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Court No. - 5

Case :- WRIT - A No. - 26097 of 2018

Petitioner :- Jag Pal Singh

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Ashok Khare(Senior Adv.),Satyendra Chandra Tripathi,Shiv Poojan Yadav,Sunil Kumar Srivastava

Counsel for Respondent :- A.S.G.I.,Chandra Bhan Singh,Pankaj Srivastava,S.C.,Satish Chaturvedi

Hon'ble Saurabh Shyam Shamsbery,J.

1. The petitioner, while working in a clerical cadre as a Cashier with Respondent-State Bank of India at Gonda Branch, has faced a disciplinary proceedings and his name was also revealed during investigation as an accused in a F.I.R. lodged by one Asha Pundir on 20.06.2024 about withdrawal of Rs.55 lakhs from her bank account without her information or permission.
2. The petitioner was arrested on 26.11.2014 and was released on bail vide an order dated 09.02.2015 passed by Special Judge, E.C. Act/Additional Sessions Judge, Aligarh.
3. After investigation, a charge-sheet was filed on 18.04.2015 against the petitioner also on which cognizance was taken and trial was commenced.
4. According to supplementary affidavit filed by the petitioner on 28.01.2024, after framing charges, some of the prosecution witnesses were examined and two co-accused were also summoned on basis of an application filed under Section 319 Cr.P.C., therefore, it appears that trial is still not concluded.

5. Simultaneously, petitioner has faced a disciplinary proceeding also and departmental charge-sheet dated 28.02.2015 was submitted and petitioner was placed under suspension. Charge-sheet was submitted against the petitioner that he has committed following irregularities:

“1) आपके द्वारा बैंक की गोपनीयता को भंग किया गया ।

2) आपकी मिलीभगत से यह घोखाधड़ी की गयी ।

3) आपके इस कृत्य से बैंक को 55.20 लाख रु० की हानि हुई तथा बैंक की छवि को अपूर्णनीय क्षति पहुंची है।”

6. Regional Manager of State Bank of India vide an order dated 15.04.2015 appointed Sri H.C. Sarkar, Chief Manager/Vigilance Department, Legal Head, New Delhi, as an Inquiry Officer.

7. After conclusion of inquiry, a written brief of Presenting Officer was submitted that the petitioner has breached secrecy of bank, he has committed fraud by hatching conspiracy and by aforesaid act, bank has suffered a loss of Rs.55.20 lakhs.

8. Petitioner has submitted a detailed reply to above referred brief and has annexed various documents and denied all allegations made therein.

9. The Inquiry Officer submitted an inquiry report dated 09.10.2015 that all the three charges were proved against the petitioner and relevant part thereof i.e. finding of the Inquiry Officer on each charge is mentioned hereinafter:

“My Findings

Following table gives the details of the amount withdrawn from A/c No.30860679645 of Smt. Asha Pundir by deposit Cheques by opening forged/fake account in other Branches.

1	2	3	4	5	6
Sl. No.	Cheque No.	Date of Payment	Amount in Rs.	Paying Branch	Pex No.
1	069774	07/06/2014	8,70,000.00	Atrauli	P-8/6
2	069771	07/06/2014	8,50,000.00	do	P-8/8
3	069772	07/06/2014	7,30,000.00	do	P-8/10
4	069773	07/06/2014	9,40,000.00	do	P-8/10

5	069791	11/06/2015	9,20,000.00	ADB Gabhana	P-8/12
6	069792	11/06/2014	7,80,000.00	do	P-8/12
7	069788	10/06/2014	4,30,000.00	Chandaus	P-8/11

Pex 1/1 is the copy of office note submitted to Regional Manager, Region-II, by Chief Manager (Admin), in which it is revealed that the EPA has shared all the information with the fraudster regarding the A/c No.30860679645 of Smt. Asha Pundir. As a result, large amounts of withdrawals took place through different Branches by depositing Cheques bearing forged signature of drawer. It is only possible when an insider/Bank Employee provides all the Customer's information regarding Account holder's Name/Mobile number/ Balance amount /Account number/ Specimen Signature / status of operation of account etc.

