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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 50/2026 & CM APPL. 7041/2026

ANIL KUMAR .....Appellant

Through: Mr. Om Prakash, Advocate with Appellant in person.

versus

CENTRAL BANK OF INDIA & ANR. .....Respondents

Through: Mr. Anuj Jain, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJAS KARIA

<u>O R D E R</u>

% 02.02.2026

<u>CM APPL. 7040/2026 (*for exemption*)</u>

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>CM APPL. 7041/2026 (*for delay in re-filing the appeal*)</u>

3. This is an application seeking condonation of 16 days' delay in re-filing the appeal moved on behalf of the appellant.

4. Having heard learned counsel for the parties and the reasons stated in the application, the same is allowed. The delay of 16 days' in re-filing the appeal is hereby condoned.

5. The application stands disposed of.

<u>LPA 50/2026</u>

6. This Letters Patent Appeal is preferred by the Appellant being aggrieved by the judgment dated 14.11.2025 ("**Impugned Judgment**")

passed by the learned Single Judge of this Court in W.P.(C) 9689/2018 ("**Writ Petition**").

7. The brief factual matrix of the case is as under:

7.1. The Appellant was employed as a clerk with Respondent No. 1. On 20.04.2006, the Appellant received a cash of ₹60,580/- towards the payment of fees of four students of DAV Public School. While receiving the said amount of ₹60,580/-, the Appellant issued cash receipts in respect of the said amount, however, the said receipts were not scrolled from the Accounts Department of the Respondent No.1. Although the Appellant issued counter foils of the receipts under his initials / signature by putting rubber stamp of cash receipts, the said amount was not accounted for and was not deposited in the current account of DAV Public School on 20.04.2006.

7.2. On 29.07.2006, the DAV Public School forwarded the photocopies of the aforesaid fee receipts to Respondent No. 1 and requested for taking necessary action as the fee deposited through the said receipts was not credited in the School's account maintained with Respondent No. 1. On 08.08.2006, entire fees of ₹60,580/- plus late fees was deposited with Respondent No. 1 through the deposit receipts bearing the same serial number as the serial numbers printed on the counter foils released by the Appellant on 20.04.2006.

7.3. Accordingly, the Respondents alleged that the Appellant misappropriated funds of ₹60,580/- for the period of 110 days.

7.4. The Respondents suspended the Appellant on 02.09.2006 and issued memos dated 06.09.2006 and 10.10.2006. The Appellant replied to the said memos on 25.09.2006 and 18.10.2006. Since, the reply was not found satisfactory, charge sheet dated 28.10.2006 was issued to the Appellant. Thereafter, departmental enquiry was conducted in *vide* final report dated 28.03.2007, the charges against the Appellant were found to be proved. The Disciplinary Authority, thereafter, gave personal hearing dated 20.06.2007 to the Appellant and in view of the said proceedings, the Disciplinary Authority of the Respondents founded it fit to dismiss the Appellant from the service *vide* dismissal order dated 20.06.2007.

7.5. In the meanwhile, the DAV Public School *vide* letter dated 08.09.2006 withdrew the complaint dated 29.07.2006 as the amount of ₹60,580/- was deposited on 08.08.2006.

7.6. The Appellant raised the industrial dispute before the learned Industrial Tribunal by way of a reference dated 11.02.2009. The Appellant filed statement of claim before the Industrial Tribunal on 22.06.2009 and the Respondents filed written statement on 19.11.2009.

7.7. *Vide* order dated 21.01.2010, the learned Industrial Tribunal framed a preliminary issue as to whether the departmental enquiry conducted by the Respondents was legal, just and fair and not in violation of principles of natural justice.

7.8. After conclusion of the evidence of both the sides and hearing the arguments on the preliminary issue, *vide* order dated

08.06.2016, the learned Industrial Tribunal decided the preliminary issue in favour of the Appellant and against the Respondents holding that the enquiry proceedings were vitiated. Accordingly, the Respondents were directed to adduce evidence to prove misconduct of the Appellant.

7.9. The Respondents filed evidence of one Mr. Naveen Kumar by way of an affidavit dated 12.05.2017, who was cross-examined on 11.10.2017. The Appellant to prove his innocence with regard to the misconduct, filed his affidavit dated 03.05.2017 and was cross-examined on 12.06.2017.

