S. No. 1
Supplementary List

IN THE HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT SRINAGAR

SWP No. 1060/2016
IA No. 01/2016

Reserved on: 04.05.2023

Pronounced on: 24.05.2023

Muneer Ahmad Paswal

…Petitioner(s)

Through: Mr. A.H.Naik, Sr. Advocate with
Mr. Zia, Advocate.

V/s

Union of India & Ors.

…Respondent(s)

Through: Mr. Altaf Haqani, Sr. Advocate with
Mr. Asif Wani, Advocate.
Ms. Rehana Qayoom vice Mr.T.M.Shamsi, DSGI.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

BRIEF FACTS

1. The petitioner was engaged in the respondent-Bank way back in the year 1985 and was regularized as Table Boy in the year 1991. It is stated that the petitioner has unblemished service record; he was assigned the job of taking the files from one table to another and there was no table work assigned to him nor was he assigned any duty relating to cash transactions which was within the domain of the clerical staff and not with the petitioner in the capacity of Table Boy. Further, stand of the petitioner is that in February 2013, a false and frivolous FIR was lodged against him by respondent No.4 in the Police Station D.H.Pora and thereafter the petitioner was put under suspension vide order dated 19.02.2013.

2. Pursuant thereto, the petitioner was served with charge-sheet to which he had filed detailed objections. The case of the petitioner is that some false and frivolous charges were leveled against him, wherein, it was alleged that the petitioner has misappropriated the money entrusted by the customers for depositing the same in the respondent-Bank. Since the job profile of the petitioner is merely that of Peon, who has been assigned the job of only taking the files from one table to another and he was never assigned the duty either accepting the money or depositing the same in the Bank, which falls within the realm of the duties assigned to the Cash clerk and the management. Neither any enquiry was conducted nor the petitioner was paid any subsistence allowance, and feeling aggrieved of the same, the petitioner filed a Writ Petition before this Court which was registered as SWP No. 1199/2014, wherein the petitioner has challenged his belated suspension. The further stand of the petitioner is that during the pendency of the aforesaid petition, the petitioner was dismissed from service on the basis of some enquiry, copy whereof was never supplied to the petitioner nor he was associated with the so-called enquiry.

3. Further stand of the petitioner is that the respondents got infuriated by the petitioner's approaching this Court, wherein, the petitioner has challenged his suspension order, the respondents dismissed the petitioner from service vide order dated 11.03.2016, which is impugned in the present writ petition. Accordingly, SWP No.

1199/2014 was dismissed vide order dated 27.08.2021 having been rendered infructuous.

ARGUMENTS ON BEHALF OF THE PETITIONER

4. The case of the petitioner, as is projected in the present writ petition is that the Enquiry Officer has not afforded the petitioner reasonable opportunity to defend himself and the reply of the petitioner to the charge-sheet was not accorded any consideration. Further case of the petitioner is that the copies of the complaint allegedly made against the petitioner and relied upon by the respondents were not supplied to the petitioner nor the list of the witnesses was given to him. Even the petitioner was not allowed to cross-examine them, as such, the enquiry which is alleged to have been conducted by the respondents is bad in the eyes of law and is liable to the set aside. The material which was relied upon by the respondents was not supplied to the petitioner before issuing the order impugned. Further stand of the petitioner is that the petitioner, though has initially filed the appeal against the said order before the Chairman of the Bank, but the same was not decided and was subsequently withdrawn as no decision was taken by the appellate authority, which prompted the petitioner to file the present writ petition.

5. Lastly, it is projected that the penalty of dismissal is a major punishment and the same has been imposed without following the procedure as envisaged under law and the same is not commensurate to the gravity of offence alleged against the

petitioner and, thus, does not sustain the test of law and is liable to be quashed.

6. Mr. A.H.Naik, learned senior counsel appearing for the petitioner submits that the respondents have suspended the petitioner on the allegations of misconduct by virtue of the order dated 19.02.2013 which was followed by the charge-sheet dated 25.02.2013. Learned counsel for the petitioner further submits that the charge-sheet is against all the canons of service jurisprudence as the respondents with preconceived notion had already formed the opinion to take stern action against the petitioner under Section 39 of the Ellaquai Dehati Bank (Officers and Employees) Service Regulations 2010 and the respondents, inspite of issuing proper charge-sheet in a proper format have issued a show cause notice as to why suitable disciplinary proceedings shall not be initiated against the petitioner for his acts of misconduct and breach of discipline. Accordingly, seven days time was given to the petitioner to file reply failing which it was conveyed in writing through the medium of the aforesaid charge-sheet that action shall be initiated against the petitioner as per the Bank's laid down rules. Learned senior counsel further submits that the charge-sheet is nothing but a show cause notice issued by the Disciplinary Authority to impose punishment and that too without conducting enquiry or providing an opportunity of being heard to the petitioner. Learned counsel further argued that the respondents have jumped over to the conclusion of imposing punishment

without conducting any detailed enquiry, which clearly proves beyond any shadow of doubt on the part of the respondents that they have acted with preconceived notion to impose punishment of dismissal on the petitioner when inquiry has yet to be conducted and charges have yet to be proved.

7. The entire exercise of the respondents as per the petitioner in issuing aforesaid charge- sheet with preconceived notion by way of show cause notice smacks foul play and loathed with *mala fide* consideration. Learned counsel further submits that the respondents by virtue of the order impugned dated 11.03.2016 have dismissed the petitioner on the basis of some enquiry authority report and other related facts which the petitioner was not aware of, as he was never associated with any enquiry nor he was supplied the material on the basis of which the aforesaid order impugned came to be issued. Even the respondents have failed to issue show cause notice before imposing major penalty of dismissal. Learned counsel has also referred to the detailed departmental enquiry, wherein, there is no whisper with regard to the factum of granting hearing to the petitioner or allowing him to cross-examine the witnesses as the enquiry is silent in this respect. As per the petitioner, the finding recorded by the Enquiry Officer is without any basis and thus, the order impugned, which is offshoot of the aforesaid enquiry, cannot sustain the test of law and is liable to be quashed.