3. As per Bank's laid down instructions, Customer's account information cannot be disclosed/shared with any person/outsider in any circumstances. In this particular case, the EPA has admitted that he has himself provided all the information's to the fraudster, it is revealed in copy of FIR dated 19/20.06.2014 marked as Dex-1/110-130.

Therefore, in view of the above documentary/Circumstantial evidence, I hold the charges levelled against the EPA as substantiated.

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“My Findings

“It was admitted by EPA as per Dex-1/110-130. that he had conspired with Shri Ajit Sharma (Canteen Boy) along with two other accomplices, to defraud the large sum of money lying in the A/c No.30860679645 of Smt. Asha Pundir. Accordingly, EPA executed the entire plan as stated in Dex-1/110-130.

In PW1, deposed on the floor of Enquiry on 08.06.2015, that the EPA had confessed /commitment of fraud in front of Crime Branch & also admitted that he had closed all the Loan accounts including that of his Mother's KCC Loan account. It is also substantiated, therefore, Allegation No.2, levelled against EPA is substantiated.

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My findings.

It is confirmed from documents Pex-9/1-12 that Bank has suffered a loss of Rs.55.20 lacs, as the amount has been transferred to Recalled Assets Account due to EPA's Act.

His action have also resulted in reputational loss for the Bank.”

(Emphasis supplied)

10. The Disciplinary Authority issued a provisional order dated 16.11.2015 that why not petitioner be terminated on basis of proved charges from service and sought his reply.

11. In response to above referred provisional order, petitioner submitted his reply on 01.12.2015 that his earlier explanation be taken note of and principles of natural justice be complied with.

12. The Disciplinary Authority passed a final order dated 10.12.2015 and confirmed the penalty of dismissal from service upon petitioner and an opportunity was granted to him to file a departmental appeal, if so advised. Relevant part of the order is reproduced hereinafter:

"इस संबंध में श्री जगपाल सिंह, सहायक द्वारा दिनांक 01/12/2015 को मेरे समक्ष व्यक्तिगत सुनवाई में अपना पक्ष रखा। मैंने अनुशासनिक प्राधिकारी के रूप में अपने विवेकाधिकार का उचित एवं न्याय संगत प्रयोग करते हुए श्री जगपाल सिंह, सहायक को दिये गए आरोप पत्र, उनसे प्राप्त स्पष्टीकरण, उनके पूर्व सेवा रिकॉर्ड व संबन्धित फ़ाइल तथा व्यक्तिगत सुनवाई आदि को संज्ञान में लेते हुए अद्वयन किया ओर पाया कि श्री जगपाल सिंह, सहायक द्वारा अनंतिम आदेश में वर्णित चूकें की गयी हैं ओर मुझे अनंतिम आदेश में वर्णित दंड को बदलने का कोई कारण नज़र नहीं आता है। अतः इन परस्थितियों में, मैंने अंतिम रूप से निर्णय लिया है कि भारतीय बैंकर्स संघ एवं कर्मचारी यूनियन के मध्य हुए मैमोरेंडम ऑफ़ सेटलमेंट दिनांक 10/04/2002, जो कि अनुशासनिक कार्यवाही प्रक्रिया से संबन्धित हैं, पर लिखित पैरा 6 (B) के अनुसार श्री जगपाल सिंह, गाँड़ा शाखा, जिला- अलीगढ़ को बैंक सेवा से बर्खास्त करने का दंड दिया जाये।"

13. The aforesaid order was also communicated to petitioner on the same date. The petitioner thereafter filed an Appeal before the Appellate Authority on 21.01.2016, but the same was dismissed by a reasoned order dated 21.03.2016.

