<u>REPORTABLE</u>

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

<u>CIVIL APPEAL NO(s). OF 2021</u>
(Arising out of SLP(C) No(s). 32067-32068 of 2018)

DEPUTY GENERAL MANAGER (APPELLATE AUTHORITY) AND OTHERS ...APPELLANT(S)

VERSUS

AJAI KUMAR SRIVASTAVA ...RESPONDENT(S)

<u>J U D G M E N T</u>

<u>Rastogi, J.</u>

1. Leave granted.

2. Dissatisfied with the judgment and order dated 13th September, 2018 passed by the Division Bench of the High Court of Allahabad, the instant appeals have been preferred at the instance of the appellant Bank.

3. Brief facts of the case which are relevant for the purpose are that the appellant is a statutory body incorporated and constituted under the State Bank of India Act, 1955. The respondent joined service as a Cashier/Clerk in Mumfordganj Branch Allahabad on 07th December, 1981. While on duty, a misconduct was committed by him for which he was placed under suspension in the first place by order dated 14th August, 1995 and later the charge-sheet dated 11th April, 1996 was served upon him detailing seven charges of misappropriation of funds which he had committed in discharge of his duties as an employee of the Bank.

4. It may be relevant to note that for the self-same misappropriation of bank's money by affording fake credits in his various accounts maintained at the Branch where he was posted, a criminal case was also instituted against him for offences under Sections 420, 467, 468, 471 IPC read with Section 120-B IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

5. After the charge-sheet dated 11th April, 1996 was served, the respondent delinquent submitted his reply dated 08th May, 1996

denying all the charges. The enquiry officer was thereafter appointed by the competent authority to hold enquiry in terms of Bipartite Settlement applicable for award staff of Nationalized Bank. The respondent had participated in the disciplinary enquiry and the enquiry officer after holding enquiry in accordance with the procedure prescribed under the Bipartite Settlement applicable for award staff of Nationalized Bank furnished his report of enquiry dated 22nd May, 1999 to the disciplinary authority holding that Charge No.1 was not proved, at the same time, held the Charge Nos. 2 to 7 proved against him. In his report dated 22nd May, 1999, it has been noticed by the enquiry officer that respondent delinquent stated in the course of enquiry that he neither wants to say anything about the prosecution documents nor he wants to ask any question to the presenting officer and did not produce any documentary evidence to substantiate his statement in defence regarding fictitious credits in his account which was the allegation against him for misappropriation of funds of the Bank and the fact remains that all the allegations levelled against the respondent were supported with the documentary evidence duly audited by the Bank.

6. The extract of the charges with the documents on which the enquiry officer placed reliance and held the charge to be proved after discussion in detail against the respondent are reproduced hereunder:-

Allegation/Charge No.1:

On 16.02.1994, saving bank account no.12215 of Shri I.S. Verma (an account holder) was debited with Rs.1,09,600/- and part amount of Rs.89,600/- was credited to his current account No. P-51 without the consent of account holder.

To prove the above allegation/charge, the presenting officer produced the following documents:-

PEX-1
Debit voucher dated 16.02.1994 for Rs.1,09,600.00 relating to savings bank account No.12215 of Shri I.S. Verma.

PEX-2
Current account credit voucher dated 16.02.1994 for Rs.89,600 pertaining to current account No. P-15 of Shri Srivastava (E.P.A).
PEX-3
Ledger sheet of current account No. P-51.

The Charge is not proved.

Allegation/Charge No.2:

On 25.03.1994, Shri Srivastava entered into a conspiracy with some staff members at the Branch with a view in defraud the bank and accordingly a fake debit was raised in branch clearing general account through schedule No.4 for Rs.4,87,300 and this amount was first posted in saving bank account No.7547 in favor of Shri K.C. Miglani. This amount was subsequently withdrawn in instalments on 25.03.1994 and 04.04.1994 and amount of Rs.89,150 and Rs.10,000 were misappropriated by him through credit to his current account No. P-15 on the aforesaid dates.

To prove the above allegations/charges, the presenting officer produced the following documents:

PEX-4:
Branch clearing general account schedule No.4 dated 25.03.1994 for Rs.4,87,300.

PEX-5:
Saving bank credit voucher dated 25.03.1994 for Rs.4,87,300 pertaining to saving bank account No.7547 of Shri K.C. Minglani.

