



W.P. No.8417/2012-3506/2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.02.2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.8417 OF 2012

W.P. NO.3506 OF 2013

AND

M.P. NO. 1 OF 2013

W.P. NO.8417 OF 2012

M.Tamilarasan

.. Petitioner

- Vs -

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

2. Chief General Manager
State Bank of India
Local Head Office
College Road
Chennai 600 006.

.. Respondents

W.P. NO. 3506 OF 2013

The Chief General Manager



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State Bank of India, Local Head Office
Circle Top House, No.16, College Lane
Chennai 600 006.

.. Petitioner

- Vs -

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

2. M.Tamilarasan

.. Respondents

W.P. No.8417 of 2012 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the concerned records from the 1st respondent quash the award passed by the 1st respondent Labour Court in I.D. No.79 of 2009 dated 2.1.2012 insofar as denying the relief of reinstatement with continuity of service, will full backwages and all other attendant benefits and consequently direct the respondent bank to reinstate the petitioner in service with full backwages, continuity of service and all other attendant benefits.



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WEB COPY W.P. No.3506 of 2013 filed under Article 226 of the Constitution of India

praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in I.D. No.79 of 2009 and quash the award dated 2.1.2012.

For Petitioner : Mr. Balan Haridas in WP 8417/12
Mr. Anand Gopalan for
M/s.AGAM Legal in WP 3506/13

For Respondents : Mr. Balan Haridas for R-2 in
WP 3506/13
Mr. Anand Gopalan for
M/s.AGAM Legal in WP 8417/12

COMMON ORDER

Aggrieved by the order of the Central Government Industrial Tribunal-cum-Labour Court (for short 'the Tribunal') in I.D. No.79/09 dated 13.2.2012 modifying the punishment of dismissal from service to one of compulsory retirement, while the workman had preferred W.P. No.8417/2012 seeking reinstatement with continuity of service and attached attendant benefits, the Bank has filed W.P. No.3506/13 questioning the modification of the punishment.

2. The petitioner was working as a clerk in the petitioner bank and during the course of his work as Clerk-cum-Cashier in Arni Branch, he had indulged in



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unauthorised withdrawal of funds from the SB accounts of various account holders and misappropriated the money. It is the further allegation against the workman that between November, 1996 and February, 1997, the workman had made nine such withdrawals for a total sum of Rs. 1 Lakh. Upon the delinquency coming to notice, the workman was proceeded with by way of a disciplinary enquiry by issuance of charge sheet dated 4.8.1998 listing out the various instances where he had resorted to such unauthorised withdrawal. The enquiry was conducted in which the workman also participated and report was filed by the enquiry officer holding the charges proved and after obtaining his explanation, the disciplinary authority imposed the punishment of dismissal from service on the workman. The workman challenged the punishment by way of appeal, which was also dismissed. The punishment was also questioned by the workman by filing W.P. No.17303/2012 before this Court, which was also disposed of on 26.7.2004.

3. Thereafter, the workman raised an industrial dispute which was referred for adjudication to the Tribunal, which was numbered as I.D. No.79/2009. Before the Tribunal, while the workman and the bank did not adduce any oral evidence,



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however, on the side of the workman, Exs.W-1 to W-10 were marked and on the side of the bank, Exs.M-1 to M-7 were marked. On the basis of the documentary evidence, the Tribunal modified the punishment imposed on the petitioner, as stated supra, leading to the filing of the present writ petitions.

4. Learned counsel appearing for the workman submitted that the order of the Tribunal is erroneous and contrary to law. It is the further submission of the learned counsel that M.W.s 1 to 3, who were examined at the domestic were not allowed to be cross examined and in such a background, the Tribunal ought to have doubted the fairness of the enquiry and should have drawn an adverse inference with regard to the proof as against the workman.

5. It is the further submission of the learned counsel that the Tribunal, without proper materials, has held that the workman had not cooperated with the enquiry and was delaying the enquiry inspite of opportunity given for cross examination, is wholly erroneous and flawed on the materials available on record though it was demonstrated before the Tribunal that the enquiry was conducted fairly and properly.



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6. It is the further submission of the learned counsel that there is a delay of 1 ½ years in the issuance of charge memo and that being the case, the enquiry officer did not give the workman sufficient opportunity to defend the charges and held that there was no violation of principles of natural justice in the conduct of the enquiry. It is the further submission of the learned counsel that there are no materials to prove the charges levelled against the workman.

7. It is the further submission of the learned counsel that material documents, which were relied on to establish the charges against the workman were not filed in original before the enquiry officer, which aspect has not been properly appreciated by the Tribunal, as the copies in Xerox cannot be taken as substantive documents to hold the charges proved against the workman.

8. It is therefore the submission of the learned counsel that the non providing of opportunity to the workman to cross examine the witnesses coupled with the non-production of the documents in original clearly would go to show that not only there was glaring violation of principles of natural justice, but the



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allegations were also not proved in the manner known to law and, therefore, the punishment imposed on the workman ought to have been set aside, however, erroneously the Tribunal modified the punishment to one of compulsory retirement, which is grossly perverse and arbitrary and without any reasonable materials and, therefore, the same requires to be interfered with.