14. Aforesaid orders were challenged at the behest of petitioner by way of filing a Writ Petition No.18744 of 2006.

15. A Co-ordinate Bench of this Court vide judgement dated 21.03.2018 has allowed aforesaid writ petition and quashed the impugned orders therein with certain directions to Disciplinary Authority to pass a fresh order. Relevant part of said judgment is reproduced hereinafter:

“A perusal of the impugned punishment order dated 10.12.2015, passed by the disciplinary authority shows that it has been passed stating that he has granted opportunity of personal hearing to the petitioner on 01.12.2015, as disciplinary authority, exercising his discretion in just and legal manner by going through the charge sheet issued to the petitioner, his reply, his earlier service record and concerned file and personal hearing granted to him, etc. He has come to the conclusion that the petitioner is guilty of the lapses mentioned in the proposed punishment order and therefore, he does not find any reason to convert the proposed punishment order and has passed the order of dismissal dated 10.12.2015, against the petitioner.

This order does not record what consideration was done by the disciplinary authority regarding the charges against the petitioner, his reply thereto, his service record and concerned file and also what was stated by the petitioner during personal hearing granted to him on 01.12.2015 and how it was considered by the disciplinary authority. It is proved that the procedure of granting hearing to the delinquent employee, prior to the passing of the proposed punishment order was observed in the case of the petitioner but what consideration of his reply was made by the disciplinary authority has not been recorded at all. The procedure does not require ritualistic compliance of procedure by the disciplinary authority, in disciplinary proceedings, rather, its purpose is to arrive at the truth with the help of the procedure. The consideration of reply was required to be proved by recording of reasons but in the impugned final punishment order, there are no reasons recorded regarding any consideration mentioned in the order itself. No punishment order can be held to be legal, if it is not based on any consideration and reasons arising out of the consideration duly recorded in the order. Therefore, the impugned punishment order dated 10.12.2015, passed by the disciplinary authority can not be sustained. The appellate order wrongly confirmed the punishment order of the disciplinary authority, which suffers from gross illegality of non consideration of the reply of the petitioner to the proposed punishment order.

In view of the above facts and the legal position emerging from the record, the order of disciplinary authority, Regional Manager, Region-II, Regional Business Office, State Bank of India, Aligarh, dated 10.12.2015 and also the appellate order dated 21.03.2016 passed by Deputy General Manager (Business and Operations) State Bank of India, Administrative Office, Agra are hereby quashed. The respondent no.4, the Disciplinary Authority is directed to pass afresh order taking into account, the Objection dated 01.12.2015 of the petitioner and also after complying with Clause-12 (c) of the Settlement dated 10.04.2002 by recording his findings regarding the gravity of misconduct, the previous record, if any, of the petitioner and other aggravating or extenuating circumstance. The disciplinary authority shall consider the findings of the enquiry officer recorded in the enquiry report dated 09.10.2015 after consideration whether the findings are based on evidence or not. The petitioner shall be continued under suspension and shall be paid his subsistence allowance from the date of his suspension till the date of passing of the fresh order

of the disciplinary authority in accordance with law. The disciplinary authority is expected to pass fresh order in accordance with law within a period of 3 months from today. Since the respondents are represented, the information of this order is deemed on them through their Counsel.

The writ petition is allowed to the extent stated above. There shall be no order as to costs.”

16. In aforesaid circumstances, petitioner submitted an application alongwith a copy of aforesaid order to Disciplinary Authority on 04.04.2018 and Disciplinary Authority after considering relevant documents, charge-sheet, records of inquiry proceedings, submissions and arguments made by the prosecution, defence, Inquiry Officer’s report and objections filed by the petitioner, by an order dated 20.06.2018 decided to impose upon petitioner a penalty of “Dismissal from service without notice” in terms of para 6 (a) of Memorandum of Settlement dated 10.04.2002 on disciplinary action and procedure thereof. Relevant part of said order is reproduced hereinafter:

“Therefore in view of the above documentary/Circumstantial evidences, I hold the charge levelled against EPA as substantiated.

