IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(137) **LPA-631-2024 (O&M)**
Decided on : 04.03.2024

Himmat Khan ……Appellant(s)

Versus

State of Haryana & others ……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA
THE ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present:- Mohammad Arshad, Advocate, for the appellant.

Mr.Deepak Balyan, Addl.A.G., Haryana, for the respondents.

G.S. Sandhawalia, Acting Chief Justice

1. Consideration in the present appeal is to the order of dismissal dated 03.10.2023 passed by the Learned Single Judge in CWP-22080-2023 filed by the appellant. Resultantly, the order dated 07.05.2018 (Annexure P-4) whereby the representation of the appellant was rejected qua his dismissal and similarly, the order dated 17.08.2023 (Annexure P-13) passed in revision were also upheld wherein the Addl.Chief Secretary to Government of Haryana had set aside the order dated 25.11.2019 (Annexure P-5) which had allowed the appeal of the appellant against the dismissal order.

2. The reasoning which weighed with the Learned Single Judge while dismissing the writ petition was that mere acquittal from the charges levelled against him in 4 FIRs would not be sufficient reason to reinstate the appellant. Reliance was placed upon the judgments of the Apex Court in **Southern Railway Officer's Association Vs. Union of India, (2009) 9 SCC 24** to come to the conclusion that the Trial Court had acquitted the appellant on technical grounds regarding non-production of original

documents. It was noticed that the Managing Director had come to the conclusion that the culpability of the appellant in commission of offence was of a much higher degree than other officials involved as he prepared the cheque under his signature without corresponding to the loan file in the name of Director Deen Mohd. Keeping in view the fact that there was embezzlement of bank funds worth Rs.2,40,000/- and the fact that the appellant was the main brain behind the fraud as he had advanced the loan by advancing a poultry loan to Noor Mohd., and was involved in cheating the bank and the said facts had been proved in the departmental enquiry, the order passed by the Revisional Authority was upheld. A finding was recorded that his continuation in service in a Public Cooperative Financial Institution was not in public interest.

3. Counsel for the appellant has sought to re-argue the said issue that once there was an acquittal, the appellant could not be prejudiced.

4. Apparently, the appellant was dismissed from service on 14.12.2010. The said order was upheld by the Registrar, Cooperative Societies on 06.09.2012 (Annexure P-1) since FIR No.35 dated 18.11.2005 was pending in the Court. The Registrar had noticed that earlier annual increment had been stopped after issuance of the charge-sheet and the services had been terminated because he was habitual, as such. On 30.09.2014 (Annexure P-2), it was noticed that the criminal case had been decided in his favour on 16.10.2012 and acquittal had come on record and therefore, liberty was given to the appellant to approach the Board of Directors who could pass an order.

5. The legal opinion was sought by the Managing Director of the bank and a report was taken from the District Attorney whether any appeal had been filed against the acquittal order. The Managing Director

then came to the conclusion that the charge-sheet had been issued on 07.02.2008 as the FIR No.35 had been lodged and Enquiry Officer had been appointed and charge of embezzlement of loan amount had been found proved against the appellant. Similarly, FIR No.3 dated 15.02.2001 was also lodged and a charge-sheet had also been issued dated 04.10.2008 regarding gross misconduct of advancing poultry loan to Noor Mohd. The Enquiry Officer had found charge of gross misconduct against him and there was stoppage of 2 annual increments with cumulative effect regarding that case. Keeping in view that background, he had been dismissed from service on 14.12.2010. FIR No.12 dated 22.03.2004 had also been lodged against him of not receiving the share money of Rs.92,600/- from the loanees and he had been acquitted in the said case by the Court on 23.09.2014. Similarly, in FIR No.7 dated 02.03.2005, he had been charge-sheeted on 06.07.2005 on the charge of preparing bogus cheque and wrong identification causing loss to the bank for which stoppage of 2 annual increments with cumulative effect was ordered vide order dated 22.12.2005.

6. Resultantly, the criminal proceedings ended in acquittal and the bank came to the conclusion that service record of the appellant remained bad and decided to reject his appeal being devoid of any merit. The said order was then challenged before the Registrar, Cooperative Societies successfully on 25.11.2019 (Annexure P-5) and it was recorded that keeping in view the fact that there was an acquittal in the criminal proceedings in FIR No.35, FIR No.3, FIR No.12 and FIR No.7 wherein it was found that there was no guilt on the part of appellant. Merely having a bad record was not sufficient and it was not cogent reason to reject his representation.