7.10. The Appellant in his evidence pleaded that on 20.04.2006, one Mr. Goyal sent his servant to deposit the school fees of his children, however, due to rush at the cash counter, the Appellant took the money and school challan copies from the servant and returned the counter foil of the challan putting stamp of the Bank as the servant told the Appellant that Mr. Goyal was in hurry. Since Mr. Goyal was known to the Appellant, the Appellant gave stamp challan copies to him looking at his urgency but asked the servant to wait so that the Appellant could count the cash. While counting the cash, the Appellant found some notes defective and asked the servant to get them changed. The servant came back after some time and informed that Mr. Goyal had already left and his number was not responding. Thereafter, the Appellant returned the challan copies and the money to the servant and asked him to bring proper cash. Due to the rush of work, the Appellant forgot to take back the counter foil of the challan and cancelled the stamp. Thereafter, the Appellant was transferred to another Branch of Respondent No. 1 and the matter slipped out of his mind.

7.11. The Appellant further submitted that when in July 2006 the matter came to his notice, he advised Mr. Goyal to contact the School and the Respondents, and it was found out that the servant had not informed about non-receipt of the cash to Mr. Goyal. The slips / challan were found from the servant's room. The said version of the Appellant was also supported by Mr. Goyal during the enquiry proceedings conducted by the Respondent.

7.12. The learned Industrial Tribunal passed the award dated 12.03.2018 ("**Award**") in favour of the Appellant holding that the Respondents had failed to prove the charge of misconduct and the action of terminating the services of the Appellant with effect from 07.08.2007 was held to be unjust, unfair and illegal. The Respondents were directed to reinstate the Appellant with all consequential benefits.

7.13. Being aggrieved by the Award, Respondent No. 1 filed the Writ Petition before the learned Single Judge of this Court. The learned Single Judge *vide* Impugned Judgment has allowed the Writ Petition on the ground that the learned Industrial Tribunal was wrong in reversing the order of dismissal of the Appellant from service and, accordingly, the Award passed by the learned Industrial Tribunal was set aside and the action of the

Respondents of terminating the services of the Appellant was upheld.

7.14. Being aggrieved by the Impugned Judgment, the Appellant has preferred the present Appeal.

8. Heard the learned Counsel for the Appellant as well as the learned Counsel for the Respondents.

9. The main grievance of the Appellant against the Impugned Judgment is that the observations made from Paragraph Nos. 8 to 11 of the Impugned Judgment are erroneous, presumptive and contrary to the record. The said paragraphs of the Impugned Judgment are reproduced as under:

> "*8. To prove the aforesaid defence, the respondent/employee relies on the testimony of DW1, recorded during the course of the domestic enquiry. The respondent/employee himself contended before the Tribunal that the enquiry proceeding was vitiated as the principles of natural justice had not been complied with. Accepting this contention, the Tribunal found the enquiry to be vitiated and permitted the management to adduce fresh evidence to prove the charge. However, the respondent/employee never led any evidence to prove his defence. Neither Rajesh Goyal nor his servant was examined to prove the defence. In such circumstances, it can only be held that the defence has not been established.*
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> *9. Further, withdrawal of the complaint by the DAV is not enough to exonerate the respondent/employee of the charge of misconduct, especially when the organization in which he was working was a financial institution. Moreover, the argument that the memo served on the respondent/employee does not specify any misconduct and hence the charge is defective, also cannot be countenanced. The purpose of framing a charge is to give notice to the party regarding the allegation that he has to answer. Annexure P-12, i.e., the chargesheet, is quite clear as to the charge that he had to answer. The respondent/employee has no case that he had not understood the charge against him. He is seen to have understood the charge against him and contested the same. No prejudice is seen to have been caused to him due to the memo only containing the terms 'omission and commission'.*

10. The argument that the punishment of dismissal awarded is disproportionate cannot be countenanced for a moment, as the respondent/employee was working in a financial institution where there cannot be a compromise on the integrity of its employees.

11. In view of the foregoing discussion, I find that the Tribunal went wrong in reversing the order of dismissal of the respondent/employee from service. Hence, the impugned Award is accordingly set aside. The action of the management in terminating the services of the respondent/employee is upheld."

