



W.P. No.27591/2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.02.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.27591 OF 2011

I.Sivakumar

.. Petitioner

- Vs -

1. The General Manager
Indian Overseas Bank
762, Anna Salai, Chennai 600 002.

2. The Presiding Officer
Industrial Tribunal, Tamil Nadu
Chennai 600 104.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari by calling for the records from the files of the 2nd respondent in I.D. No.28 of 1989 and quash its impugned award made therein dated 30.09.2009 insofar as the 2nd respondent has denied and negatived petitioner's claim for reinstatement in service with continuity of service with back wages and with all other attendant benefits.

For Petitioner : Mr. K.M.Ramesh, SC, for
Mr. V.Subramani



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For Respondent : Mr. Sathish Kumar for
M/s.N.G.R.Prasad for R-1

ORDER

Aggrieved by the order dated 30.09.2009 passed by the 2nd respondent/Industrial Tribunal, in I.D. No.28/1989, denying reinstatement and other attendant benefits to the petitioner, the present writ petition has been filed challenging the said order.

2. The brief facts necessary for the disposal of this petition are as under:-

The petitioner was initially appointed on 22.9.1982 as Clerk-cum-Shroff initially at Chakkarapalli and was later transferred and at the material point of time, the petitioner was working in Manavalanallur Branch. While working in the said branch, the petitioner was served with a charge memo dated 25.10.1985 alleging that he had fraudulently withdrawn certain amounts from SB Account No.3623 and that he had prepared excess interest accrued vouchers to cover up the said withdrawals. Vide the aforesaid communication, the petitioner was suspended and to the charge memo, the



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petitioner submitted his explanation denying the charges. Not satisfied, enquiry was initiated in which the petitioner was held guilty of the charges and an order of dismissal of the petitioner from service was passed vide order dated 7.3.1987. Aggrieved, the petitioner preferred appeal against the said dismissal on 15.4.1987, which was also dismissed prompting the petitioner to seek refuge u/s 2-A of the Industrial Disputes seeking the intervention of the Conciliation Authority, which also failed resulting in the dispute being referred for adjudication by the Tribunal.

3. Upon reference of the dispute, the Tribunal took up the reference and on behalf of the petitioner, the petitioner examined himself as P.W.1 and marked Exs.W-01 to W-07. On the side of the 1st respondent, two witnesses were examined as M.W.s 1 and 2 and Exs.M-01 to M-47 were marked. On the basis of the oral and documentary evidence, the Tribunal concurred with the findings arrived at by the enquiry officer and also upheld the punishment of dismissal of the petitioner from service. Aggrieved by the said award, the present writ petition has been preferred by the petitioner.



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4. Learned senior counsel appearing for the petitioner submits that the order passed by the Tribunal is illegal, perverse and against the probabilities and weight of evidence and that the said award is contrary to the documentary and oral evidence available on record.

5. It is the further submission of the learned senior counsel that though initially one other witness was shown in the list of witness to depose on behalf of the 1st respondent, however, curiously, the said witness was not examined and though the said non-examination, as per the Tribunal, would have been better, however, the Tribunal erred in not drawing adverse inference against the 1st respondent and had held that the said non-examination would not disprove the charges.

6. It is the further submission of the learned senior counsel that the materials placed before the Tribunal were not sufficient to prove the charges and the forgery alleged against the petitioner and the finding of the Tribunal that not placing the aforesaid documents in no way destroys the case of the 1st respondent is wholly erroneous. It is the further submission of the learned



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senior counsel that the petitioner was only a ledger keeper and the entries were made by the cashier, which aspect has not been properly appreciated by the Tribunal.

7. It is the further submission of the learned senior counsel that Ex.M-29 relating to SB A/c No.3623, the handwriting therein were not proved to be that of the petitioner through proper forensic expert's opinion and in the absence of such proof, the finding recorded by the enquiry officer, which has been accepted by the Tribunal is wholly fallacious and erroneous as there is no material to establish that the handwriting is that of the petitioner. Further, the 1st respondent has not proved that the alleged fraudulent transactions and fabrication have been done by the petitioner and in the absence of any evidence placed in the domestic enquiry, the finding recorded on the said aspect is wholly flawed and, therefore, the same requires to be interfered with.

8. It is the further submission of the learned senior counsel that when M.W.2 had fasten the responsibility equally on the other staff members as



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well, however, the 1st respondent, without any proper reasoning has not taken any action against the other persons, who were also implicated to the exclusion of the petitioner, which clearly shows a biased attitude on the part of the 1st respondent.

9. It is the further submission of the learned senior counsel that the findings of the enquiry officer is based on alleged circumstantial evidence, which are based on vague suspicion, unfounded and baseless surmises and inferences and not supported by any material, however, the Tribunal failed to notice all the above and has erroneously fastened the liability on the petitioner, which is perverse and the same deserves to be interfered with.

