remitted back the balance amount of Rs.18000/- to the party's a/c No. 1002271 Shree Rajlaxmi Fabrics on 04.12.2006 by a separate voucher, duly prepared in your own handwriting and under your initials, without details of denominations.*

*Thus, you have misappropriated Rs.18000/- from 01.12.2006 till it was brought into the books of the Bank on 04.12.2006.*

*(3) P Rajendran A/c 30954*

*The Customer Sri P.Rajendran remitted cash Rs.54500/- vide voucher dated 29.11.2006 and also mentioned the date 29.11.2006 beneath his signature. But, you have accounted the cash in the books of the Bank, only on 01.12.2006 under voucher No.47. The original date of the voucher was rounded off and a revised date 01.12.2006 was written by you. You had also manually corrected the date in the cash receipt stamp. Thus, the amount remitted by the customer on 29.11.2006 was brought into the books of the Bank by you, only on 01.12.2006.*

*(4) You received cash and issued counterfoils to the customers. However, the cash received were not accounted in the books of the Bank on the same day of receipt(s), but accounted only on subsequent date(s). Further, in order to conceal the facts and aid misappropriation of the cash received, you have affixed the cash receipt stamp in the vouchers in such a way, that the date portion of receipt is not clear/decipherable. Besides, you have not signed in full on both parts of the pay-in-slip.*

*To quote:*

| *S. No.* | *Date of counterfoil* | *Date of voucher* | *A/c.No./ Name of the party* | *Amount Rs.* | *Voucher No.* | *Date of Accounting in the books of the Bank viz., Date of entry in cashier scroll* |
|---|---|---|---|---|---|---|
| *1* | *06.11.06* | *06.11.06* | *Selvakumaran Agency A/c 9301001932* | *95000-* | *7* | *07.11.06* |
| *2* | *09.11.06* | *09.11.06* | *- Do -* | *20000-* | *13* | *10.11.06* |
| *3* | *13.11.06* | *13.11.06* | *- Do -* | *85000-* | *2* | *14.11.06* |
| *4* | *14.10.06* | *14.10.06* | *Imperial Computers A/c27112* | *20000-* | *1* | *16.10.06* |
| *5* | *03.11.06* | *03.11.06* | *- Do -* | *28000-* | *3* | *04.11.06* |
| *6* | *06.11.06* | *06.11.06* | *- Do -* | *30000-* | *11* | *07.11.06* |
| *7* | *09.11.06* | *09.11.06* | *- Do -* | *45000-* | *9* | *10.11.06* |
| *8* | *30.11.06* | *30.11.06* | *- Do -* | *20000-* | *12* | *01.12.06* |
| *9* | *18.10.06* | *18.10.06* | *Shree Kulavilakkamman Finance A/c 1001973* | *150000-* | *10(*)* | *19.10.06* |
| *(*)But, entered in the Cashier scroll under S.No.9 on 19.10.06* | | | | | | |
| *10* | *08.11.06* | *08.11.06* | *- Do -* | *75000-* | *7* | *09.11.06* |
| *11* | *11.11.06* | *11.11.06* | *- Do-* | *25000* | *12* | *13.11.06* |

*Thus, you have misappropriated the Bank's funds from the date of* *receipt(s) till it were brought into the books of the Bank on subsequent date(s)*

*(5)You have replaced the original vouchers tendered by the parties with vouchers prepared by you, in as much as the handwriting in the counterfoils and the vouchers differs altogether. This has been done in order to cover up the delay in accounting the cash deposited by the parties in the books of the bank subsequent date(s) of receipt(s)*

*To quote:*

| S. No. | Date of counterfoil | Date of Voucher | A/c.No./ Name of the party | Amount Rs. | Voucher No. | Date of Accounting in the books of the Bank viz., Date of entry in cashier scroll |
|---|---|---|---|---|---|---|
| 1 | 13.11.06 | Undated | Imperial Computrs A/c 27112 | 35000 | 4 | 14.11.06 |
| 2 | 20.11.06 | Undated | -Do- | 31000 | 11 | 21.11.06 |
| 3 | 23.11.06 | 24.11.06 | Shree Kulavilakkamman Finance A/c 1001971 | 35000 | 3 | 24.11.06 |
| 4 | 01.12.06 | 02.12.06 | -Do- | 200000 | 4 | 02.12.06 |
| 5 | 27.11.2006 | 28.11.2006 | S.Kalaiselvi A/c No. 9301001969 | 80000 | 1(*) | 28.11.06 |
| | | | | | | |
| 6 | 2.12.2006 | Undated | - Do- | 70000 | 5 | 4.12.06 |