ARGUMENTS ON BEHALF OF RESPONDNETS

8. Per contra, Mr. Altaf Haqani, learned senior counsel, appearing for respondents 3 to 5, submits that the present writ petition is not maintainable, as such, is liable to be dismissed in the light of the fact that the petitioner has an alternate and efficacious remedy available under Section 49 of the Regulations known as Ellaquai Dehati Bank (Officers and Employees) Service Regulations 2010. The petitioner after having availed the remedy of filing appeal has subsequently withdrawn the same and thereby relinquished and abandoned his statutory right to avail the efficacious remedy and after withdrawal of the aforesaid appeal, the present writ petition is not maintainable and is liable to be dismissed.

9. Mr. Haqani, further submits that the petitioner after taking advantage of his reputation has resorted to parallel banking methodology of his own by receiving the deposits against fake receipts from the customers and the petitioner was paying such deposits to the customers against withdrawals/cheques without routing such deposits and payments through the Bank and making the entries in their passbooks falsely. Learned counsel further submits that on some oral complaint regarding non-deposit of Rs.500/- in the relevant account of one of the customers, the activities of the petitioner got surfaced, who on being confronted, deposited an amount of Rs.1,54,400/- upto 10.01.2013 leaving a huge amount of Rs.8,44,900/-, yet to be accounted for, the bunch of vouchers which were seized and recovered by the Bank

authorities from his residence. Learned counsel further submits that taking into consideration the sensitivity of the issue and its reputation, a detailed investigation was ordered by the Bank which was conducted by the Chief Vigilance Officer of the respondent-Bank, which necessitated lodgment of FIR with the Police Station D.H.Pora under No. 09/2013 on 25.02.2013. Further stand of the respondents is that the petitioner's reply to the charge- sheet was found unsatisfactory and accordingly a full dress departmental enquiry was ordered to be conducted against him on 12.04.2013. Learned counsel further submits that the procedure as envisaged under law was followed while conducting enquiry and subsequently, the order impugned came to be issued, whereby, the punishment of dismissal from service was imposed against the petitioner. Further stand of the respondents is that since the petitioner never raised any demand for providing him copy of the complaints and accordingly, the same were not provided to the petitioner.

LEGAL ANALYSIS

10. Heard learned counsel for the parties at length and perused the original record supplied by the respondents minutely.

11. The service of the petitioner is governed in terms of the Regulations called as Ellaquai Dehati Bank (Officers and Employees) Service Regulations 2010. Regulation 39 deals with the penalty clause and both the major and minor penalties have

been defined in the aforesaid Regulations. For facility of reference, Regulation 39 is reproduced as under :-

"39.Penalties- Without prejudice to the foregoing regulations of this Chapter, an officer or employee who commits a breach of these regulations or who displays negligence, inefficiency or indolence or who commits acts detrimental to the interests of the Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other acts of misconduct, shall be liable for any one or more penalties as follows, namely:-

1. Officers :
(a) Minor Penalties:
(i) Censure,
(ii) Withholding or stoppage of increments of pay without cumulative effect;
(iii) Without of promotion;
(iv) Recovery from emoluments or such other amounts as may be due to him, of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders;
(v) Reduction to a lower stage in time scale of pay for a period not exceeding two years without cumulative effect.
(b) Major Penalties:
(i) Same as provided in item (v) of clause (a) of sub regulation (1) of regulation 39, reduction to a lower stage in time scale of pay for a specified period with further directions as to whether or not the officer shall earn increments of pay during the period of such reduction and whether on expiry of such period the reduction shall or shall not have the effect of postponing the future increments of his pay;
(ii) Reduction to a lower grade or post;
(iii) Compulsory retirement;
(iv) Removal from service which further h shall not be a disqualification for future employment;
(v) Dismissal which shall ordinarily be a disqualification for future employment.

Explanation:- For the purpose of this regulation, the following shall not amount to be a penalty, namely:-

(i) Withholding of one or more increments of an officer on account of his failure to pass a departmental test or examination in accordance with the terms of appointment to the post which he holds;
(ii) Stoppage of increment(s) of an officer at the efficiency bar in a time scale on the grounds of his unfitness to cross the bar;
(iii) Not giving an officiating assignment or non-promotion of an officer to a higher grade of post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;
(iv) Reserving or postponing the promotion of an officer for reasons like completion of certain requirement for promotion or pendency of disciplinary proceedings;
(v) Reversion to a lower grade or post of an officer officiating in a higher grade or post, on the ground that he is considered, after trial, to be unsuitable for such higher grade or post or on administrative grounds unconnected with his conduct;
(vi) Reversion to the previous grade or psot of an officer appointed on probation to another grade or post during or at the end of the period of probation, in accordance with the terms of his appointment or rules, or orders governing such probation;
(vii) Reversion of an officer on deputation to his parent organization;
(viii) Termination of service of an officer-
(a) Appointment in a temporary capacity otherwise than under a contract or agreement on the expiration of the period for which he was appointment, or earlier in accordance with the terms of his appointment;
(b) Appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and
(c) As part of retrenchment;

Provide that no minor penalties as specified in items (i) to (v) of clause (a) of sub regulation (1) of regulation 39, shall be imposed by the competent authority unless the officer is given a notice in writing-

(i) Informing him of the grounds on which it is proposed to impose the said penalties;
(ii) Giving him a reasonable opportunity for making a statement of defense in writing within a period of 15 days from the date of receipt of notice, and statement of defense, if any, submitted by the officer shall be taken into consideration and of being heard.