10. It is the further submission of the learned senior counsel that the criminal machinery had resulted in the closure of the case as mistake of fact, which clearly shows that no fraud or misappropriation has been perpetrated and the Tribunal failed to appreciate the above and ought to have interfered with the dismissal of the petitioner in the absence of any conclusive proof and, therefore, the said dismissal deserves to be set aside.



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11. Per contra, learned standing counsel appearing for the 1st respondent submitted that in departmental proceedings, it would suffice if the allegation is proved on the touchstone of preponderance of probabilities and the strict proof as is required in criminal prosecution is not necessary. The allegations against the petitioner have been proved on the basis of the documents and merely because the criminal machinery had referred the complaint as mistake of fact cannot be the basis to hold that the petitioner has not committed any offence.

12. It is the further submission of the learned counsel that it has been the consistent ratio of the courts that the scale of evidence in departmental proceedings is not akin to criminal prosecution and that being the case, the documents which have been placed during the enquiry point directly to the culpability on the petitioner, the enquiry officer has rightly held the petitioner guilty of the of charges.



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13. It is the further submission of the learned counsel that the mere non-enquiry of a witness by the enquiry officer, who acted as the Presenting Officer, would not vitiate the departmental proceeding so long as the whole case stands premised on the documentary evidence. Further, the witnesses, who have been examined, have clearly spoken about the fabrication done by the petitioner and had also spoken about the handwriting of the petitioner being found in the ledger entry.

14. It is the further submission of the learned counsel that misappropriation has been proved through the documents marked and there is no necessity for placing any direct evidence, as the documents are direct evidence to show that it was the petitioner, who was instrumental in the act of misappropriation. The documentary evidence, coupled with the oral testimony of the witnesses, who have spoken about the handwriting of the petitioner being in the ledger entry and in the absence of any explanation being submitted by the petitioner at the earliest point of time to the charge memo, it is the submission of the learned counsel that the only inference that could be drawn is the complicity of the petitioner in the offence. Therefore,



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on the touchstone of preponderance of probability, the 1st respondent has proved the case against the petitioner in enquiry and the report of the enquiry unerringly point to the petitioner as the person responsible for the misappropriation.

15. It is the further submission of the learned counsel that the other persons, who were also pointed to have committed some irregularity by M.W.2 are not irregularities which are of the magnitude of irregularity committed by the petitioner and, therefore, the petitioner cannot claim parity with them.

16. The department has placed all the necessary evidence to prove the culpability of the petitioner in the offence and had also provided all the materials to the petitioner and opportunity was also granted to the petitioner and all the materials have been rightly appreciated before passing the order of dismissal and the Tribunal, properly appreciating all the facts and documents has upheld the order of dismissal, which does not warrant any interference at the hands of this court.



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17. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the parties and perused the materials available on record.

18. 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 of the order passed by the disciplinary authority, 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 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.



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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. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 :



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(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)

19. The above view has been reiterated by the Hon'ble Supreme Court in **Principal Secy. Govt. of A.P. - Vs - M. Adinarayana, (2004 (12) SCC 579)**, wherein, it has been held as under :-

“23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the



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Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

20. 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*



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can be permitted to be canvassed before the High Court in a writ petition.

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.



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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



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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 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*



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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 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;



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(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.”

(Emphasis Supplied)

21. 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.

22. It has been further held in the said decisions that so long as the enquiry is not defective the Court has to only see whether there was a *prima facie* case for dismissal and whether the employer had come to the *bona fide*



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conclusion that the employee was guilty of misconduct. What is further to be seen is that the conclusion arrived at by the employer is *bona fide* as to the guilt of the employee and that there was no unfair labour practice or victimization involved and to satisfy itself with regard to the punishment imposed. However, if the enquiry is found to be defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified.

23. The Hon'ble Supreme Court, in *Rajendra Kumar Dubey's case* (*supra*), following the ratio laid down in *Gunasekaran's case* has held that the High Court, sitting under Article 226 of the Constitution, while determining its scope of interference in a departmental proceedings is only bound to 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 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*



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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.

24. It is to be stressed that the Court 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 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. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceeding is not on the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of



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preponderance of probabilities. In such a scenario, 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. If the enquiry is properly held within the four boundaries of legal necessities, then 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. 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. 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 and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

25. The words of eminent jurist V.R.Krishna Iyer, J., resonates loud, where His Lordship (as he then was), had stated that *“The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as*



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men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny”.