10. The learned Counsel for the Appellant submitted that the observation in Paragraph No. 8 of the Impugned Judgment that the Appellant never led any evidence to prove his defence is factually incorrect. The Appellant had filed his own affidavit of evidence and was cross-examined extensively, which is evident from the Award passed by the learned Industrial Tribunal.

11. It was further submitted on behalf of the Appellant that the counter affidavit and the written submissions including the case laws relied upon therein as filed by the Appellant in the Writ Petition have not been referred to in the Impugned Judgment and not considered at all by the learned Single Judge.

12. The learned Counsel for the Appellant contended that the learned Single Judge improperly replaced the findings and conclusions of the learned Industrial Tribunal by misconstruing the Award. It was further argued that the Impugned Judgment inappropriately reassessed or reviewed the factual determinations made by the Industrial Tribunal, the designated fact-finding authority, which is not permissible under the law.

13. It was further submitted by the Appellant that the finding of the learned Industrial Tribunal that there was no misappropriate or embezzlement of any money has not been considered by the learned Single

Judge. The learned Counsel for the Appellant relied upon the decision of ***State Bank of India v. C.P. Kanak & Ors.***, (2010) LLJ (IV) 563, that the powers of Industrial Tribunal under Section 11A of the Industrial Disputes Act, 1947 ("**ID Act**") are wider than the power of judicial review under Article 226 of the Constitution of India, 1950 by the High Court. The learned Counsel for the Appellant also relied upon the decision of the Apex Court in the case ***Calcutta Port Shramik Union v. The Calcutta River Transport Association and Ors.***, AIR 1998 SC 2168, wherein it is held that the object of enacting the ID Act and making provision therein to refer the Tribunal to settle the disputes is to bring about industrial peace and in all such cases, attempt should be made by the Courts exercising power of judicial review to sustain as far as possible the awards made by Industrial Tribunals instead of pickings holes here and there in the awards on trivial points and ultimately frustrating the entire adjudicating process before the Tribunals by slacking down the awards on hyper-technical grounds.

14. The learned Counsel for the Appellant submitted that Respondent No. 1 had itself admitted in the charge sheet dated 28.10.2006 that the Appellant was guilty of certain lapses / minor mistakes and, therefore, the punishment of dismissal from service was disproportionate to the gravity of the minor mistakes. Further, there was no wrongful gain to the Appellant or loss to the Respondent if the entire amount of ₹60,580/- was deposited into the DAV Public School's account on 08.08.2006, which was confirmed by the said School by withdrawing the complaint.

15. It was also pointed out by the learned Counsel for the Appellant that Respondent No. 1 has not been complying with the mandate of Section 17B of the ID Act notwithstanding the clear direction given by the learned

Industrial Tribunal for reinstatement of the Appellant in the service of Respondent No. 1 as per the Award dated 12.03.2018. The Appellant had filed an application dated 14.11.2018 before the learned Single Judge in the Writ Petition duly supported by the affidavit for payment of wages under Section 17B of the ID Act as he was not employed in any establishment since his dismissal on 07.08.2007.

16. Despite that Respondent No. 1 has not made any payment as per Section 17B of the ID Act on the ground that the Appellant was gainfully employed in property dealing business as he is running his real estate business and also running a restaurant. In addition, Respondent No. 1 also contended that the Appellant is owner of several properties in his own name or in the name of his family members and is earning fixed monthly income of rent.

17. The Appellant had denied the allegation of Respondent No. 1 regarding the Appellant being gainfully employed in property dealing and other allied businesses. It was submitted by the Appellant that the restaurant was started by his wife and was closed and, therefore, the Appellant was entitled to relief under Section 17B of the ID Act. As regards the allegation of the Appellant being owner of certain properties, the same was denied by the Appellant being wholly incorrect and irrelevant for the purpose of determination of relief under Section 17B of the ID Act.