Provided further that no order in imposing any of the major penalties specified above, shall be made except by an order in writing signed by the competent authority and no such order shall be passed without the charge or charges being framed in writing and given to the officer and enquiry held so that he shall have reasonable opportunity to answer the charge or charges and defense himself.
Provided further that no enquiry shall be made, if,
(i) The misconduct in such cases if proved, the Bank does not intend to impose the punishment of removal or dismissal; and
(ii) The Bank has issued a show cause notice to the officer advising him of the misconduct and the punishment for which he may be liable for such misconduct; and
(iii) The officer makes a voluntary admission of his guilt in his reply to the aforesaid show cause notice;
2. Employees:
(a) Minor penalties;
(i) Censure;
(ii) Recording of adverse remarks against him;
(iii) Withholding of increments for a period not exceeding six months.
(b) Major penalties:
(i) Fine;
(ii) Withholding of increment(s) for a period exceeding 6 months;
(iii) Withdrawal of special allowance;
(iv) Reduction of pay to next lower stage upto a maximum period of two years in case the staff has reached the maximum in the scale of pay;
(v) Removal from service which shall not be a disqualification for future employment;
(vi) Dismissal.
Provided that no major penalties as specified in items (i) to (vi) of clause (b) of sub regulation (2) of regulation 39 shall be imposed by the competent authority unless;
(i) An order in writing signed by the competent authority and no such order shall be passed without the charge(s) being framed in writing and given to the employee and enquiry held;
(ii) Giving him reasonable opportunity to answer the charge(s) in writing, and defend himself.

Provided further that an enquiry need not be held if-

(i) The misconduct is such that even if proved, the Bank does not intend to impose punishment of removal or dismissal; and
(ii) The Bank has issued a show cause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct; and
(iii) The employee makes a voluntary admission of his guilt in his reply to the aforesaid show cause notice."

12. From the perusal of the aforesaid regulation, it is apparently clear that the order of imposing major penalty, specified above, shall be made except by an order in writing signed by the competent authority and no such order shall be passed without the charge or charges being framed in writing and given to the officer and

enquiry held so that he shall have reasonable opportunity to answer the charge or charges and defend himself.

13. Conducting of enquiry can be dispensed with only in the eventuality, if the misconduct in the case even if proved, the Bank does not intend to impose punishment of removal or dismissal but in the present case, no proper charge-sheet in a proper format has even been issued to the petitioner yet the petitioner did not raise any grouse against the same and replied the same by filing objections.

14. From the perusal of the charge-sheet, it is manifestly clear that same has been issued with preconceived notion for imposing penalty under Section 39 of the aforesaid Regulations for the act of gross misconduct and breach of discipline against the petitioner which was yet to be enquired into and it appears that the respondents have already formed an opinion that the petitioner has indulged in gross misconduct which warrants suitable disciplinary action against him and accordingly, by way of camouflage, the aforesaid notice in the guise of charge-sheet was issued to the petitioner. The aforesaid communication dated 25.02.2013, though styled as charge-sheet but under the guise of charge-sheet a final show cause notice by the Disciplinary Authority to impose punishment for the act of misconduct and breach of discipline has been issued. Thus, the aforesaid communication by no stretch of imagination can be construed as the charge-sheet as envisaged

under the service jurisprudence and the Regulations framed by the Bank.

15. Although the charge-sheet is not happily worded, yet there is no challenge to the same in the instant writ petition and in absence of any specific challenge, this Court refrains from giving any finding on the said charge-sheet.

16. I have minutely examined the original record supplied to me by the learned counsel appearing on behalf of the Bank and a perusal whereof reveals that the detailed procedure as prescribed in the aforesaid Rules have been followed and detailed Departmental Inquiry has been conducted against the petitioner with respect to the allegations leveled against him. The following charges have been framed against the petitioner in the charge-sheet dated 25.02.2013:-

> ***"During your posting as Office-Attendant at our Branch Office K. B. Pora, you have indulged in gross misconduct and resorted to unfair practices which are against the interests of the Bank and have put the Bank's reputation at stake. You are accordingly charged as under:***
>
> ***1) That you have misutilized the cash entrusted to you by the Customers for depositing in their accounts at the Branch. Instead of depositing the Cash with the Bank, you have diverted it to your convenience. You were unauthorizedly involved in the receipt of Cash and making entries in the Pass-Books and retain the Cash as well as the Pay-in-Slips and Withdrawal forms with you which is in contravention to Banks prescribed rules.***
>
> ***2)That you used to pay the Cheques and withdrawal of the Customers from your own resources giving a cause of enforcing a parallel Banking in utter violation of the rules. Neither the deposits nor the Withdrawals, were recorded in the Bank transactions with the clear intention of cheating the Customers/defrauding the Bank.***
>
> ***3)You were found unauthorizedly possessing the stamped Cash /payments Vouchers aggregating to Rs 8,44,900/(Rupees Eight Lac Forty Four Thousand and Nine Hundred) at your residence which stand already admitted by you and witnessed by your wife.***
>
> ***4) That you have been continuously overdrawing your OD limit of Rs One lac which has been even to the tune of Rs 1.64 lacs (One Lac and Sixty Four Thousand) thus floating the financial discipline of the Bank through misuse of funds.***

5) That the Commission of lapses on your part as admitted by you have subjected the Bank's reputation and image to an irreparable loss for which you are liable for action under Bank's Service Rules."