DA’s findings

I have gone through all the relevant documents, the enquiry officer's report, the submission made by the parties and objections dated 30.11.2015 made by EPA Sh.Jagpal Singh which were received on 01.12.2015 and my findings are as under:

*The enquiry officer in his finding in respect of allegation no.1 has relied upon document Dex-1/110-130 which is copy of Police diary report. From the perusal of the said document it diary clearly reveals that the EPA admitting his involvment in the fraud perpetrated upon the Bank had disclosed before the Police that he had conspired with Sh.Ajit Kumar Sharma and shared the information with other persons in respect of the account of Smt. Asha Pundhir with others. The contention of the EPA that on his refusal of bribery to the Police, he was falsely implicated in the case is not tenable. Further, the contention of the EPA in submissions/objections dated 30.11.2015 that the Bank is inclined to proceed against him only in view of the registration of case by the Police under grave sections is also not tenable. **Document DEX 1/110-130 clearly reveals that the EPA admitted before the Police that he had conspired with Sh. Ajit Kumar Sharma and shared the information with others in respect of the account of Smt. Asha Pundhir. The other contentions raised by EPA in his objections dated 30.11.2015 are neither relevant nor material to the charge.***

Thus, I agree with the views/ findings of the Inquiry Authority and hold allegation PROVED.

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DA's findings:-

I have gone through the relevant documents, record of enquiry proceedings, enquiry officers, findings of the enquiry officer and the submissions/objections made by EPA Sh.Jagpal Singh dated 30.11.2015 received on 01.12.2015 and my comments are as under:

*The enquiry officer in his findings in respect of allegation no.2 has relied upon Document Dex 1/110-130 and the deposition of PW 1 Sh. Manoj Kumar, the then Branch Manager of Gonda Branch. **Document Dex 1/110-130 is copy of Police diary report. The relevant portion of case diary reveals that the EPA had admitted before the Police that he had conspired with Sh.Ajit Kumar Sharma and others in the commission of fraud in respect of account of Smt. Asha Pundhir. PW I Sh. Manoj Kumar has also deposed that the EPA Sh. Jagpal Singh had admitted commission of fraud before the Police in his presence.** The EPA in his submission has simply disowned his involvement in the fraud and has tried to shift the blame on others. Further, the EPA in his objections dated 30.11.2015 has denied the Charge. He has submitted that allegations made against him are baseless and that the bank has proceeded against him in a prejudiced manner. He has further submitted that in the course of enquiry proceedings Sh. Shree Chand Meena, Chief Manager was not produced for cross examination and the audio/video recording of his admission before the Police was also not produced. The submissions/objections of EPA are not tenable. **The statement of Sh. Shree Chand Meena has not been relied upon by the enquiry officer as evidence against Sh. Jagpal Singh. Further, mere non production of audio/video recordings of admission of the EPA does not vitiate the statement of Sh. Manoj Kumar Singh. Further, from the perusal of document Dex 1/110-130 it reveals that the EPA had admitted before the Police that he had conspired with Sh. Ajit Kumar Sharma and others in the commission of fraud in respect of account of Smt. Asha Pundhir. PW I Sh. Manoj Kumar has also stated that in his presence, the EPA Sh. Jagpal Singh had admitted before the Police as to commission of fraud by him in conspiracy with Sh. Ajit Kumar Sharma and others.***

Thus, I agree with the views/ findings of the Inquiry Authority and hold allegation PROVED.

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DA's Findings

I have gone through the relevant documents, record of enquiry proceedings, enquiry officers, findings of the enquiry officer and the submission/objections made by EPA sh. Jagpal Singh dated 30.11.2015 received on 01.12.2015 and my comments are as under:

*The enquiry officer in his findings has relied upon document Pex-9/1-12. Perusal of these documents reveals that fraud amount has been transferred in Recalled Assets account by the Bank. The EPA in his submissions has just tried to shift the blame on others. He has further alleged that these documents are made and executed by the Bank. The contentions of EPA are not tentable. **Perusal of documents Pex-9/1-12 clearly reveals that amount defrauded from the account of Smt. Asha Pundhir has been transferred in Recalled Assets account by the Bank. As such, a loss of Rs.55.20 lacs and reputational loss as well have been caused to the Bank. The EPA in his submissions has not disputed the loss to the Bank.***

Thus, I agree with the views/ findings of Inquiry Authority and hold allegation PROVED.