PEX-6:
Debit voucher dated 25.03.1994 for Rs.2,36,550 pertaining to savings bank account No.7547 of Shri K.C. Miglani.

PEX-7:
Current account credit voucher dated 25.03.1994 for Rs.89,150 pertaining to current account No. P-51 of Shri Ajay Kumar Srivastava.

PEX-8: Debit voucher dated 04.04.1994 for Rs.2,40,750 pertaining to saving bank account No.7547 of Shri K.C. MIglani.

PEX-9
Current Account credit voucher dated 04.04.1994 for Rs.10600 pertaining to current account No. P-51 of Shri Ajay Kumar Srivastava, actually the voucher is for Rs.10000.

PEX-10
Current account day book dated 04.04.1994.

PEX-11
Ledger sheet of current account No. P-15 of Shri Ajay Kumar Shrivastava

The Charge is proved.

Allegation/Charge No.3:

On 22.09.1994, Shri Srivastava conspired with some staff members at the branch with a view to defraud the bank and accordingly a fake debit of Rs.5,00,000/- was raised in branch's saving bank a/c and out of the above an amount of Rs.2,00,000/- was misappropriated by him through credit to his current account No. P-51.

To prove the above allegation/charge, the presenting officer produced the following documents:

PEX-12 – Saving Bank day book dated 22.09.1994

PEX-13 – Current A/c day book dated 22.09.1994

PEX-14 – Ledger sheet of current a/c No. P-51 pertaining to Shri Ajay Kumar Srivastava.

The charge is proved.

Allegation/Charge No.4:

On 30.12.1994, Shri Srivastava entered into a conspiracy with some staff members at the branch with a view to defraud the Bank and accordingly a fake debit of Rs.5,30,000 was raised in Branch's current Account and out of the above amount an amount of Rs.2,50,000.00 and Rs.25,000/- were misappropriated by him through affording of credit to his current Account No. P-51 and Saving Bank A/c. No.11068 favoring Smt. Rashmi Srivastava (his wife).

To prove the above allegation/charge, the presenting officer produced the following documents:

PEX-15 – Debit voucher dated 30.12.1994 for Rs.5,30,000/- pertaining to current account ledger no.2.

PEX-16 – Current A/c day book dated 30.12.1994

PEX-17 – Saving bank credit voucher dated 30.12.1994 Rs.25,000/- pertaining to saving bank a/c no.11068 of Smt. Rashmi Srivastava.

PEX-18 – Ledger sheet of saving bank a/c no.11068 of Smt. Rashmi Srivastava (page no.70/16).

The charge is proved.

Allegation/Charge No.5:

On 30.05.1995, Shri Srivastava fraudulently raised a fake debit of Rs.2,30,000 in the S.B. A.C. No.11068 fvg. Smt. Rashmi Srivastava (his wife) wherein no credit balance was available and credited to his current account No. P-51 with the above amount with a view to defraud the Bank.

To prove the above allegation/charge, the presenting officer produced the following documents:

PEX-18 – Ledge sheet of saving bank a/c no.11068

PEX-19 – Debit voucher dated 30.05.1995 for Rs.2,30,000/- pertaining to saving bank account no.11068 of Smt. Rashmi Srivastava

PEX-20 – Current A/c credit voucher dated 30.05.1995 Rs.2,30,000/- pertaining to current a/c no. P-51 of Smt. Srivastava.

PEX-21 – Saving bank daybook dated 30.05.1995

The charge is proved.

Allegation/Charge No.6:

On 31.05.1995, Shri Srivastava fraudulently raised a fake debit of Rs.3,60,000 in the S.B. A/c No.11068 fvg. Smt. Rashmi Srivastava (his wife) wherein no credit balance was available and got its part amount of Rs.3,00,000 credited to his current account no.P-51 with a view to defraud the Bank.

To prove the above allegation/charge, the presenting officer produced the following documents:

PEX-22 – Current A/c credit vouchers dated 31.05.1995 for Rs.3,00,000/- pertaining to current a/c no. P-51 of Sri Ajay Kumar Srivastava

PEX-23 – Ledger sheet pertaining to saving bank a/c no.11068

PEX-24 – Ledger sheet pertaining to current a/c no. P-51.

PEX-25 – Saving bank daybook dated 31.05.1995

PEX-26 – Current a/c daybook dated 31.05.1995

The charge is proved.