17. The charges were duly replied by the petitioner in which a specific stand was taken by the petitioner that since the applicant has been a office attendant in the office and had no table work, thus, there is no question of mis-utilizing any cash entrusted to him by the customers for depositing the same in their accounts at the branch. The petitioner has taken a specific stand in the aforesaid reply that the duties of the office boy are specific and his duties nowhere, defined that he has to deal with the cash nor has he authority to deposit the cash with the Bank and accordingly, he denied the allegations leveled in the charge-sheet. The petitioner further denied having been involved in receipt of cash and making entries in the passbooks of the customers and receiving the cash as well as pay slips and withdrawal, thereof. The petitioner has also denied that no details have been provided with respect to the charges in the charge-sheet and the allegations leveled against the petitioner were fabricated, false and frivolous and on the basis of which FIR was registered against him. Pursuant thereto, Mr. Ghulam Hussain Bhat of Ellaquai Dehati Bank was appointed as Enquiry Officer by virtue of order dated 12.04.2013 under the provisions of the Regulation 39/41 of Ellaquai Dehati Bank (Officers and Employees) Service Regulation, 2010 for holding enquiry in respect of the charges against the petitioner. The respondents have also placed on record the detailed enquiry proceedings and a perusal whereof reveals that the Inquiry Officer has conducted a

detailed enquiry in which all the charges mentioned in the preceding paragraphs leveled against the petitioner stood proved and this Court while exercising the writ jurisdiction, cannot act as an Appellate Court to evaluate the findings arrived by the Enquiry Officer based on material and cogent evidence. Along with the enquiry report, the relevant record i.e. copies of the passbooks, receipts and other relevant document received from the concerned SHO Police Station, D.H Pora has also been annexed. The Enquiry Officer after concluding the enquiry by virtue of communication No. ANG/RO-2/438/2014-15 dated 12.03.2015 has referred the matter to the Chairman, Ellaquai Dehati Bank along with the comments, a perusal whereof reveals that all the charges against the petitioner stood proved. Thereafter, the Chief Vigilance Officer, by virtue of communication dated 20.08.2015 prepared a note for the disciplinary authority to impose punishment in the light of the findings arrived at by the Enquiry Officers. A perusal of the aforesaid note reveals that the petitioner while being posted at K.B Pora Branch, due to his being a local resident has earned goodwill and faith of branch customers and customers as a routine used to hand over their cash for depositing into their accounts. The petitioner taking advantage of the trust reposed in him, he would issue unsigned receipts by making the entries in their passbooks, without depositing the cash with the Bank. Note further reveals that the petitioner has been doing all this in a planned way, so much so he used to make the payments of cheques and withdrawal

form of the affected customers from his own resources and retain the instruments with him, thereby avoiding any complaint, till 24th December, 2012, when one of the customers found that the installment of Rs. 500/- for the month of November, 2012 has not been credited to his account, which he had delivered to the petitioner against receipt and entry in his passbook, about one month back.

18. With the surfacing of the aforesaid complaint, the Branch Manager got alert and started his investigations, and managed to recover a sum of Rs. 1,54,400/- till 10th January, 2013 and got it credited to seven accounts. As per the note, it is apparently clear that a bunch of vouchers aggregating to Rs. 8,44,900/- has been seized from the residence of the petitioner during the course of investigations and consequently, an FIR No. 09/2013 dated 25.02.2013 has been lodged with Police Station, D.H Pora, District Kulgam in this regard. The case was under trial in the Court of Sub Divisional Magistrate, Kulgam on the date of issuance of the aforesaid communication. Accordingly, the petitioner was put under suspension on 19.02.2013 which was called in question by the petitioner in the earlier round of litigation in a petition which was registered as SWP No. 1199/2014 and the same stand dismissed by virtue of order dated 27.08.2021 by this Court in view of the termination order passed. Since the petitioner has challenged the termination order in the present petition, the earlier petition was rendered infructuous and accordingly, dismissed.

19. The present petition is by way of second round of litigation. The details of the charges, findings of the Inquiring Authority, submissions of the petitioner and the view of the disciplinary authority/comments are appended below in the tabular form:-

S.No	*Charges*	*Inquiring Authority's Findings*	*CSO's Submissions*	*Disciplinary Authority's View*
1	*That you have misutilized the cash entrusted to you by the customer for depositing in their accounts at the Branch. Instead of depositing the cash with the Bank, you have diverted it to your convenience. You were unauthorizedly involved in the receipt of cash and making entries in the passbook and retain the cash as well as pay-in-slips and withdrawal forms with you which is in contravention to Banks prescribed rules.*	*The main charge against the charge sheeted official (Under suspension) of misutilizing the cash entrusted to him by the customer for depositing in their respective deposit/loan accounts at the branch and diverting the same as per his convenience by Sh. Muneer Ahmad Paswal office Attendant is "PROVED". His involvement in receipt of cash making entries in passbook and retention of cash, pay-in-slips and withdrawals with him is also proved.*	*In reply to Para 1, it is submitted that the position of the applicant has been of an Office-Attendant in the Office and had no table work. There is, therefore, no question of misutilizing the cash entrusted to him by the customers for depositing the same in their accounts at the branch. It is submitted that the duties of the office boys are specific. As office boy, the applicant does not have the duty to deal with the cash not has he the authority to deposit the cash with the bank. Thus, the charge made in the Para under reply is vehemently denied. It is further denied that the applicant has been involved in receipt of cash and making entries in the passbooks of the customers and receiving the Cash as well as pay slips and withdrawal thereof. It is made clear that none of the aforesaid allegations can be attributed to the applicant as he in no way involved in the aforesaid allegations acts. The applicant does not have to perform any duty, wherein he has to deal with the customers. Since the applicant is a Class-IV employee and as an Office Attendant, his status is lower than a peon, therefore, levelling the allegations in the Para under reply has no nexus with the job of the applicant.*	*I as disciplinary authority is convenienced with the findings of inquiry authority having proved the charge of entrusting of cash by depositors to the CSE Sh Muneer Ahmad Paswal which has been misutilized by him by not depositing said cash in respective deposit accounts and withdrawing the same as per his conveyance Charge is proved.*
2	*That you used to pay the cheques and withdrawal of the customers from your own resources giving a clause of enforcing a parallel Banking in utter violation of the rules. Neither the deposits nor the withdrawals were recorded in the Bank transactions with the clear intention of*	*The charge of payment of cheques and withdrawals of the customers from his own source is PROVED and non entering of such payments in records and system of the bank is also PROVED.*	*Para No. 2 is totally baseless and is vehemently denied. There is no truth in the allegations levelled in the said Para. It is submitted that no details have been provided with respected to the charges in the reply under reply. There is no question of paying or withdrawal of cheques of customers either from the bank or from the applicant's own resources. It may be submitted here that it is not within the*	*The charge of paying cheques and withdrawals from own source and not entering the same in branch books stands proved. I reiterate the findings of inquiry authority have the Charge Proved against Sh Muneer Ahmad*