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DA'S FINAL VIEWS:

I have carefully examined the relevant document, submissions/ arguments made by prosecution, defence & entire record of enquiry proceedings. In exercise of my discretionary power, individually, I have observed that all the three charges against Sh. Jagpal Singh, Assistant had been Proved and he has committed the following irregularities:-

- "1. श्री जगपाल सिंह के द्वारा बैंक की गोपनीयता को भंग किया गया।*
- 2. श्री जगपाल सिंह की मिलीभगत से यह धोखाधड़ी की गयी ।*
- 3. श्री जगपाल सिंह के इस कृत्य से बैंक को 55.20 लाख रु की हानि हुई तथा बैंक की छवि को अपूर्णनीय क्षति पहुंची है।*

Thus, Sh. Jagpal Singh, Assistant is guilty of gross misconduct. I have gone through the previous record of Sh. Jagpal Singh, Assistant, the Submission dated 30.11.2015 made by him in the course of personal hearing given to him on 01.12.2015 and other extenuating circumstances. The irregularities submitted by Sh. Jagpal Singh, Assistant amounts to gross misconduct. His acts have resulted into a loss of Rs. 55.20 Lakhs to the bank.

The irregularities committed by him also caused the reputational loss to the bank. Accordingly I have decided to impose upon Sh. Jagpal Singh, Assistant a penalty of "dismissal from service without notice" in terms of Para 6 (a) of memorandum of settlement dated 10.04.2002 on disciplinary action and procedure there off. Further. the period of suspension of Sh. Jagpal Singh, Assistant will be treated as such i e. he will not be paid salary, any other allowances other than subsistence allowance for the period of his suspension and it will not be reckoned in his service in the bank. Further, the gratuity, if any payable to him is forfeited in terms of Section 4 (6) (a) of payment of gratuity act 1972."

(Emphasis supplied)

17. Petitioner thereafter filed an Appeal before Appellate Authority on 28.06.2018, however, it was dismissed vide an undated order.

18. Above referred departmental charge-sheet dated 28.02.2015, order dated 20.06.2018 passed by the Disciplinary Authority and an undated order passed by the Appellate Authority are under challenge before this Court in present Writ Petition.

19. Sri Satyendra Chandra Tripathi, learned counsel for petitioner, has submitted that in earlier round of litigation a Coordinate Bench of this Court has allowed writ petition, set aside punishment order and matter was remitted back with certain directions, which includes that Disciplinary Authority will pass a fresh order taking into account the objections dated 01.12.2015 submitted by petitioner as well as provisions of Clause 12(c) of Memorandum of Settlement dated 10.04.2002. Disciplinary Authority was also directed that the findings of Inquiry Officer recorded in inquiry report dated 09.10.2015 shall also be examined and consider that whether the findings are based on evidence on record. However, Disciplinary Authority has not followed the directions in its letter and spirit and by awarding punishment the error committed earlier was perpetuated.

20. Petitioner was not involved in alleged fraud and alleged loss directly or indirectly. He was not authorized to do the work which was alleged by Complainant. The Complainant has not named petitioner as one of the erring Officer. Reply dated 01.12.2015 has essentially adopted the earlier reply dated 06.10.2015, however, said reply was not considered afresh. Video recording of alleged confession was not produced during departmental inquiry and no opportunity was granted to cross-examine any witness.

21. Learned counsel for petitioner has referred the statement of PW-1 recorded in criminal trial that Complainant has not even referred his name in entire statement. He also referred that allegations were made against

other Bank employees also, however, they were left with minor punishment or without any punishment, whereas without any evidence or reason, petitioner was awarded major punishment of dismissal from service.