Allegation/Charge No.7:

On 20.10.1993, Shri Srivastava borrowed Rs.35,000.00 from Shri K.C. Miglani S.B. Account No.7547, an account holder at the branch without the permission of the Bank.

To prove the above allegation/charge, the presenting officer produced the following documents:

PEX-25A – Photocopy of the ch. No.775157 dated 29.10.1993 for Rs.35,000/-

PEX-26A – Saving bank credit voucher dated 29.10.1993 for Rs.35,000/- pertaining to a/c no.7547

PEX-27 – Debit voucher dated 20.10.1993 for Rs.35,000/- pertaining to saving bank a/c no.7547 of Shri K.C. Miglani.

PEX-28 – Current a/c credit vouchers dated 20.10.1993 for Rs.35,000/- pertaining to current a/c no. P-51 of Shri Ajay Kumar Srivastava.

The charge is proved.

7. After copy of the detailed report of enquiry was made available, the disciplinary authority took pains to revisit the report of enquiry and while concurring with the finding of fact in reference to Charge Nos.2-7 proved by the enquiry officer disagreed with the finding recorded by the enquiry officer as of charge no. 1 and assigning his reasons of disagreement held the Charge No.1 to be proved and served the copy of enquiry report dated 29th June, 1999 along with his finding of disagreement(for charge no. 1) with the prima facie opinion based on the record of enquiry to the respondent delinquent calling for his written explanation.

8. The reply was submitted by the respondent in reference to communication made by the disciplinary authority dated 29th June, 1999 raising objection to the note of disagreement which was recorded by the disciplinary authority as of Charge no. 1, at the same time, in reference to other Charge Nos. 2 to 7 which were held to be proved and prima facie accepted by the

disciplinary authority, no specific objection was raised of any prejudice being caused during the course of enquiry or defence in rebuttal not been considered by the enquiry officer or of any breach of the procedure prescribed in holding disciplinary enquiry or violation of the principles of natural justice, raised vague objections of general in nature without supporting any documentary/oral evidence and one of the objection of the respondent delinquent was that there was no requirement to hold a disciplinary enquiry when a criminal case was instituted and pending trial/investigation by the CBI and the conclusion of departmental enquiry without awaiting the outcome of the investigation/trial instituted against him in a pending criminal case, has caused great prejudice to him.

9. Despite no specific objection being raised by the respondent delinquent in reply to the show-cause notice, still the disciplinary authority revisited the record of enquiry including the enquiry report, the explanation furnished by the respondent while affirming the finding by the enquiry officer in its report, confirmed its prima-facie opinion which he has expressed in his communication dated 29th June, 1999 and in terms of Para

521(5)(a) of the Sastry Award read with Para 18, 28 of the Desai Award as modified by the 12th Bipartite Settlement dated 14th February, 1995 between the State Bank of India and All India State Bank of India Staff Federation, confirmed the penalty of dismissal from service by its order dated 24th July, 1999.

10. The respondent preferred departmental appeal against his dismissal from service. A bare perusal of the appeal preferred by the respondent would indicate that it was just a reflection of the general objection raised in reply to the show-cause notice with no specific averment in the appeal as to what was the procedural error being committed by the enquiry officer in holding disciplinary enquiry or of any violation of the principles of natural justice or any prejudice being caused to him of a kind during the course of enquiry or the action being bias or malafide initiated for certain ulterior reasons if any, and no specific objection was raised in reference to the charge nos. 2-7 stands proved against him other than general objections which are vague and ambiguous without any foundation.

11. The departmental appeal was examined by the appellate authority and taking note of the record of enquiry, the appellate

authority noticed the alleged objections raised by the respondent being so vague with no supporting foundation as reflected from para 2 of the order of the appellate authority and after going through record of enquiry and taking note of the nature of allegations levelled by the respondent delinquent in his appeal, the appellate authority assigned reasons in its order as reflected from para 3(i) to (viii) and finally holding the appeal having no merit and the punishment being commensurate to the charges levelled against him, confirmed the punishment of dismissal which was the subject matter of challenge in a writ petition before the High Court of Allahabad filed at the instance of the respondent delinquent.