*(6)You have deliberately smudged/over-written the date portion of the voucher in order to conceal the actual date of deposit by the customers and*

*to hid the delay in accounting the vouchers in the books of the Bank on subsequent date(s) of receipt(s).*

| S. No. | Date of counter foil | Date of Voucher | A/c.No. /Name of the party | Amount Rs. | Voucher No. | Date of Accounting in the books of the Bank viz., Date of entry in cashier scroll | Remarks |
|---|---|---|---|---|---|---|---|
| 1 | 15.11.06 | Smudged | Imperial Computers A/c 27112 | 20000 | 5 | 16.11.06 | Also date rewritten in the voucher as 16.11.06 by you |
| 2. | 10.11.06 | Date over written as 11.11.06 | Selvakumaran Agency A/c No. 93 | 80000 | 6 | 11.11.06 | -- |

*(7)Your initial entry of the voucher in the cashier scroll was struck off and accounted in the cashier scroll on the subsequent date. This clearly indicates the delay in accounting the cash received in the books of the Bank and misappropriation of the Bank's funds.*

*To quote:*

| S. No. | Date of counter foil | Date of Voucher | A/c.No./ Name of the party | Amount Rs. | Vr No. | Date of Accounting in the books of the Bank viz., Date of entry in cashier scroll | Remarks |
|---|---|---|---|---|---|---|---|
| 1. | 30.11.06 | Undated | Palanikumar Auto Stores A/c 87-2087 | 110000 | 1 | 01.12.06 | Originaly entered in cashier scroll on 30.11.06 at S.No.29, which was struck off and re-entered on 01.12.06. Further, the undated and without remitter's signature |
| The customer has given letter dated 14.12.06 informing that the amount Rs. 110000- deposited on 30.11.06 in the account 87-2087 was credited only on 01.12.06 and requested to take suitable action. | | | | | | | |

*(8)You have received the cash on 04.12.2006 in the following cases, which is evident from the date mentioned in the counterfoils ie., 04.12.06. However, you have not accounted the cash receipts in the books of the Bank on 04.12.06.*

| S. No. | Date of counterfoil | Date of Voucher | A/c.No./ Name of the party | Amount Rs. | Vr No. | Date of Accounting in the books of the Bank viz., Date of entry in cashier scroll |
|---|---|---|---|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| *1* | *04.12.06* | *05.12.06* | *Selvakumara Agency A/c 9301001932* | *10000* | *32* | *05.12.06* |
| *2* | *04.12.06* | *05.12.06* | *Kalaiselvi A/c 9301001950* | *15000* | *33* | *05.12.06* |
| *3* | *04.12.06* | *15.12.06* | *S Saroja A/c 9301001950* | *15000* | *34* | *05.12.06* |

*You have met the party on 05.12.06 and obtained fresh vouchers dated 05.12.06 for the cash deposited on 04.12.06, informing that the vouchers tendered on 04.12.2006 were lost. You have replaced the original vouchers dated 04.12.06, with those dated 05.12.06.*

*Further, while the counterfoils of the pay-in-slips were receipted and signed by you, the vouchers were signed by other cashier Shri S Vinayagamoorthy, who took charge of cash from you on 05.12.06. Thus, in collusion and connivance with Shri S Vinayagamoorthy, the cash received by you on 04.12.06 were accounted in the books of the Bank on 05.12.06. This has been supported by the party's letter dated 14.12.2006. Thus, you have misappropriated the Bank's funds on 04.12.2006.*

*Charge II:*

*Scrutiny of your following accounts from 25.01.2005 to 02.01.2007 reveals that disproportionate credits and cash transactions have been routed through these accounts, which his beyond your known sources of income/take-home salary.*

(Rs.in lacs)

| *Nature & A/c No* | *Credit Summation* | *Total Cash Deposits during the period* |
|---|---|---|
| *OD 437800 9400029596* | *5.25* | *0.71* |

| | | |
|---|---|---|
| *SF 016500 0200054005* | *2.01* | *0.58* |
| *SF 437800 0200036902* | *8.33* | *6.62* |
| *TOTAL* | *15.59* | *7.91* |