	cheating the customers/defrauding the Bank.		***duties of the Office-Attendant to deal with the cash transactions in the bank, in any manner whatsoever. It appears that some officer of the bank are involved in the aforesaid omission and commissions and the applicant is a poor employee and it is not within the duties or powers and the allegations made against him. The allegations are totally false and denied the same.***	***Paswal.***
3	***You were found unauthorizedly possessing the stamped cash/payments vouchers aggregating to Rs. 844900/= (Rupees eight lac forty four thousand and nine hundred) at your residence with stand already admitted by you and witnessed by your wife.***	***Possessing of stamped cash/payment vouchers aggregating to Rs. 844900/= (Rupees eight lack forty four thousand nine hundred only) unauthorizedly by Sh. M.A Paswal office attendant (Under Suspension is proved).***	***Para No. 3 of the notice is also concocted and baseless. It is denied that any stamped cash/payments vouchers, as mentioned in the Para under reply have been recovered. It appears that some employees of the Bank in connivance with some police people have fabricated the story. There is no evidence with respect to the allegations made in the Para under reply. Such an allegation has also been made in the police report and the witness who have been cited by the police, have totally denied of having witnessed the seizure of any stamped cash/payment vouchers.*** ***The charges are vehemently denied. Details of the charges are requiring to be supplied to the applicant, so that necessary detailed reply is submitted.***	***The charge of possessing stamped cash/payment vouchers aggregating to Rs. 844900/= by the CSE employee is also proved. I agree with the inquiry authority's findings as having the Charge Proved.***
4	***That you have been continuously overdrawing your OD limited of Rs. One lac with has been even to the tune of Rs. 1.64 lacs thus floating the financial discipline of the bank through misuse of funds.***	***The charge of overdrawing his OD Limit of Rs. 100000/= (rupees One Lac by Sh M.A Paswal office attendant (under suspension) on various regular intervals is Proved.***	***In reply to Para 4, it is submitted that the applicant is a class-iv employee. He does not know about the niceties of the banking. In any case withdrawing of money from OD limit is for the concerned employees to see. If any overdrawing has been made it was duty of the concerned staff to stop the over drawing. The charges against the applicant are baseless.***	***The charge of overdrawing OD Limit of Rs. 100000/= by the CSE is also proved and I agree that charge of overdrawing OD Limit by Sh Muneer Ahmad Paswal is proved.***
5	***That the commission of lapses on your part as admitted by your have subject the Bank's reputation and image to an irreparable loss for which you are liable for action under Bank's Service Rules.***	***The charge of Commission of lapses on the part of Sh. M A Paswal (under suspension) which has subjected the banks reputation and image of the bank to a great extent is proved.***	***Para No. 5 is also denied as being baseless and frivolous. It is denied that the applicant has admitted any lapse. The applicant has not made any lapse and there is no question of admission of any lapses. Needless to mention here that the duties of the applicant as an Office-Attendant are specific and distinct. As already submitted here in above, he has no authority or power to deal with any cash transactions and in case there is any lapse on the count, the concerned employees have to pin pointed who are responsible for such acts.***	***The charge of commission of lapses by the delinquent employee also admitted by him verbally during investigation stands proved and I reiterate the findings of inquiry authority as having charge proved.***

			Office-Attendants cannot make be a scapegoat. It is not within the duties of an Office Attendant to deal with any cash transactions in the Bank. The allegations made in the notice are all false and frivolous, as such denied. It is further submitted that whatever allegations have been made, the details of such allegations have not been furnished to the applicant so as to enable him to submit detailed reply. In any case the allegations made are baseless and unfounded. Even from the duty roaster of the applicant, nobody can believe or trust with respect to the authenticity of the aforesaid allegations, as none of such allegations can come within the duties of any Office-Attendants. Whatever allegations have been made, that can be made against the clerical staff or the Officers of the Bank and not against on Office-Attendant or peon.	

From the perusal of the aforesaid findings of the Inquiring Authority report, it is manifestly clear that all the charges leveled against the petitioner have been established. The charge of commission of lapses on the part of the petitioner injured the reputation and image of the bank to a great extent. Pursuant to the aforesaid note of the Chief Vigilance Officer, wherein reference has been made to Section 39 of the aforesaid rules imposing penalty, the disciplinary authority after going through the Inquiring Authority Report and other related facts which includes the personal hearing of charge-sheeted employee and in view of the seriousness and heinous irregularities committed by the petitioner and applying his mind independently dismissed the petitioner by

virtue of order dated 11.03.2016, which is impugned in the present writ petition.

20. The petitioner has not thrown any challenge either to the charge-sheet or for that matter the inquiry proceedings which clearly proves beyond any shadow of doubt that the petitioner did not have any grouse against the issuance of the charge-sheet or for that matter conducting of detailed inquiry proceedings in which the petitioner participated without any demur and was given an opportunity of being heard by leading evidence. Thus, the allegation of the petitioner in the writ petition that the inquiry officer has not afforded him reasonable opportunity to defend himself falls flat in the light of the original record produced by the respondent-Bank which has been perused by this Court, minutely. All the allegations leveled against the petitioner have been proved by the detailed inquiry conducted by the inquiry officer which was gladly and voluntarily accepted by the petitioner as no grouse was ever raised by the petitioner against the initiation of the said inquiry or conducting of the departmental proceedings as there is no specific challenge in the present petition to the departmental proceedings or for that matter the charge-sheet, which although, is not happily worded. Record further reveals that copy of the inquiry report was supplied to the petitioner by virtue of communication dated 02.09.2015 which has been accepted by the petitioner, thus, it does not lie in the mouth of the petitioner to agitate that he was not aware of the inquiry proceedings/inquiry conducted in this

regard when the copy of the same has been supplied to him and the petitioner is signatory to the aforesaid fact. After having accepted the inquiry report and the findings arrived at by the officer, the petitioner is estopped under law to question the imposition of the penalty by the disciplinary authority which is n offshoot of the recommendations given by the inquiry officer wherein all the charges against the petitioner stood proved. It is not so even the petitioner has issued a communication to the disciplinary authority on 03.10.2015, wherein, after having appeared before the disciplinary authority on 03.10.2015, the petitioner has admitted his guilt wherein the petitioner has admitted that he is not having any documentary evidence/proof to defend himself.