7. The bank filed a revision petition before the Addl.Chief Secretary, Cooperation who set aside the said order dated 25.11.2019 (Annexure P-5) and upheld the order dated 07.05.2018 (Annexure P-4) passed by the bank. Apparently, the said order was passed without issuing notice to the appellant which had led to the filing of CWP-4633-2021 wherein directions had been issued to pass a fresh order. Resultantly, order dated 17.08.2023 (Annexure P-13) was passed and the Addl.Chief Secretary came to the conclusion that in 2 charge-sheets, the Enquiry Officer had proved the charges levelled against the appellant and other bank employee had also been given a punishment of stoppage of annual increment with cumulative effect and one Mukhtiyar Singh, LVO was also dismissed from service on account of the fact that there was a higher degree of involvement and responsibility for the embezzlement.

8. The finding in the enquiry report dated 19.05.2010 of the fraud and connivance of the appellant with Ranbir Singh Raghav, the then Manager and Deen Mohd., Advocate, was also noticed. Regarding the findings by the Enquiry Officer in his report dated 19.10.2009, it was noticed that in connivance of Deen Mohd., Advocate, the poultry loan had been advanced to Noor Mohd. It was in such circumstances, the revision was allowed and the order passed in appellant's favour was set aside, upholding the dismissal order. Further directions were also given that if any other officials are yet to be proceeded against in connected disciplinary proceedings, action shall be taken against all the culpable officials.

9. It has been held time and again by the Apex Court that in departmental proceedings pertaining to the banks, scope for interference by way of judicial review is less as the level of responsibility is of a much

higher degree and the confidence in the employee has to be complete. It is settled principle that on the departmental side, the principle of preponderance of probabilities is to be kept in mind whereas on the criminal side, the principles are that the prosecution has to prove his case beyond a shadow of doubt. This aspect has also been dilated time and again.

10. The nature and scope of criminal cases are very different from those of departmental proceedings and merely on account of an acquittal it cannot be held that departmental proceedings have also to be concluded in favour of the employee. In a criminal case, the prosecution has to prove his case beyond a shadow of doubt in the shape of evidence whereas in a departmental proceedings, on the basis of legally admissible evidence and on the preponderance of probabilities, the charge can be established and therefore, the two operate in different fields. Reliance can be placed upon the judgment of the Apex Court in **Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay, 2022 (1) SCT 340** wherein while allowing the appeal, the Apex Court upheld the order of dismissal of the workman from service passed by the disciplinary authority. In the said case, the workman was working as Driver and plying a passenger bus and met with an accident with a jeep. He was also proceeded under Section 279 IPC and came to be acquitted and therefore, got reinstatement since the Industrial Tribunal came to the conclusion that drivers of both the vehicles were negligent. The said order had been upheld by the High Court and was then taken to the Supreme Court wherein the reasoning which prevailed with the Apex Court was that the Industrial Court was in error in laying stress on the acquittal of the workman by the Criminal Court. The fact that disciplinary proceedings

had been initiated and it was on conclusion of an enquiry he had been dismissed by noting that the workman was driving the vehicle at a great speed and pushed the jeep by 25 feet. Resultantly, it was held that the workman was negligent and it could not be said that the dismissal was shocking and disproportionate or that it was unfair labour practice. The record of the case had also been seen that the workman was in service for 3 years and was punished 4 times during that period.

11. Similarly, in **State Bank of India & others Vs. P.Zadenga, 2023 (10) SCC 675**, it was held by the Apex Court that acquittal in criminal proceedings does not amount to automatic discharge of disciplinary proceedings and the standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are different. The aspect of responsibility of the bank officials was also kept in mind since the workman in that case was an employee of the State Bank of India and 3 different FIRs had been registered against him regarding non-deposit of the amounts received for which challan had been issued. Resultantly, while placing reliance upon **United Commercial Bank & others Vs. P.C.Kakkar, (2003) 4 SCC 364**, it was held that a bank officer is required to exercise higher standards of honesty and integrity. Relevant portion of the said judgment which was quoted, reads as under:

> "14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank… The very discipline of an organization more particularly a bank is dependent

> upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. (Emphasis Supplied)"

12. Keeping in view the settled principle of law, once the track record of the appellant is bad having 4 FIRs lodged against him and similar charges of misappropriation, the decision of the bank not to reinstate him on account of acquittal, cannot be faulted which has been duly upheld by the Addl.Chief Secretary to Government of Haryana. Accordingly, this Court is of the considered opinion that the Learned Single Judge was well justified in not interfering with the said orders.

13. Resultantly, in view of the above discussion, the present appeal is hereby dismissed. All pending applications are also disposed of.

(G.S.SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

March 4th, 2024
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No