3.The respondent offered his explanation to the charges on 18.10.2008, where, apart from giving explanations, he had stated that due to high pressure of work and due to routine nature of late receipts, he has not recorded in the books of account of the Bank, which he agreed is an omission, for which he regret. Being not satisfied with the explanation offered, the appellant Bank appointed an Enquiry Officer for conducting enquiry. The respondent participated in the enquiry and after completing the enquiry, the Enquiry Officer by proceedings, dated 14.07.2009, submitted the enquiry report holding that the charges are proved. A second show cause notice, dated 21.12.2009, was served on the respondent along with the report of the Enquiry Officer and his explanation was called for. The respondent offered his explanation, pursuant to which, the Disciplinary Authority concurred with the findings of the Enquiry Officer, as the charges proved were very grave and serious in nature. By order, dated 23.01.2010, the third appellant/the Disciplinary Authority imposed the punishment of "dismissal without notice". The order of termination was passed in terms of Clause-14.6(a) of Bipartite Settlement, dated 10.04.2002, against which, the respondent preferred an appeal and the Appellate Authority also, by proceedings, dated 23.02.2011, rejected the appeal confirming the order of termination passed by the Disciplinary Authority. Challenging the orders passed by the Disciplinary Authority, dated 23.01.2010 and the Appellate Authority, dated 23.02.2011, the respondent had filed W.P.(MD)No.14277 of 2013.

4.The Writ Court even though found that the enquiry conducted was proper, but however, appreciated the facts of the case and came to the conclusion that the punishment of dismissal from service imposed on the Writ Petitioner is disproportionate and thereby, modified the punishment as compulsory retirement. Challenging the impugned order passed by the Writ Court, the Bank has preferred the above appeal.

5.The learned Counsel appearing for the Bank argued that when the employee had indulged in financial irregularities and has committed gross misconduct in terms of clause 5(j) of Bipartite Settlement, dated 10.04.2002 and proper enquiry has been conducted and based on which, the Disciplinary Authority has passed an order of dismissal from service, which has been confirmed by the Appellate Authority, the impugned order passed by the Writ Court, by re-appreciating the evidences, is not proper and unsustainable. The learned Counsel further contended that when the learned Judge has found that the enquiry conducted is proper, then there was no justification to re-appreciate the facts and substitute the punishment, which is not permissible under judicial review in view of the settled position of law.

6.The learned Counsel further submitted that when the employee on several occasions have not remitted the cash deposits made in the Bank and have been remitted into the accounts only belatedly, even after five and six days in some instances and also have further manipulated the records by superimposing the seal and changing the date and also huge deposits have been made in the accounts of the employee out of which, major portion was cash deposit, for which there was no explanation forthcoming from the employee and the deposits made were disproportionate to the known sources of the income, the employee has acted against the interest of the bank, which after due enquiry, resulted in an order of dismissal from service and the same ought not to have been disturbed by the Writ Court. The learned Counsel by relying on the decision of Hon'ble Supreme Court in ***Union of India and others vs Subrata Nath***, reported in ***2022 SCC OnLine SC 1617,*** contended that the procedure adopted by the learned Judge by re-appreciating the evidence and modifying the punishment imposed by the Disciplinary Authority, which was confirmed by the Appellate Authority more particularly, after finding no fault with the enquiry conducted, is erroneous and sought for allowing the appeal.

7.*Per contra*, the learned Counsel for the respondent argued that only due to work pressure, the cash deposit made was not able to be entered into the Bank accounts then and there, but however, they have been entered into the accounts in some cases on the next day and in other cases within two days or within a maximum of five days. When there was no misappropriation, the same cannot be put against the employee, which he also sufficiently explained in the reply submitted to the charge memorandum. The learned Counsel further submitted that as far as the deposits made in the personal account, it is his contention that the marriage of the respondent's son was underway and therefore, he had received money from his relatives only in respect to the marriage and further, the charges levelled and the punishment imposed is not sustainable, as it does not come within the purview of 5(j) of Bipartite Settlement, dated 10.04.2002. The learned Counsel further submitted that when no misappropriation has been done and no loss has been caused to the Bank and when the employee has been put in nearly 23 years of service, the punishment of dismissal from service imposed by the Disciplinary Authority was too harsh and not proportionate to the charges and the Writ Court has rightly interfered with the punishment imposed, whereby, the punishment has only been modified from dismissal from service to that of compulsory retirement, which does not warrant any inference at the hands of the Division Bench and sought for dismissal of the appeal.

8.Heard the rival submissions on either side and perused the materials available on record.

9.In respect of the charges framed as against the respondent, he had submitted a reply on 18.10.2008, where, even though he had given several explanations to the charges, he had agreed that due to some high work pressure and routine nature of late receipts, he had not recorded in the books of account, which is an omission for which he had regretted. As the reply submitted by the employee was not satisfactory, an Enquiry Officer was appointed, where, witnesses were examined and nearly 29 documents were marked and the Enquiry Officer has submitted a report on 14.07.2009 holding that all the charges are proved. A second show cause notice was issued to the employee on 21.12.2009 enclosing the enquiry report for which, an explanation was submitted and the Disciplinary Authority/third appellant concurred with the findings of the Enquiry Officer and by order, dated 23.01.2010, imposed a punishment of “dismissal without notice” and further, the appeal preferred by the employee was also came to be rejected by the Appellate Authority/fourth appellant on 23.02.2011.

