



W.P. No.17106/2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.03.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.17106 OF 2015

The Management of DBS Bank India Ltd.
'CUB House', 4, Sardar Patel Road
Guindy, Chennai – 32.

.. Petitioner

- Vs -

1. The Presiding Officer
Central Government Industrial Tribunal
-cum- Labour Court
Shastri Bhavan, 1st Floor, 'B' Wing
26, Haddows Road, Chennai 600 006.

2. P.Ramachandran

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the Award dated 29.10.2014 (communicated to the petitioner vide letter dated 18.12.2014) passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai, the first respondent herein in I.D. No.60 of 2013 and quash the



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same insofar as it modifies the punishment imposed on the 2nd respondent herein to one of compulsory retirement from service.

For Petitioner : Mr. Anand Gopalan, for
M.s.AGAM Legal

For Respondents : Mr. K.M.Ramesh, SC, for
M/s. V.Subramani for R-2

ORDER

Aggrieved by the order of the Central Government Industrial Tribunal-cum-Labour Court (for short 'the Tribunal') in I.D. No.60/13 dated 29.10.2014, modifying the punishment of dismissal from service to one of compulsory retirement, the Bank has preferred the present petition.

2. The workman joined the services of the Bank as clerk in the year 1980 and during the year 2005, the workman was working In Kathamparai Branch, Karur. While so working, the workman was issued with a charge sheet on 20.7.2010 alleging that the workman pre-closed a deposit of one Mangayarselvi and credited R.7500/- being the Government subsidy to the account of one Manikandan, a sub-staff of Papanad branch of the Bank on 4.7.2009. It is the



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further allegation that the workman, by misusing the password of the Manager of the Bank, who was on leave, and without his knowledge, had approved the transaction and, thus defrauded the bank by misappropriating the Government subsidy by his above act. The workman submitted his explanation to the charge sheet denying the allegation and not being satisfactory, enquiry was initiated and the enquiry which commenced on 30.10.2010, concluded on the very same day and the workman was not given any opportunity to put forth his defence and defend his case. The enquiry officer gave a report finding the workman guilty of the charges. However, without giving a copy of the report and issuing any notice to the workman, the punishment of dismissal from service was imposed on the workman by the disciplinary authority.

3. Aggrieved by the same, the workman raised an industrial dispute which was referred for adjudication to the Tribuna. Before the Tribunal, while the workman examined himself as W.W.1 and marked Exs.W-1 to W-8, on the side of the Bank, no oral evidence was adduced, but the Bank marked Exs.M-1 to M-18. On the basis of the oral and documentary evidence, the Tribunal modified the



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punishment imposed on the petitioner to one of compulsory retirement aggrieved by which the Bank has preferred the present writ petition.

4. Learned counsel appearing for the Bank submitted that the Tribunal could exercise its power to modify the punishment only when the punishment is shockingly disproportionate. However, the workman being an employee of the bank, who is required to exhibit utmost honesty had misappropriated the Government subsidy, which has been proved in the enquiry and the disciplinary authority has inflicted the punishment of dismissal from service. When the materials clearly establish that the workman had committed the said act of misappropriation, the Tribunal, on sympathetic consideration, ought not have interfered with the punishment of dismissal by modifying the same to compulsory retirement.

5. It is the further submission of the learned counsel that the charges against the workman have been proved in the enquiry and the disciplinary authority has though it fit to impose the punishment of dismissal from service and the Tribunal without considering the gravity of the offence has interfered



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with the punishment imposed, without any rhyme or reason, which requires interference.

6. Per contra, learned counsel appearing for the workman/2nd respondent submitted that the Tribunal has taken into consideration all the materials, including the fact that no notice has been given to the workman calling for explanation with regard to the punishment to be imposed and finding that the punishment is shockingly disproportionate to the delinquency committed and also considering the long service of blemishless service rendered by the workman, had modified the punishment to one of compulsory retirement.