22. Learned counsel for petitioner refers the judgments passed by Supreme Court in **Bharat Singh and others vs. State of Haryana and others**, (1988)⁴ SCC 534; **Radha Raman Samanta vs. Bank of India and others**, (2004)¹ SCC 605; **Roop Singh Negi vs. Punjab National Bank and others**, (2009)² SCC 570; **Rajendra Yadav vs. State of Madhya Pradesh and others**, (2013)³ SCC 73; and, **United Bank of India vs. Biswanath Bhattacharjee**, (2022) 13 SCC 329 and much reliance was placed on following paragraphs of **Roop Singh Negi (supra)**:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

23. Learned counsel for petitioner also submitted that departmental inquiry was based on alleged confession of petitioner recorded before Police in criminal investigation, which cannot be read in present departmental proceedings.

24. Per contra, Sri Pankaj Srivastava, learned counsel appearing for Respondent-Bank submitted that directions passed by this Court in earlier round of litigation were strictly complied with. Petitioner's reply was considered as well as inquiry report was also considered and since there were sufficient evidence against petitioner, impugned punishment order was passed. He also submitted that scope of judicial review in departmental proceedings is very limited as well as nature to prove the charge in departmental inquiry is based on preponderance of probabilities and it cannot be compared with standard of proof in criminal trial, i.e., to prove a charge beyond reasonable doubt. He refers a judgment passed by Supreme Court in **State Bank of India vs. A.G.D. Reddy: 2023 INSC 766** wherein scope of judicial review in disciplinary proceedings was considered. Relevant paragraphs of the judgment are reproduced hereinafter:

“32. From the above discussion, it is clear that it could not be said that the Enquiry Report, the findings of the Disciplinary Authority and the order of the Appointing Authority are based on no evidence or are perverse. Even if we eschew the report insofar as the aspect of non-submission of control form, the transgression of the area of operation and non-declaration of the immovable property and certain other charges are concerned, the order of penalty can be sustained.

33. As has been demonstrated above, the aspects of failure to conduct periodic inspection and the negligence in not stipulating the taking of immovable property as collateral security in the case of M/s Saraswathi Fabricators in spite of the party offering it, constrain us to conclude that there was material on record for the appellant to pass the order of penalty.

*34. Mr. S.N. Bhat, learned Senior Counsel, relying upon the judgments of this Court in **Nand Kishore Prasad vs. State of Bihar and Others, (1978) 3 SCC 366** and **Anil Kumar vs. Presiding Officer and Others,***

(1985) 3 SCC 378 contends that the Disciplinary Authority should arrive at its conclusion on the basis of some evidence with some degree of definiteness pointing to the guilt of the delinquent in respect of the charge against him. He would contend that a suspicion cannot be allowed to take the place of proof and scrupulous care must be taken to see that the innocent are not punished by recording findings merely based on ipse dixit of the Enquiry Officer. We are unable to accept the contention that the principles laid down in the above judgments are attracted to the present case. The judgments cited are clearly distinguishable, for the reasons that we have set out hereinabove, while analyzing the facts of the present case.

35. *Shri Sanjay Kapur, learned counsel for the Bank relies on **State Bank of India vs. Ram Lal Bhaskar and Another**, (2011) 10 SCC 249. In that judgment the scope of judicial review of departmental proceedings was set out and the principle laid down in **State of A.P. vs. S. Sree Rama Rao**, AIR 1963 SC 1723, was reiterated, which reads as follows:-*

*“This Court has held in **State of A.P. and Others v. S. Sree Rama Rao** (AIR 1963 SC 1723, para 7):*

"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."

13. *Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re- appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations*

leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct.”

36. It is now well settled that the scope of judicial review against a departmental enquiry proceeding is very limited. It is not in the nature of an appeal and a review on merits of the decision is not permissible. The scope of the enquiry is to examine whether the decision-making process is legitimate and to ensure that the findings are not bereft of any evidence. If the records reveal that the findings are based on some evidence, it is not the function of the court in a judicial review to re-appreciate the same and arrive at an independent finding on the evidence. This lakshman rekha has been recognized and reiterated in a long line of judgments of this Court.”