21. The petitioner, feeling aggrieved of the same, has filed an appeal against the said order before the Chairman, Ellaquai Dehati Bank and the petitioner without waiting for the same has withdrawn the appeal and filed the present petition.

22. The respondents have taken a specific objection and has prayed for dismissal of the present petition on the ground that the petitioner having abandoned his statutory right of filing the appeal and thus, sought dismissal of the writ petition. As per Regulation 49 of the aforesaid Regulations, the petitioner has a statutory remedy of filing an appeal which is a self contained Court and the petitioner after having abandoned the alternative and efficacious remedy has chosen to file the present petition under Article 226 of the Constitution of India.

23. The objections which have been raised by the respondents with regard to the maintainability of the writ petition in the light of the Regulation 49 of the Regulations mentioned supra, is not sustainable at this stage when the writ petition has since been admitted and has been heard finally for its disposal as the present writ petition was filed way back in the year 2016 and was admitted to hearing on 17.11.2020. Once the petition is admitted for hearing in exercise of writ jurisdiction, the respondents cannot raise the ground of maintainability of the same after so many years and in that view of the matter, the objections raised by the respondents regarding maintainability of the writ petition in the light of alternate and efficacious remedy provided under Section 49 of the Regulations (supra) is held to be unsustainable in the eyes of law.

24. Indisputably, the departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent official must be found to have been proved and the Enquiry Officer has a duty to arrive at a finding upon taking into consideration the material brought on record by the parties.

25. Although the provisions of the Evidence Act are not applicable to the present proceedings, yet principles of natural justice are to be complied with. The Court while exercising the power of judicial review is under a solemn duty to consider as to whether while inferring misconduct on the part of the delinquent official and the relevant piece of evidence has been taken into consideration or not.

The decision of the inquiring officer must be arrived at on some evidence, which is legally admissible, as the report of the Enquiry Officer, which is relied upon by the respondents, is based on evidence and statements of all the relevant witnesses and providing an opportunity of being heard to the petitioner.

26. All the charges against the petitioner stood proved and the disciplinary authority has imposed the punishment on the basis of the recommendations arrived at by the inquiry officers strictly in conformity with Regulation 39 of the aforesaid Regulations and has imposed the major penalty of dismissal.

27. The petitioner has betrayed the trust and confidence of the bank by resorting to a parallel banking by receipt of deposit from customers against fake receipts and repay such deposits against withdrawals/cheques without routing the deposits and payment to the bank and made requisite entries falsely in the passbooks of the customers and this charge against the petitioner stood proved by way of a detailed inquiry. The petitioner, on being confronted with the complaints raised, deposited a huge amount of Rs. 1,54,400/- up to 10.01.2013 as per the stand of the respondents, thus, leaving a substantial amount of Rs. 8,44,900/- yet to be accounted for. The claim and allegation of the bank stood proved once the bank have recovered the aforesaid vouchers from the residence of the petitioner. While perusing the inquiry proceedings, it is manifestly clear that the petitioner was provided assistance for defence representative given by adequate opportunity to defend himself

during the inquiry which ultimately led to his dismissal by the competent authority.

28. I do not find any fault with respect to the action of the respondents in dismissing the petitioner against whom serious allegations which were leveled have been proved which ultimately has got dent to the reputation of the bank. The bank has followed the mandate of the Regulations.

29. As already discussed hereinabove that since there is no specific challenge in the instant petition by the petitioner either to the charge-sheet or to the inquiry proceedings, thus, this Court refrains from giving any finding with respect to the terminology used in the charge-sheet and the conducting of the inquiry proceedings. The petitioner as such is estopped to challenge the legality of charge-sheet and inquiry proceedings in absence of any specific challenge and having participated in the inquiry proceedings without any grouse. After having participated in the inquiry proceedings voluntarily and gladly and having acquiesced his right to challenge the charge-sheet, it doesn't lie in the mouth of the petitioner to agitate that the issuance of charge-sheet and conducting of proceedings by the inquiry officer were bad in the eyes of law. The petitioner after having taken a chance before the inquiry officer can't turn around and agitate at this belated stage that the procedure was not followed. Had the inquiry gone in favour of the petitioner, then perhaps the petitioner has no grouse against the issuance of charge-sheet or inquiry proceedings. It was only when

the disciplinary authority imposed the punishment of dismissal, the petitioner started raising eyebrows against the issuance of charge-sheet and the procedure followed while conducting the inquiry proceedings without throwing challenge to the same.

30. The inquiry officer, on the other hand has submitted a detailed report on each charge after considering the relevant evidence and material on record. The findings of the inquiry officer has been accepted by the disciplinary authority and this Court cannot act as an Appellate Court to go into the findings arrived by the inquiry officer in absence of any specific challenge to the same. The findings arrived by the inquiry officer and the record produced proves beyond any shadow of doubt that the petitioner has indulged in the activities which are in breach and beyond scope and the standard of his duties to act as a Table Boy. The working in the bank by a member of the staff is sensitive in nature requiring exercise of higher standard of honesty and integrity and the petitioner has failed to discharge the same and has been rightly dismissed by the competent authority.