26. Keeping the ratio laid down on the subject issue, a careful perusal of the impugned order in and by which the punishment of dismissal has been confirmed reveals that as against the earlier order holding that the domestic enquiry was conducted fairly and rejecting the claim for reinstatement, in the earlier round of litigation preferred by the petitioner in W.P. No.17184/1995, this Court, after hearing the parties, on merits, held that the contentions with regard to the questions put by the enquiry officer and the manner in which the enquiry was conducted had held that the enquiry was held in a fair and proper manner and in accordance with the principles of natural justice, thereby, confirming the finding of the Tribunal, however, the said order of the Tribunal dated 30.11.1994 was set aside and the matter was remanded to pass a reasoned order as to whether there was sufficient material to sustain the charge against which the appeal filed by the 1st respondent ended in



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dismissal. Thereafter, the Tribunal had taken up the matter upon remand and decided the aforesaid issue by means of the present impugned order.

27. The main thrust of argument put forth on behalf of the petitioner is that certain witnesses, who were shown in the list of witnesses were not examined and that the handwriting of the petitioner, which is alleged to have been found in the ledger have not been proved by the 1st respondent.

28. For addressing the aforesaid contention, the Tribunal had referred to Exs.M-29, M-33 and M-31. Ex.M-31 one of the withdrawal slip, which is alleged to contain a forged signature of the petitioner, but the same was not produced before the Tribunal and it was pointed out by the petitioner that he has no access to the safe room and it is only the cashier and manager, who are the persons, who have entry permission into the safe room and, therefore, there was no possibility for the petitioner to remove the withdrawal slip.

29. Though such a submission has been advanced before the Tribunal, however, it is to be pointed out that when show cause notice was issued to



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the petitioner, no explanation has been submitted by the petitioner taking such a stand. When at the earliest point of time the petitioner has not questioned the aforesaid allegation, it can only be taken to mean that the petitioner has accepted the said allegation, as the petitioner has not come forward to give any explanation to the said allegation. When the petitioner has kept silent and had accepted the allegations leveled against him, turning back and raising finger against any other person during the proceedings before the Tribunal is impermissible. Further, the petitioner, even before the Tribunal, except for his evidence, has not placed any oral or documentary evidence to substantiate the aforesaid contention with regard to the entry into the safe room. That being the case, the claim of the petitioner that he has no access to the safe room cannot be accepted as the same has not been substantiated.

30. Though the petitioner had challenged the enquiry having not been conducted in a proper manner, the said contention does not merit acceptance for the simple reason that in the earlier round of litigation, this Court had approved the fairness of the enquiry and such being the case, the petitioner is



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estopped from canvassing the very same grievance once over. Further, insofar as the involvement of co-employees, as alleged by the petitioner, it is the stand of the 1st respondent that the standard of delinquency of the co-employee is not of the magnitude as that of the petitioner, who has misappropriated amounts, whereas the delinquency of the co-employees are only relatable to erroneous entries or approving such entries, which could only be brought under dereliction of duty and, therefore, it is for the 1st respondent to decide about proceeding against them and the petitioner cannot impose that if action is taken against him, action ought to be taken against the other persons as well. Rightly, the Tribunal has negated the said contention, which does not require any interference.

31. When the petitioner had raised a finger on the 1st respondent contending that it had not produced materials to substantiate their contention, the petitioner ought to have been diligent in his acts. However, as aforesaid, to the show cause notice, no explanation was submitted by the petitioner, which resulted in the enquiry being proceeded with. Though the petitioner had contended that he was not provided with the list of witnesses



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and documents, however, it is not as if the petitioner was not provided with the said materials. There seems to be some delay in providing the same, but it is not as if that the said documents were not provided at all.

32. Further, it is to be pointed out that when the petitioner has not submitted any explanation to the show cause notice in which allegations of misappropriation, which is grave in nature, has been raised against the petitioner, the petitioner ought to have submitted his explanation and non-submission of explanation can only lead to the inference that the petitioner has accepted the allegations raised against him without any demur.

33. Further, the examination of the witnesses is within the domain of the enquiry officer, who had acted as the Presenting Officer as well. If a particular witness has not been examined, the petitioner cannot impose upon the 1st respondent to have the said witness examined. If the petitioner wants to prove anything through the said witness, the petitioner could have summoned the witness as petitioner's witness, but cannot impose upon the 1st respondent to examine the said witness who has been shown as list witness.



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The petitioner not having taken any steps to examine the witness on his side, the non-examination of the person, who was arrayed as a witness cannot be held to be fatal to the case of the 1st respondent.

34. The Tribunal, in extenso, has considered all the materials, both oral and documentary placed before it and also analysed the enquiry report and had come to the categorical conclusion that the petitioner had committed the act of delinquency and had concurred with the punishment imposed on the petitioner.

35. It is to be noted that the allegation levelled against the petitioner is of a very grave nature. The petitioner, who is entrusted with the task of handling public money, highest standards of probity is expected of the said individual. However, without adhering and maintaining the highest standards of probity, the petitioner had indulged in acts, which were prejudicial to the interest of the customers and had brought down the reputation of the bank in the face of the general public. Persons employed in institutions, which handle public money, should exhibit highest standards of probity and purity and



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should maintain themselves with utmost integrity and honesty, else the trust reposed on the said individuals as well as the institution would diminish in the eyes of the general public and its customers.