12. The learned Single Judge of the High Court although has passed a detailed judgment but the focus was throughout on charge no.1 which was not found to be proved by the enquiry officer in his report but the disciplinary authority recorded its note of disagreement which according to the learned Single Judge of the High Court has caused great prejudice and that apart, the disciplinary/appellate authority has passed a non-speaking order which is in violation of the principles of natural justice and the

view expressed by the learned Single Judge came to be affirmed by the Division Bench of the High Court by its impugned judgment dated 13th September, 2018, which is the subject matter of challenge before us.

13. During the course of arguments, it was brought to our notice that in the criminal case instituted against the respondent for offences under Sections 420, 467, 468, 471 IPC read with Section 120-B IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, the respondent employee was held guilty and convicted by the learned Court of Special Judge, CBI Court No. 1, Lucknow, by a judgment dated 31st May, 2019 and sentenced to ten year rigorous imprisonment with fine and in default to undergo imprisonment of three months.

14. Learned counsel for the appellants submits that fair opportunity of hearing was afforded to the respondent delinquent in the course of enquiry and it was never the case of the respondent that either the procedure prescribed under the disciplinary rules have not been followed or the enquiry was held by the authority who was not competent under law or the findings or conclusions which have been arrived at by the enquiry

Officer in his report and confirmed by the disciplinary authority are not supported by the evidence on record or there was a violation of the principles of natural justice. In the absence whereof, the plea raised by the respondent holding that the disciplinary authority has passed a non-speaking order without application of mind lacks merit and is not substantiated from the material on record.

15. To the contrary, the Enquiry Officer in his detailed report recorded cogent reasons in holding the Charge nos. 2-7 proved against the delinquent employee. The disciplinary authority while expressing its prima facie opinion and after the copy of the enquiry report along with the tentative view of the disciplinary authority being served and affording a reasonable opportunity of hearing to the respondent and having taken note of his written reply into consideration, has dealt with so called alleged objections raised, confirmed its tentative view expressed in upholding penalty of dismissal from service after assigning reasons supported by the documents on record. In the given circumstances, the order of the learned Single Judge confirmed in

LPA by the Division Bench of the High Court is unsustainable in law.

16. Learned counsel further submits that so far as Charge no. 1 is concerned, it is true that the enquiry officer has not found charge no. 1 proved but the disciplinary authority has recorded its reasons for disagreement while expressing a prima facie opinion, a copy of the note of disagreement recorded of charge no. 1 along with the report of enquiry was served on the delinquent employee, no justification was tendered by the delinquent respondent in his written reply to the note of disagreement recorded by the disciplinary authority. Thus, a fair opportunity was afforded to him and taking assistance of the Constitution Bench Judgment of this Court in ***State of Orissa and Others Vs. Bidyabhushan Mohapatra***[1] which was further considered by this Court in ***P.D. Agrawal Vs. State Bank of India and Others***[2], learned counsel submitted that the order of dismissal based on the finding of Charge nos. 2-7, which were proved by the enquiry officer and confirmed by the disciplinary/appellate authority holds the respondent delinquent guilty of grave

1 AIR 1963 SC 779
2 2006(8) SCC 776

delinquency in upholding the penalty of dismissal and interference in the order of penalty inflicted upon the respondent delinquent by the High Court was not justified and needs interference of this Court.

17. Per contra, learned counsel for the respondent while supporting the impugned judgment submits that the disciplinary authority reiterated the finding recorded by the enquiry officer in his report and failed to examine the record of enquiry independently and rejected the written objections raised by the respondent cursorily and inflicted penalty upon him of dismissal from service by passing a non-speaking order without due application of mind has been rightly interfered by the High Court in the impugned judgment.

18. Learned counsel further submits that when the enquiry officer has not found charge no. 1 proved and the disciplinary authority disagreed with the finding recorded by the enquiry officer in his report, should have served in the first place, a note of disagreement, calling for his explanation and only thereafter it was open for him to examine the record of enquiry independently in taking its decision in accordance with law and the procedure

which was adopted by the disciplinary authority in holding the respondent guilty in reference to Charge no. 1 was not only a procedural error but is a great prejudice being caused to the respondent and such defect could not have been cured by the post-decisional hearing, which has been rightly upheld by the High Court in the impugned judgment and needs no interference by this Court.