This aspect of the matter has been elaborated by Hon'ble Supreme Court in the case titled State of Rajasthan and ors. Vs. Heem Singh; AIR 2020 SC 5455. The relevant portion of the judgment is reproduced herein below:-

> ***13. The standard of standard of proof in disciplinary proceedings is different from that in a criminal trial. In Suresh Pathrella v. Oriental Bank of Commerce , (2006) 10 SCC 572, a two judge Bench of this Court differentiated between the standard of proof in disciplinary proceedings and criminal trials in the following terms:***
>
> ***" …the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof***

beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

This standard is reiterated by another two-Judge Bench of this Court in Samar Bahadur Singh v. State of U.P. (2011) 9 SCC 94:
"Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities."
33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse 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.

Further the Hon'ble Supreme Court in judgment titled as Suresh Pathrella Vs. Oriental Bank of Commerce; 2006 (10) SCC 572, observed as under:-

18. It will be noticed that the appellant was charged for the alleged violation of Regulation 3 (1) of the Regulations 1982. Regulation 3(1) reads:

"3(1)"Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer".

The Regulation ensures that every officer at all times take all possible steps to protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a bank officer. Such regulations are made to instill the public confidence in the bank so that the interests of customers/depositors are well safeguarded. In such a

situation the fact that no amount was lost to the bank would be no ground to take a lenient view for the proved misconduct of a bank officer.

22. In the present case the appellant acted beyond his authority in breach of bank's Regulation. Regulation 3(1) of the bank's Regulation required that every officer of the bank at all times take all possible steps to protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a bank officer. It is a case of loss of confidence in the officer by the bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service, preceded by an enquiry, and to direct the bank to take back the officer in whom the bank has lost confidence, unless the decision to remove the officer is tainted with malafide, or in violation of principles of natural justice and prejudice to the officer is made out. No such case is made out in the present case.

Reliance is also placed on another judgment of Apex Court titled as G.M (Operations) S.B.I and anr. Vs. R. Periyasamy; 2015 (3) SCC 101, the operative portion of which is reproduced as under:-

12. Further, in Union Bank of India Vs. Vishwa Mohan[6], this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus in that case the Court set-aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

17. We also find it difficult to understand the justification offered by the Division Bench that there was no failure on the part of the respondent to observe utmost devotion to duty because the case was not one of misappropriation but only of a shortage of money. The Division Bench has itself stated the main reason why its order cannot be upheld in the following words, "on reappreciation of the entire material placed on record, we do not find any reason to interfere with the well considered and merited order passed by the learned Single Judge."

Further, the Hon'ble Supreme Court in the judgment titled as Union of India and ors. Vs. P. Gunasekaran; 2015(2) SCC 610 observed as under:-

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a 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 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.

13. Under Article 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 case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

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

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree Rama Rao[1], many of the above principles have been discussed and it has been concluded thus:

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing 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, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their 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 proceeding for a writ under Article 226 of the Constitution."

15. In State of Andhra Pradesh and others v. Chitra Venkata Rao[2], the principles have been further discussed at paragraph-21 to 24, which read as follows:

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that[pic]an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing 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. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their 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 proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, representing the Union of India, New Delhi v. Niranjan Singh said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and 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. See Syed Yakoob v. K.S. Radhakrishnan.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

16. These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another v. Rattan Singh[3]. To quote the unparalled and inimitable expressions:

"4. .... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

17. In all the subsequent decisions of this Court upto the latest in Chennai Water Supply and Sewarage Board v. T. T. Murali Babu[4], these principles have been consistently followed adding practically nothing more or altering anything.

18. On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:

"Article-I was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.92 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.92 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.92 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ..."

19 The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity.

21. The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment. These aspects have been discussed at quite length by this Court in several decisions

including B.C. Chaturvedi v. Union of India and others, Union of India and another v. G. Ganayutham, Om Kumar and others v. Union of India, Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and another[8], Chairman-cum- Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others and the recent one in Chennai Metropolitan Water Supply.

22. All that apart, on the facts of the present case, it has to be seen that in the first round of litigation before the Central Administrative Tribunal in order dated 27.10.1999 in O.A. No. 805 of 1997, the Tribunal had entered a finding that "on the evidence adduced, the inquiring authority has come to the conclusion that Article I has been proved taking note of the appellant's letter dated 11.11.92 addressed to the Collector of Central Excise when he was kept under remand. This finding given by the inquiry officer has been accepted by the disciplinary authority". That order of the Central Administrative Tribunal was challenged by the respondent in Writ Petition No. 226 of 2000 which was disposed of by judgment dated 12.01.2000 wherein the High Court had also endorsed the said finding which we have already referred to herein before.

23. Thus, the finding on Charge no. I has attained finality. It is the punishment of dismissal on Charge no. I which was directed to be reconsidered by the Central Administrative Tribunal and which view was endorsed by the High Court. On that basis only, the dismissal was converted to compulsory retirement. Such findings cannot be reopened in the subsequent round of litigation at the instance of the respondent. It was only the punishment aspect that was opened to challenge.

24. The Central Administrative Tribunal, in the order dated 01.02.2001 in O.A. No. 521 of 2000, after elaborately discussing the factual as well as the legal position, has come to the conclusion that the punishment of compulsory retirement is not outrageous or shocking to its conscience, it was not open to the High Court to interfere with the disciplinary proceedings from stage one and direct reinstatement of the respondent with backwages.

The Hon'ble Supreme Court in Shivaraj V. Patil And Arijit Pasayat, JJ; AIR 2003 SC 1571 observed as under:-

11. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in dfiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra), that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors, and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer, Good conduct and discipline are in Separable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum Regional Manager v. Nikunja Bihari Patnaik, 1996 (9) SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and wert serious, These aspects do not appear to have been kept in view by the High Court.