36. In the case on hand, the petitioner had acted prejudicial to the interest of the bank, which had given him his livelihood, but without the scantiest regard for the same, the petitioner had indulged in acts, which had not only brought down the reputation of the bank, but had brought disrepute to him as well and such an act had resulted in the act of dismissal of the petitioner from service.

37. In ***Boloram Bordoloi – Vs – Lakhimi Gaolia Bank & Ors. (2021 (3) SCC 806)***, the Supreme Court had occasion to consider a similar issue relating to procedural lapses in the discharge of duty by the appellant therein, as Manager of the bank and in the said context held as under :-

“13. The manager of a bank plays a vital role in managing the affairs of the bank. A bank officer/employee deals with the public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. If an officer/employee of the bank is allowed to act beyond his authority, the discipline of the bank will



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disappear. When the procedural guidelines are issued for grant of loans, officers/employees are required to follow the same meticulously and any deviation will lead to erosion of public trust on the banks. If the manager of a bank indulges in such misconduct, which is evident from the charge memo dated 18.06.2004 and the findings of the enquiry officer, it indicates that such charges are grave and serious. In spite of proved misconduct on such serious charges, disciplinary authority itself was liberal in imposing the punishment of compulsory retirement. In that view of the matter, it cannot be said that the punishment imposed in the disciplinary proceedings on the appellant, is disproportionate to the gravity of charges. As such, this submission of the learned counsel for the appellant also cannot be accepted."

38. In the said case, the nature of the work discharged by the workman therein required maintenance of the highest standards of probity and integrity and is bound to follow the procedures prescribed, which are in the interest of the employer

39. The proportionality of the punishment inflicted on the delinquent had been considered by the Apex Court in **V.S.P. – Vs - Goparaju Sri Prabhakara Hari Babu (2008 (5) SCC 569)**, and it was held as under:-



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“12. While answering the aforesaid question/issue, the decision of this Court in the case of Goparaju Sri Prabhakara Hari Babu (supra), on the judicial review and the limited jurisdiction of the High Court on the proportionality of the order of departmental authority is required to be referred to. In the said decision, after referring to a catena of judgments of this Court, it is observed and held by this Court that the jurisdiction of the High Court on the proportionality of the order of departmental authority is limited. It is observed that it cannot set aside a well-reasoned order only on grounds of sympathy and sentiments. It is further observed and held that once it is found that all the procedural requirements had been complied with, courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. It is further observed that the superior courts, only in some cases may invoke the doctrine of proportionality, however if the decision of an employer is found to be within the legal parameters, the doctrine would ordinarily not be invoked when the misconduct stands proved.”

40. The precedents on the issue of interference with the punishment imposed has been oft considered by the Courts and it has been the consistent view of the Courts that it is always within the domain of the disciplinary authority to decide on the punishment to be imposed on the delinquent,



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which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Article 226. In **Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)**, the Supreme Court held as under :-

“20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is



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found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

41. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

42. The act of misappropriation by the petitioner is not only shocking the conscience of the Court, but has eroded the faith, which the general public had invested in the bank. The gravity of the offence, which has been alleged against the petitioner, which had been proved, clearly does not eke any sympathy at the hands of this Court. Any sympathy given to the petitioner



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would be a mistaken sympathy, as it would be against the interest of justice and would be a travesty of justice to the general public, who had reposed faith on the bank and the act of its employee had, in turn, portrayed the bank in a bad light before its customers. The Tribunal, appreciating the materials, had confirmed the order of dismissal passed by the 2nd respondent, which, both on facts, as well as law, is justified and this Court does not find any infirmity in the same warranting interference.

43. For the reasons aforesaid, this writ petition lacks merit and, accordingly, the same is dismissed confirming the order impugned herein dated 30.11.2009 passed in I.D. No.28/1989 by the Industrial Tribunal, Chennai.

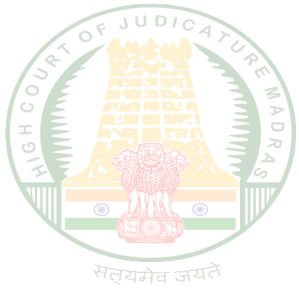
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GLN

To

The Presiding Officer
Industrial Tribunal, Chennai.



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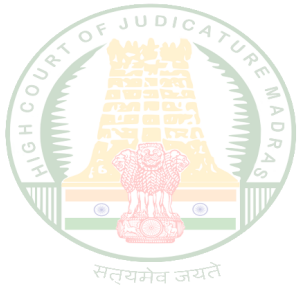


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