19. We have heard learned counsel for the parties and with their assistance perused the material available on record.

20. At the outset, it may be noted that the enquiry officer has noticed in his enquiry report that the respondent delinquent neither produced any document nor witness in self-defence. At the same time, he never requested to allow him to defend him by a representative of his choice. He further stated during the course of enquiry that he neither wanted to say anything about the prosecution documents nor he wanted to ask any question to the presenting officer. Taking note of the record of enquiry including the documents produced by the presenting officer, brief of the presenting officer, defence and the submission made by the respondent employee, the enquiry officer examined each of the

charge nos. 1 to 7 and after detailed analysis, recorded his finding in reference to each charge separately and found charge no. 1 not proved, at the same time charges nos. 2-7 were proved based on the documentary evidence placed on record.

21. The disciplinary authority, after the report of enquiry was furnished by the enquiry officer, took pains to revisit the record of enquiry including charge-sheet, reply to the charge-sheet, enquiry proceedings, findings of the enquiry officer dated 22nd May, 1999, brief of the presenting officer, brief of the defence (respondent delinquent) and further noticing 28 documents which were exhibited PEX-1 to PEX-28 relied by the presenting officer and taking note of the written submissions made by the respondent employee, after due application of mind recorded its finding in upholding the finding of fact recorded by the enquiry officer in his report including the note of disagreement in reference to charge no. 1 holding to be proved. The detailed reasons assigned in confirming the order of penalty by its order dated 24th July, 1999 are as under:-

"O R D E R

Staff: AWARD
SRI AJAY KUMAR SRIVASTAVA, CLERK

DISCIPLINARY ACTION

Placed before me are the submissions/show cause notice dated the 15th July, 1999 of Shri A.K. Srivastava, Cashier-cum-Clerk, under suspension, presently posted at Daryaganj branch in respect of the Disciplinary Authority's tentative order dated 29.6.1999 wherein it was decided to dismiss him without notice for his gross misconduct relating to the fraudulent transactions perpetrated at Mumfordganj branch due to which the bank has suffered substantive loss in addition to loss of public image. It was also decided that the period spent by Shri Srivastava as suspended will be treated as such and no salary and allowance, except the subsistence allowance already paid, will be payable to him. The above order was passed against him on the charges contained in the charge-sheet dated 11.4.1996 and he was given an opportunity to make submissions, if any, against the above punishment within 7 days of its receipt, extended to 15 days on his request, failing which it would be deemed that he has nothing to submit in this regard and final order will be passed without any further reference to him.

2. Shri A.K. Srivastava has submitted that it is highly illegal to have passed the tentative order of dismissal dated 29.6.1999 on the basis of the findings of the Enquiry Officer without seeking his comments thereon. In his view, the report of the Enquiry Officer must have been forwarded to him for seeking his submissions, if any, which has not been done. No such procedure is laid down followed in the bank to forward the enquiry report to the charged employees before finalization of the proposed punishment. The procedure in this regard has been followed by enquiry report and related documents have been forwarded to him along with the tentative order to enable him to submit his defence as to why the proposed punishment should not be imposed on him as per the system and procedure in the bank.

3. His allegation that prosecution documents had not been given to him earlier which deprived him of the reasonable opportunity of proving himself not guilty as not based on facts as all the documents had been made available to him for perusal/comments during the enquiry proceedings. The copies of the enquiry proceedings had been given to him on the same day on the conclusion of the day's proceedings and the allegation has no substance. On the perusal of the page 16 and 17 of the enquiry proceedings, it is evident that

the Enquiry Officer had asked Shri Srivastava whether he wants to say anything regarding the prosecution documents to which he had replied in the negative, he had also stated that he will submit his defence brief within a week, for the receipt of the prosecution brief. Likewise the Enquiry Officer has already clarified on the points raised by Shri Srivastava in his letter dated 10.11.1998 which has been found by myself-explicit and satisfactory.

4. The other points raised by Shri Srivastava in his submission dated 15.7.1999 sent to the Disciplinary Authority as 'show cause notice' are found irrelevant after close scrutiny. The enquiry started on 2.11.1997 and Shri Srivastava neither asked any document not desired to produce any witnesses/defence evidence, during the enquiry proceeding till its conclusion on 12.5.1998. However, when he left that the prosecution has produced enough evidences as per enquiry proceedings which will prove his involvement in the conspiracy to defraud the bank, he started levelling the baseless allegations against the bank to delay the decision against him.