25. I have heard learned counsel for parties and perused the material available on record.

26. As referred above, the Coordinate Bench while allowing writ petition filed in earlier round of litigation has passed directions and on perusal of material on record the said directions, which includes, to consider the reply of petitioner, to consider the inquiry report and to pass a fresh reasoned order, were substantially followed and complied with. Therefore, any argument in this regard is rejected.

27. The other arguments of learned counsel for petitioner, i.e., charges levelled against petitioner was proved on basis of statements recorded during investigation by Police under Section 161 Cr.P.C. as well as his alleged confession, have some substance and for that the Court has carefully perused the discussion made in impugned order by Disciplinary Authority. Relevant part of impugned order has already been quoted in earlier paragraph of this judgment.

28. So far as Charge No. 1 is concerned, it is only based on a statement of petitioner recorded before Police in investigation that he has shared details of Bank account of a customer to other co-accused. With regard to Charge No. 2, it is based on statement of PW-1 recorded during the disciplinary proceedings that delinquent/ petitioner has confessed before

Police that he has committed fraud and no other discussion or independent evidence was called or considered.

29. The statement made before Police Authorities cannot be made a sole ground to punish petitioner in a departmental proceedings. Inquiry ought to have been conducted by considering independent evidence but it appears that in present case the departmental proceedings were proceeded only on basis of statements recorded during investigation including of the petitioner.

30. Third charge is with regard to loss. However, once there is no evidence that petitioner was involved directly or indirectly in crime or fraud, which has caused loss to customer or bank, he could not be made solely responsible for such act.

31. Preponderance of probability does not mean that entire proceeding would be made on probabilities only. There must be some evidence to support the allegations levelled against delinquent employee. There must be existence of a fact, being more probable than its non existence. In this regard the Court takes note of a judgment passed by Supreme Court in **Union of India and others vs. Subrata Nath, 2022 SCC OnLine SC 1617** wherein it is observed that Court cannot re-appreciate the evidence led during departmental proceedings and the relevant paragraph of the judgment is reproduced hereinafter:

“27. We are unable to commend the approach of the learned Single Judge and the Division Bench. There was no good reason for the High Court to have entered the domain of the factual aspects relating to the evidence recorded before the Inquiry Officer. This was clearly an attempt to reappreciate the evidence which is impermissible in exercise of powers of judicial review vested in the High Court under Article 226 of the Constitution of India. We are of the opinion that both, the learned Single Judge as well as the Division Bench, fell into an error by setting aside the order of dismissal from service imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority.”

32. The Court further takes note of another judgment passed by Supreme Court in **Biswanath Bhattacharjee (supra)** that if departmental proceeding, which culminated in penalty, was based on confessional statement made before Police and no other material, the punishment order can be interfered.

33. As referred above, in the present case, no independent witness was examined and the only material considered was the statement of the petitioner recorded during Police investigation. The witness examined has only stated that petitioner has accepted his guilt before the Police during investigation, therefore, such nature of evidence would be failed if tested at the anvil of “preponderance of probability”.

34. In aforesaid circumstances, the Court is of the opinion that it is a case of no evidence. The impugned order is failed in the test of preponderance of probability since it was based only on alleged confessional statement made by petitioner before Police, which cannot be read in its entirety against the petitioner in a disciplinary proceeding without any independent support. There is absolutely no material on record that petitioner was directly or indirectly committed alleged fraud. Therefore, facts of present case warrants interference.

35. In the result, writ petition is allowed. Impugned order of Disciplinary Authority dated 20.06.2018 as also the undated order passed in the Appeal, are hereby set aside and its legal consequence shall follow. The respondents can proceed afresh against the petitioner or may wait for outcome of the criminal trial, which is still pending.

36. So far as relief with regard to back wages is concerned, the Court is of the view that despite the principle of “no work no pay”, petitioner is entitled for 1/4 of salary for the period he remained out of service. However, there will be continuity in service.

Order Date :- 29.07.2025

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