9. Learned counsel appearing for the workman placed reliance on the following decisions :-

- i) *The General Manager (Personnal), Syndicate Bank & Ors. – VS – B.S.N.Prasad (C.A. No.5327/2024 (SC)); and*
- ii) *The General Manager, Indian Bank – Vs – The Presiding Officer & Anr. (W.A. No.387/2024 – Dated 20.12.2024 (MHC))*

10. Per contra, learned counsel appearing for the Bank submitted that though the Tribunal has held that the materials inexplicably prove the misconduct committed by the workman and that the misconduct is of a very grave nature eroding the public trust reposed in the bank and that the misconduct may lead to the bank losing confidence upon the workman, yet, had



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modified the punishment from one of dismissal from service to one of compulsory retirement.

11. It is the further submission of the learned counsel that the observation of the Tribunal to modify the punishment imposed on the workman by holding that the object of the bank to keep the workman away from service could be achieved by changing the punishment from one of dismissal to compulsory retirement with eligibility for some terminal benefits is grossly perverse, as it would send a wrong signal to the other members of the bank to resort to such misconduct at the fag end of their career with the fond hope that their retirement benefits would stand safe in their hands, even if the case against them is proved. The perversity of the order of the Tribunal not only benefits the workman, but also acts in detriment not only to the bank, but also the general public, who have reposed confidence in the bank and have deposited their hard earned savings into their account, to be swindled away by unscrupulous persons.

12. In this backdrop, it is the submission of the learned counsel that the award of the Tribunal, while safeguards the workman from the clutches of



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dismissal by compulsory retirement, however, punishes the bank for the misconduct committed by the workman, as the misconduct of the workman is leniently dealt with by allowing to go scot-free with all the terminal benefits, while jeopardizing the position of the bank in the eyes of the general public. The said award being passed without proper application of mind requires to be interfered with in the interest of the institution and also from sending a wrong signal to the other workmen/employees not to commit such acts while dealing with public money and, therefore, prays for setting aside the award.

13. 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.

14. 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. It is the contention of the workman that the originals of the documents, which were



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relied on were not placed; rather Xerox copies only were placed, which cannot form the basis to hold that the enquiry was conducted in a fair and proper manner.

15. 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 adequacy of evidence.

16. 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.

17. A perusal of the order passed by the Tribunal reveals that the workman has been granted sufficient opportunity to participate in the proceedings and if the workman had not utilised the said opportunity to cross examine the witnesses in the departmental enquiry, the workman cannot claim that opportunity was not given to him. Its only the probative value of the evidence to the prudent mind to arrive at the conclusion on the basis of the said evidence and it is not a proof beyond reasonable doubt, which is warranted with the evidence tendered. The Tribunal, on proper appreciation has held that the evidence, both oral and documentary, placed during enquiry, unerringly point to the misconduct of the workman and, therefore, had refrained from interfering with the said finding rendered by the enquiry officer.

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, held as under :



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“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



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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 : (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. 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 :-



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“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.

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.*



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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.

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 spectrum is the principle that the court has the jurisdiction to



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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 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the*



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



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(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)

20. 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.

21. 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



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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.

22. 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.

23. A careful perusal of the order of the Tribunal reveals that while embarking upon the scope of interference with the punishment, the Tribunal has recorded a finding that the nature of misconduct of swindling the customer's money is a grave misconduct and an act prejudicial to the interests of the bank and, therefore, the continuance of the workman in the services of the bank would not only prejudice the customers, but would impact the credibility of the bank in the eyes of its customers. The Tribunal has reasoned for interfering with the punishment of dismissal by pointing out that *"while avoiding such a delinquent is the prominent aim of the Management, it could well be brought about by ordering the petitioner's removal from service or imposing compulsory retirement with his eligibility for some terminal benefits."* The above view,



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according to the Bank, is erroneous when the Tribunal has found out that the misconduct is grave in nature.

24. In this regard, 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)**, is pressed into service, 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 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.

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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 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.



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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.

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.”

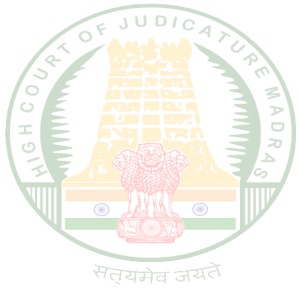
14. In view of the above expression to the word Perverse, the reason assigned by the Tribunal, could not be termed as perverse and it's view is quite plausible. In the light of the above discussion, the findings of the Tribunal are well merited.”



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25. There could be no quarrel with the fact that the misconduct of the workman is grave in nature. However, in the same stretch, it cannot also be construed that the reasoning adopted by the Tribunal is erroneous, as the Tribunal has clearly reasoned that what weighed in the mind of the bank is the continuance of the workman in the post which would prejudice the customers and would harm the bank. Considering the fact that the workman had put in almost 16 years of 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 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.



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26. For the reasons aforesaid, this Court does not find any reason to interfere with the order of the Tribunal modifying the punishment and, accordingly, both the writ petitions fail and they are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Central Government Industrial Tribunal
-cum- Labour Court
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