7. It is the further submission of the learned counsel that when there is violation of principles of natural justice as the workman was not given notice before inflicting punishment, necessarily the same requires interference, which has been rightly interfered with by this Court and, therefore, no interference is warranted with the well considered order passed by the Tribunal.



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8. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on by the learned counsel for the parties.

9. It is an undisputed fact that during the relevant point of time, the workman was working as Clerk-cum-Cashier during which phase the misappropriation is alleged to have taken place. Materials have been placed before the enquiry with regard to the acts of misappropriation. However, it is borne out by record that in record time, viz., on the very same day when the enquiry was taken up, the enquiry was concluded and the report has been filed holding the workman guilty.

10. In cases of disciplinary proceedings, though appreciation of materials is on preponderance of probability, however, it is elementary that there should be fulfilment of principles of natural justice. In the present case, not only the enquiry has been concluded in a hurried manner, but on the enquiry report, which had held the workman guilty, no notice was given to the workman calling upon him to submit his explanation with regard to the punishment sought to be



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imposed. In the absence of any notice to the workman by providing him with a copy of the enquiry report, necessarily there is infraction of principles of natural justice, which strikes at the root of the issue.

11. It is the settled legal position that insofar as departmental proceedings is concerned, the appreciation of evidence is based on preponderance of probability and not in the manner in which evidence is appraised during a criminal prosecution. The enquiry authority has satisfied himself with regard to the materials placed before it and the Tribunal has also, as the first appellate authority, appreciated the enquiry report and accepted that the enquiry has been conducted in a fair and proper manner. In fact, the Tribunal has held that the misconduct cannot be assailed to be perverse as it has been rendered on legal evidence and that there is no question of inadequacy of evidence.

12. In the above backdrop, it is to be pointed out that this Court, sitting under Article 226 of the Constitution in a matter of judicial review, cannot reappraise the evidence as a court of first instance or appellate authority. The duty of this Court is only to see as to whether the enquiry has been fair and



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proper and that the enquiry has been conducted in consonance with principles of natural justice.

13. Though the enquiry has been conducted in a hurried manner, a perusal of the order of the Tribunal reveals that the workman had admitted the acts alleged against him. However, notwithstanding the said fact, what had weighed in the mind of the Tribunal is the fact that the service record of the workman had been a clean slate till then and his service record for the past 30 years did not reflect any delinquency of any nature. In this backdrop, the Tribunal has modified the punishment to one of compulsory retirement and this Court, in exercise of its powers of judicial review is bound to find out the sustainability of the aforesaid order.

14. The Hon'ble Supreme Court, in ***B.C. Chaturvedi – Vs - Union of India, (1995 (6) SCC 749)***, while dealing with the issue pertaining to the power of the Court relating to judicial review, held as under :

“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



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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.



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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. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] 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.”

(Emphasis Supplied)

15. In ***Director General of Police, RPF & Ors. - Vs – Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)***, the Hon'ble Supreme Court, advertent to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's case (supra)*, held as under :-

“12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.



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We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

*In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.*



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These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a 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.

In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha**, these principles have been consistently followed.

In a recent judgment delivered by this Court in the **State of Rajasthan & Ors. v. Heem Singh** this Court has summed up the law in following words :



“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse



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determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

*In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the 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*



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proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are 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.

In paragraph 13 of the judgment, the Court held that :

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

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in the 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.”



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(Emphasis Supplied)

16. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authority and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authority on the basis of the evidence before it, which has since been confirmed by the Tribunal and not proceed with the case as if it is an appeal against the order of punishment.

17. The Tribunal, on dissection of the evidence tendered before it as also before the enquiry officer, which formed the basis of the report, had accepted the findings of guilt recorded against the workman and this Court, sitting in judicial review, is not inclined to interfere with the said finding, so long as it is not perverse and it is in consonance with the principles of natural justice.



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18. Now the only question that requires the determination of this Court is whether the modification of punishment by the Tribunal, on the facts of the case, is just and warranted.

19. A careful perusal of the order of the Tribunal reveals that while conceding with the finding of delinquency, the Tribunal, considering the length of service of the workman, during which period, the workman had an unblemished record, had modified the punishment.