18. The Appellant submitted that despite the application under Section 17B of the ID Act filed by the Appellant before the learned Single Judge, the Impugned Judgment does not deal with the aspect of payment of full wages to the Appellant during the pendency of the Writ Petition before the learned Single Judge. The Appellant has relied upon the decision of this Court in ***Taj***

Services Limited v. Industrial Tribunal-I, 1999 SCC OnLine Del 815, which held that once the workmen has filed an affidavit to the effect that he had not been employed in any establishment during the pendency of proceedings, the onus is on the employer to prove to the satisfaction of the Court that the workmen had been so employed and had been receiving adequate remuneration.

19. Having considered the above submissions and considering the Impugned Judgment, it is apparent that the learned Single Judge has wrongly recorded in Paragraph No. 8 of the Impugned Judgment that the Appellant never led any evidence to prove his defence and relied upon the testimony of the Appellant recorded during the course of the domestic enquiry. This finding is erroneous as in Paragraph No. 9 of the Award the learned Industrial Tribunal has stated that the Appellant examined himself and his affidavit is Exhibit WW1/B.

20. Considering the foregoing, the observation in the Impugned Judgment that the Appellant failed to lead evidence supporting his defence is not correct. The records from the proceedings before the learned Industrial Tribunal, which were made available with the Writ Petition, indicate that the Appellant underwent cross-examination before the learned Industrial Tribunal. Consequently, the Impugned Judgment, which rests on the erroneous factual finding that the Appellant did not provide any evidence in support of his defence, cannot be sustained.

21. Furthermore, the observation in the Impugned Judgment that the withdrawal of the complaint by DAV Public School was insufficient to absolve the Appellant of misconduct—given Respondent No. 1's status as a financial institution—is inconsistent with the findings of the learned

Industrial Tribunal. The learned Industrial Tribunal determined that Respondent No. 1 failed to substantiate the allegations of misconduct against the Appellant. Evidence presented by the Respondents confirmed that the students' parents had paid the full fees on 08.08.2006 and provided a letter to the school authorities expressing regret for any inconvenience caused, with the School acknowledging it held no complaint against Respondent No. 1. Based on these facts, the learned Industrial Tribunal concluded that there was no misappropriation of funds by the Appellant, as all student fees had been deposited on 08.08.2006. Consequently, the Award found no basis for claims of misappropriation or embezzlement, and the learned Industrial Tribunal determined that the Respondents failed to establish the charge of misconduct against the Appellant.

22. However, the Impugned Judgment neither discusses nor provides any reasons for rejecting the factual determinations made by the learned Industrial Tribunal. Furthermore, the learned Single Judge has not considered the findings of fact regarding the Appellant's non-involvement in misappropriation or embezzlement of funds, as established through the evaluation of evidence presented before the learned Industrial Tribunal.

23. It is settled law that the powers under Section 11A of the ID Act are very wide in the matter of awarding relief according to circumstances of the case, whereas the power of judicial review in a writ jurisdiction is extremely limited as held in ***U.B. Gadhe v. G.M. Gujarat Ambuja Cements Private Limited***, AIR 2008 SC 99 and relied upon by the Appellant. The learned Single Judge interfered with the findings of the fact recorded by the learned Industrial Tribunal in the Impugned Judgment without recording any reasons for the same.

24. In the facts of the present case, the discretion exercised by the learned Industrial Tribunal under Section 11A of the ID Act has been set aside by the learned Single Judge in the Impugned Judgment without appreciating the finding of facts or providing any justification for disagreeing with the same.

25. The Impugned Judgment is also completely silent about the aspect of payment of wages during the pendency of the Writ Petition despite the application filed by the Appellant under Section 17B of the ID Act.

26. Accordingly, the Impugned Judgment is required to be set aside as the learned Industrial Tribunal has arrived at the finding of facts, which did not require any interference by the learned Single Judge in exercise of writ jurisdiction in absence of any manifest error in the Award passed by the learned Industrial Tribunal.

27. In view of the above, the Appeal is allowed and the Impugned Judgment is quashed and set aside and the Award dated 12.03.2018 is upheld. Consequently, Respondent No. 1 is directed to pay the entire back wages to the Appellant from the date of his dismissal on 07.08.2007 till the date of his superannuation on 25.01.2022 with all consequential benefits. The pending Application also stands disposed of. There shall be no order as to costs.

DEVENDRA KUMAR UPADHYAYA, CJ

TEJAS KARIA, J

FEBRUARY 2, 2026

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