15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All ER 1148) observed "The giving of reasons is one of the fundamentals of good

administration". In Alexander Machinery (Dedley) Ltd. v. Crabtres (1974 LCR 120), it was observed: " failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2003. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstances to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application.

Thus in the light of the aforesaid settled legal position, this Court while exercising the power under Article 226 can't venture into re-appreciation of evidence with respect to any inquiry and conclusion drawn in accordance with law. The disciplinary authority on scanning the inquiry report and having accepted it, this Court can't substitute an opinion to the wisdom of the inquiry officer or disciplinary authority.

18. It is not open for this Court in exercise of its jurisdiction under Article 226 to go into the proportionality of the punishment as long as such punishment shocks the conscience of the Court. However, I concur with the view of the disciplinary authority that the petitioner lacked integrity. An employee of the Bank is required to exercise highest standard of honesty and integrity. He deals with the money of depositors and the customers.

19. Every employee of the Bank is under solemn duty to protect the interest of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a employee of Bank.

20. Good conduct and discipline are inseparable from the functioning of every employee of the Bank.

21. In view of the aforesaid backdrop, the punishment imposed by the disciplinary authority of dismissal by no stretch of imagination can be construed as disproportionate to the gravity of allegations leveled against the petitioner, which stood proved and accordingly, I uphold the punishment imposed by the disciplinary authority as the petitioner has betrayed the trust and confidence reposed in him by the local customers and the petitioner had transgressed the scope of his duties as a peon and caused a serious dent to the reputation of Bank. The major punishment imposed on the petitioner is strictly in conformity with Regulation 39 of Bank Regulations and commensurate to the gravity of charges leveled against him. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values.

22. The specific case of the respondents in the counter affidavit is that the petitioner after having indulged in the misconduct and admitted his guilt has deposited an amount of Rs. 1,54,400/- up to 10.01.2013

leaving an outstanding amount of Rs. 8,44,900/-. The petitioner has not given any satisfactory reply with respect to the aforesaid admission of his guilt as the said assertion has not been rebutted by the petitioner which strongly pointing to the preponderance and probability of his guilt in the domestic inquiry.

I am supported with the view of the Hon'ble Supreme Court in case titled G.M (Operations) S.B.I and anr.; 2015(3) SCC 101. Para 11 of the aforesaid judgment is reproduced as under:-

> ***11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India Vs. Sardar Bahadur[3], this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in State Bank of India & ors. Vs. Ramesh Dinkar Punde[4]. More recently, in State Bank of India Vs. Narendra Kumar Pandey[5], this Court observed that a disciplinary authority is expected to prove the charges leveled against a bank-officer on the preponderance of probabilities and not on proof beyond reasonable doubt.***

23. The Hon'ble Supreme Court in Himachal Pradesh Road Transport Corporation and anr. Vs. Hukam Chand; 2009 (11) SCC 222 observed as under:-

> ***12. Compliance with principles of natural justice, either by holding an enquiry or by giving the employee an opportunity of hearing or showing cause, is necessary, where an employer proposes to punish an employee on a charge of misconduct which is denied, or when any term or condition of employment are proposed to be altered to the employee's disadvantage without his consent.***
> ***13. On the other hand, if there is an admission of misconduct, or if the employee pleads guilty in respect of the charge, or if the employee consents to the alteration of any terms and condition of service, or where the employee himself seeks the alteration in the conditions of service, there is no need for holding an enquiry or for giving an opportunity to the employee to be heard or show cause. Holding an employee guilty of a misconduct on admission, or altering the conditions of service with consent, without enquiry or opportunity to show cause, does not violate principles of natural justice.***
> ***15. The absence of enquiry before altering the date of birth as 02.5.1945 did not affect the validity of the retirement of respondent. Nor did the acquittal in the criminal appeal subsequent to his retirement, entitle the respondent to claim that his date of birth should have been treated as 11.1.1948 or that he should have been reinstated and continued in service till 31.1.2006.***

24. Lastly, the allegation of the petitioner that he was not provided with the copies of the complaint or the relevant material even if assumed to be true, yet the same pales into insignificance in absence of any plea

of prejudice caused to him or pleaded in the petition in matters of defence. The assertion/allegation of the petitioner falls flat on the touchstone of "principles of useless formality test" propounded by the Apex Court in case titled Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and ors; (2015) 8 Supreme Court Cases 519. The relevant extract of the aforesaid judgment is reproduced as under:-

> ***38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.***
>
> ***39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation[20], who said that a (WLR p. 1595: AII ER p. 1294)'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court dos not act in vain'.***
>
> ***Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority[21] that (WLR p. 593: AII ER p.377)'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual.***
>
> ***40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the***

person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

41. The judgments relied by learned counsel for the petitioner i.e. Roop Singh Negi Vs. Punjab National Bank and ors.; (2009) 2 SCC 570, Calcutta Discount Co. Ltd. Vs. Income Tax Officer; AIR 1961 SC 372, Radha Krishan Industries Vs. State of Himachal Pradesh and ors; (2021) 6 SCC 771 and Vijay Singh Vs. State of U.P and ors; (2012) 5 SCC 242 are not applicable to the facts of the present case.

CONCLUSION

42. In the light of what has been discussed hereinabove, coupled with the settled legal position, the present writ petition which is devoid of any merit, deserves dismissal and the challenge thrown by the petitioner to the order of dismissal Vide No. EDB/851/HRD/927/2015-16 dated 11.03.2016 is ill founded and not sustainable in the eyes of law and as a necessary corollary, the order of dismissal is upheld.

43. The present petition is, accordingly, dismissed along with connected application(s).

44. Registry is directed to handover the original record to learned senior counsel Mr. Altaf Haqani appearing on behalf of the Bank.

(WASIM SADIQ NARGAL)
JUDGE

Srinagar
24.05.2023
Tarun

Whether the order is reportable? Yes
Whether the order is speaking? Yes