20. It would be worthwhile to look at the decision of the Division Bench of this Court in the case of **General Manager, Indian Bank – Vs – The Presiding Officer & Anr. (W.A. No.387/2024 – Dated 20.12.2024)**, wherein, the Division Bench has held as under :-

10. But here the issue is, when the bipartite agreement dated 10.04.2002, mandates the Disciplinary Authority as well as the Appellate Authority to consider the previous records, and aggravating and extenuating circumstances, we must see, whether such exercise was undertaken by the Authorities. While reading the orders of the Disciplinary Authority and the Appellate Authority, this Court could not find any traces of



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consideration in this regard. Only in such a background, the Tribunal got into the proportionality of the punishment. On a wholesome reading of the order of the Tribunal, the reason for modification is on two folds. One is at the time of imposition of punishment the employee was 57 years old, and the second is, the 2nd charge of misappropriation was initially closed, and only on account of subsequent complaint, the said charge was reopened.

* * * * *

12. At this juncture, the learned counsel for the respondent relied upon the case reported in (2009) 12 SCC 267 in the case of D.M.Premkumari Vs.Divisional Commissioner, Mysore, wherein, the Hon'ble Supreme Court eloquently explained that, many a times people mistakenly think that the Courts are separated from the feelings and righteousness; There is also general misunderstanding that the Court should not express such emotions of indignation, sorrow and compassion, but the reality is that the judiciary has very strong sense of justice and it works to maintain social justice and fairness. The above proposition squarely applies to the above set of facts, and the Tribunal and learned Single Judge had rightly permeated the above principle to the present case.

13. In the present case the bipartite settlement provides maximum punishment of dismissal and minimum punishment of fine to the misconduct classified as major. The present charge comes within the ambit of major misconduct. As



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already stated there are no reasons as to why maximum punishment of dismissal was imposed. This lapse assumes significance in the backdrop of the diligent long unblemish service and his conduct of not hiding the error. In a writ jurisdiction, this Court will generally interfere only when the order is perverse. In this regard, it is appropriate to extract the expression “perverse” defined by various dictionaries:-

a .Oxford Advanced Learner's Dictionary of Current English, 6th E d.

Perverse – Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b.Longman Dictionary of Contemporary English – International Edition

Perverse – Deliberately departing from what is normal and reasonable.

c.The New Oxford Dictionary of English – 1998 Edition

Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d.New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)

Perverse – Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.



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*e .Stroud's Judicial Dictionary of Words & Phrases,
4th E d.*

*Perverse - A perverse verdict may probably be
defined as one that is not only against the weight of
evidence but is altogether against the evidence."*

*14. In view of the above expression to the word Perverse,
the reason assigned by the Tribunal, could not be termed as
perverse and it's view is quite plausible. In the light of the
above discussion, the findings of the Tribunal are well
merited."*

21. There could be no quarrel with the fact that the misconduct of the workman is grave in nature. However, in the same stretch, it can be safely concluded that the order of the Tribunal modifying the punishment could not be said to be perverse, as it is evident from the materials that the workman is not a chronic defaulter and over the past 30 years of service, the workman had not indulged in any such act. Therefore, considering the fact that the workman had put in almost 30 years of unblemished service, when he was dismissed from service and considering the fact that there were no earlier complaints against the workman of such nature in his service, the Tribunal, exercising its power u/s 11-A of the Industrial Disputes Act, had modified the punishment from dismissal to one



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of compulsory retirement, which cannot be said to be erroneous. When the Tribunal is clothed with power u/s 11-A of the Act and had given just and proper reasons to modify the punishment, this Court, in the absence of any perversity, shall not interfere with the said order, unless the said order of modification is shocking the conscience of the Court, which, in the present case, the modification of punishment does not do so.

22. For the reasons aforesaid, this Court does not find any reason to interfere with the order of the Tribunal modifying the punishment and, accordingly, the writ petition fails and the same is dismissed. There shall be no order as to costs.

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