10.A perusal of the charges show that in respect of Charge-I(1), after receiving the cash deposit through voucher on 29.11.2006, the same has been accounted for in the books of Bank only on 05.02.2006 and further, the voucher has been superimposed by using a rubber stamp to show that the cash was only received on 30.11.2006; in respect of Charge-I(2), the cash deposit of Rs.20,000/- was received on 01.12.2006 for the credit of account of Shree Rajalaxmi Fabrics, but only a sum of Rs.2,000/- was accounted for in the voucher, but the balance of Rs.18,000/- was credited to the account only on 04.12.2006, by a separate voucher; in respect of Charge-I(3), when the cash remittence of a sum of Rs.54,500/- was made through voucher, dated 29.11.2006, the same was accounted in the books of Bank only on 01.12.2006; in respect of Charge-I(4), at least in respect of 11 deposits made, all the deposits have not been brought into Bank accounts on the same day, but only with delay of upto two days; in respect of Charge-1(5), also the cash deposits in six instances have been made belatedly; in respect of Charge-I(6), also in two instances, the cash deposits made were not accounted immediately, but were accounted in the books of Bank belatedly; one instance in Charge-I(7) and three instances in Charge-I(8), the cash deposits made were not accounted immediately, but were accounted in the books of Bank belatedly. Further, in the Charge-II, a total sum of Rs.15.59 lakhs have been credited in the three accounts of the employee for the period between 25.01.2005 to 02.01.2007, out of which, Rs.7.91 lakhs has been made as cash deposits and it is charged that the disproportionate credits and cash transactions have been routed through these accounts, which is beyond the known sources of income/take home salary of the employee.

11.The learned Judge, in fact, have concluded that the orders passed by the Disciplinary Authority/third respondent is proper, as he is competent authority and further has arrived at a finding that since the employee, who is a Cashier, being an important person in a Bank, ought to have been very vigilant and the claim that double entry was made inadvertently is not acceptable and since the employee is dealing with public money, the excess transactions in his own account would definitely lead to a suspicious situation and as such, the employee's attitude is not beyond doubtfulness. The learned Judge also found that because of the overlapping and over-stamping on some vouchers, the Bank had taken the extreme step of imposing major punishment of termination of service. The learned Judge has also not found fault with the enquiry conducted, but has observed that only due to work pressure on the employee, he has entered the cash transactions in the accounts of book of the Bank belatedly and since there was no loss to the Bank or customer, the order of termination from service imposed on the employee has been modified to that of compulsory retirement.

12.At this juncture, it will be useful to refer the judgment of the Hon'ble Supreme Court relied upon by the learned Counsel for the appellants in ***Union of India and others vs Subrata Nath***, reported in ***2022 SCC OnLine SC 1617***. The relevant paragraphs of the judgment read as follows:

> *"**14.**It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.*
>
> ***15.**In the above context, following are the observations made by a three-Judge Bench of this Court in B.C. Chaturvedi (supra):*
>
> > *"**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 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.***

***13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal****. In Union of India v. H.C. Goel6 this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*

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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 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."*

***16.*** *In State Bank of Bikaner and Jaipur v.Nemi Chand Nalwaya7, a two Judge Bench of this Court held as below:*

> *"7.**It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse**. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union*

*of India8, Union of India v. G. Ganayutham9, Bank of India v. Degala Suryanarayana10 and High Court of Judicature at Bombay v. Shashikant S. Patil11).*

***17.****In Chairman & Managing Director, V.S.P. v. Goparaju Sri Prabhakara Hari Babu12, a two Judge Bench of this Court referred to several precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that:*

> *"**21.** Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."*

***18.****Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India v. P. Gunasekaran13 held thus:*

> *"**12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal**. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
>
> *(a) the enquiry is held by a competent authority;*
>
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*

*(c) there is violation of the principles of natural justice in conducting the proceedings;*

*(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*

*(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

*(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

*(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*

*(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*

*(i) the finding of fact is based on no evidence.*

*13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*

*(i) reappreciate the evidence;*

*(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*

*(iii) go into the adequacy of the evidence;*

*(iv) go into the reliability of the evidence;*

*(v) interfere, if there be some legal evidence on which findings can be based.*

*(vi) correct the error of fact however grave it may appear to be;*

*(vii) go into the proportionality of punishment unless it shocks its conscience."*

***19.** In Union of India v. Ex. Constable Ram Karan14, a two Judge Bench of this Court made the following pertinent observations:*

*"**23.** The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal,*

*which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.*

*24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."*

***20.** A Constitution Bench of this Court in State of Orissa (supra) held that if the order of dismissal is based on findings that establish the prima facie guilt of great delinquency of the respondent, then the High Court cannot direct reconsideration of the punishment imposed. Once the gravity of the misdemeanour is established and the inquiry conducted is found to be consistent with the prescribed rules and reasonable opportunity contemplated under the rules, has been afforded to the delinquent employee, then the punishment imposed is not open to judicial review by the Court. As long as there was some evidence to arrive at a conclusion that the Disciplinary Authority did, such an order becomes unassailable and the High Court ought to forebear from interfering. The above view has been expressed in Union of India v. Sardar Bahadur[15].*

***21.*** *To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.*

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***27.*** *We are unable to commend the approach of the learned Single Judge and the Division Bench. There was no good reason for the High Court to have entered the domain of the factual aspects relating to the evidence recorded before the Inquiry Officer. This was clearly an attempt to reappreciate the evidence which is impermissible in exercise of powers of judicial review vested in the High Court under Article 226 of the Constitution of India. We are of the opinion that both, the learned Single Judge as well as the Division Bench, fell into an error by setting aside the order of dismissal from service imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority."*

13.In view of the above decision, the punishment imposed by the

Disciplinary Authority and the Appellate Authority cannot be interfered with, except in circumstances, where such findings are patently perverse or grossly incompatible with the evidence on record or based on no evidence. Even in the cases, where the punishment imposed is so disproportionate to the offence, which would shock the conscience of the Court or the order is found to be flawed, the Disciplinary/Appellate Authority may be called upon to re-consider the punishment imposed and only in an exceptional circumstances, for which reasons to be adduced, the Court can impose appropriate punishment by itself.

14.In the instant case, the charges are very grave and serious and the respondent, being working in a financial institution, that too as a Head Cashier, had involved in financial irregularities, by which the credibility of the Bank itself would be in question and which will lead to a great loss to the Bank. As from the charges, it could be seen that in several instances and in respect of several Bank accounts, the employee had received cash deposits and had not entered into the Bank accounts and had entered the transactions belatedly even upto a delay of five or six days. The employee had also indulged in superimposing the seal and altering the date and further huge deposits have been made in the accounts of the employee, in which, major portion of the same was cash deposits, for which, the employee has not offered any plausible explanation. The entire charges have been taken into consideration and after conducting proper enquiry, the Disciplinary Authority has imposed the punishment of dismissal from service based on the proved misconduct, which is as per the Bipartite Settlement, dated 10.04.2002.

15.In fact, as referred earlier, the learned Judge, having found that the enquiry conducted is proper and also has come to the conclusion that the explanation offered by the employee that he had made a double entry inadvertently cannot be accepted, as he is working as a Cashier in a Bank and dealing with public money and also the excess transactions in his account definitely lead to a suspicious situation, however, had interfered with the punishment imposed by the Disciplinary Authority, as confirmed by the Appellate Authority and had modified the punishment from termination from service to that of compulsory retirement by holding that the employee had only done it due to work pressure and since there is no loss to the Bank or customer, the punishment is modified, which is not sustainable.

16.When the Disciplinary Authority having conducted a proper enquiry, based on the evidence available and the enquiry report, for the proven charges, has, on its discretion, imposed the appropriate punishment on the delinquent employee, particularly, keeping in mind the gravity of misconduct committed, which had been confirmed by the Appellate Authority, the impugned order of the learned Judge having modified the punishment by substituting a different view is not permissible and is liable to be interfered with and accordingly, interfered.

17.As, in our view, the punishment of dismissal from service imposed on the respondent by the Disciplinary Authority and confirmed by the Appellate Authority is commensurate with the negligence and the proven charges, the impugned order of the learned Single Judge is set aside and the orders passed by the Disciplinary Authority, dated 23.01.2010 and confirmed by the Appellate Authority, dated 23.02.2011, imposing a punishment of "dismissal from service" is restored. Accordingly, this Writ

Appeal stands allowed. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**[R.S.K., J] & [G.A.M., J]**
**04.04.2024**

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

cmr

**R.SURESH KUMAR, J.**

**AND**

**G.ARUL MURUGAN, J.**

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Judgment made in
W.A(MD)No.533 of 2024

04.04.2024