5. I have perused all the relevant documents again including the enquiry report, his letters dated 10.11.1998 and 15.12.1998 and do not find any substance for re-opening the enquiry as Shri Srivastava had already been given ample opportunity to defend himself. The proposed punishment is commensurate to the charges levelled and proved against him as discussed in detail in tentative order. I, therefore, confirm my tentative order dated 29.6.1999 to dismiss Shri Ajay Kumar Srivastava without notice in terms of para 521(5)(a) of the Sastry Award read with para 18,28 of the Desai Award as modified by the 12th Bipartite Settlement dated 14.2.1995 made between State Bank of India and All India State Bank of India Staff Federation. I also order that the period spent by Shri Srivastava as suspended be treated as such and no salary and allowances, except the subsistence allowance already paid, will be payable to him.

I order accordingly.

Sd/-
ASSTT. GENERAL MANAGER(IV)
DISCIPLINARY AUTHORITY,
DATED: 24th July, 1999"

22. The departmental appeal which was preferred by the respondent employee was revisited by the appellate authority and taking note of the objections, all have been separately dealt with by the appellate authority in its order dated 15th November, 1999, the relevant portion of which is extracted as under:-

> "3. In order to examine the aforesaid points by the appellant, I have gone through the charge-sheets, reply of charge-sheets submitted by the charged employee, enquiry proceedings, findings of the Enquiry Officer, tentative order dated the 29th June, 1999, final order dated the 24th July, 1999, his service sheet and other relevant records of the case. My views are as under:-
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> i) Almost all points raised by Shri Srivastava, as above, have been suitably replied in the Enquiry Officer's reply and in the final order dated the 24th July, 1999. The clarification given are quite reasonable and I am satisfied with the same. He was given full opportunity to defend himself and there was no ground for re-opening the enquiry. The charges contained in the charge-sheet were not vague, as alleged by him, and all the charges, except one, have been proved in the enquiry.
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> ii) The contention of Shri Srivastava that the Enquiry Officer should be above the rank of the Disciplinary Authority, the officer who has issued the charge-sheet, is not correct. The Disciplinary Authority should be above the rank of the Enquiry Officer who has been appointed by him for fact finding on his behalf.
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> iii) There is no bar on initiation of the domestic enquiries, if the police/investigating agency do not submit their reports within a reasonable time and Supreme Court has given several judgments in this regard.

iv) The Disciplinary Authority reviews the pending suspension cases and can order reinstatement of any suspended employee after the review. Two employees had been reinstated as the charges against them were not serious enough.

v) The charges of double standards and discriminatory treatment are not correct as disciplinary proceedings have been initiated against all the erring employees/officers and the penalties have been imposed on the basis of the Enquiry Officer's report and due consideration of the malafide/bonafide conduct of the employees. Supplementary charge-sheets have already been served on some of the employees against whom penalties have been imposed on the basis of earlier charge-sheets.

vi) The payment of suspension period has not been made, in terms of their service rules, to any charge-sheeted employee and none has been discriminated.

vii) The appellant has already accepted that he prepared to take vouchers without any real cash/transfer transaction for regularizing his overdrawn current account and deposit of fraudulently drawn amount partly cannot absolve him of perpetration of fraudulent transactions and none had promised him penalty short of dismissal.

viii) Non-reply of his letters/representations, meant for delay in the domestic enquiry and resultant punishment, cannot be treated as violation of natural justice. The enquiry started on 30.11.1997 and he defended his case himself while other charged employees opted for defence representative. It appears that he could not get any representative to defend his case in view of serious charges against him. He neither asked

> any document nor desired to produce any witness/defence evidence during the enquiry proceedings till its conclusion on 12.5.1998. When he felt that the prosecution has produced enough evidences as per enquiry proceedings which will prove his involvement in the conspiracy to defraud the bank, he started levelling the baseless allegations against the bank to delay the decision against him.
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> 4. Thus, the points raised by Sri Srivastava in his appeal have no merit. The punishment ordered by the Disciplinary Authority is commensurate to the charges levelled against him and the contention of the appellant does not hold good in view of the charges proved otherwise as discussed in the preceding paragraphs. After careful consideration of the matter in its entirety, I am of the view that the Disciplinary Authority is fully justified in awarding the punishment of dismissal without notice and treating the period spent by Shri Srivastava as suspended as such and no payment of salary and allowances, except the subsistence allowance already paid, to him. I, therefore, hold the order of the Disciplinary Authority.
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> I order accordingly."

23. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in ***State***

of Tamil Nadu Vs. T.V. Venugopalan[3] and later in ***Government of T.N. and Another Vs. A. Rajapandian***[4] and further examined by the three Judge Bench of this Court in ***B.C. Chaturvedi Vs. Union of India and Others***[5] wherein it has been held as under:-

> "**13.** The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India* v. *H.C. Goel* [(1964) 4 SCR 718] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

24. It has been consistently followed in the later decision of this Court in ***Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya***[6] and recently by the three Judge Bench of this Court in ***Pravin Kumar Vs. Union of India and Others***[7].

25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making

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3 1994(6) SCC 302
4 1995(1) SCC 216
5 1995(6) SCC 749
6 2017(1) SCC 768
7 2020(9) SCC 471

process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

26. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine: (i) whether the enquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or conclusions are based on some

evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

27. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

28. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

29. The Constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

30. In the case on hand, the charge-sheet was served upon the respondent delinquent for misappropriation of public funds by affording fake credits in his various accounts maintained at the branch where he was serving (Mumfordganj Branch) during the relevant period. In all, 7 charges were levelled against him of grave misconduct which he had committed in discharge of his official duty and after affording an opportunity of hearing to the respondent delinquent and due compliance of the principles of natural justice, the enquiry officer in his report while dealing with the preliminary objections raised by the respondent delinquent specifically indicated that the details of enquiry report contained

22 pages along with documents produced by the presenting officer marked as PEX-1 to PEX-28 to establish the allegations/charges levelled against the respondent delinquent who neither produced any document nor witness in his defence. It was further indicated that the respondent stated in the course of enquiry that he neither wants to say anything about the prosecution document nor he wants to ask any question to the presenting officer and never requested to seek permission to defend the representative of his choice.

31. After affording an opportunity of hearing at the conclusion of the departmental enquiry, along with the written note submitted by the presenting officer and by the respondent delinquent, the enquiry officer marshalled the record of enquiry and based on the documentary evidence produced by the presenting officer in reference to each charge recorded a finding in holding charge no.1 not proved and charges nos. 2-7 stood proved against the delinquent respondent.

32. It was later revisited by the disciplinary authority and apart from the note of disagreement in reference to charge no. 1, the disciplinary authority accepted the finding of fact recorded by the

enquiry officer in his report for charge nos. 2 to 7 and with its prima facie opinion, called upon the respondent to submit his explanation and after affording an opportunity of hearing and dealing with the objections raised by the respondent in his written reply expressed its brief reasons while upholding the finding recorded by the enquiry officer in his report and confirmed its opinion of inflicting penalty of dismissal from service by order dated 24th July, 1999 and the appellate authority also later revisited on the appeal being preferred and after assigning reasons confirmed the finding of fact in upholding the order of penalty inflicted upon the respondent delinquent.

33. The submission which persuaded the High Court in the impugned judgment is basically for two reasons. Firstly, before the finding of disagreement being recorded by the disciplinary authority in reference to Charge no. 1, fair opportunity of hearing was not afforded to the respondent delinquent and that has caused prejudice to him. Secondly, the disciplinary authority/appellate authority has not examined the record of disciplinary enquiry independently and passed a non-speaking order without due application of mind and this what prevailed

upon the High Court in the impugned judgment in setting aside the penalty inflicted upon the respondent delinquent.

34. The submission which was made in regard to the note of disagreement not being served upon the respondent delinquent as to Charge no. 1 is concerned, this Court do find substance to hold that the disciplinary authority on receiving the report of enquiry, if was not in agreement with the finding recorded by the enquiry officer, was under an obligation to record its reasons of disagreement and call upon the delinquent for his explanation in the first place before recording his finding of guilt and indisputedly the procedure as prescribed by law was not followed and that has caused prejudice to the respondent and indeed it was in violation of the principles of natural justice. We are of the considered view that so far as the finding of guilt recorded by the disciplinary authority in reference to Charge No. 1 is concerned, that could not be held to be justified in holding him guilty.

35. But this may not detain us any further for the reason that Charge no. 1 in reference to which the finding recorded by the enquiry officer has been overturned by the disciplinary authority is severable from the other charges(Charge nos. 2-7) levelled

against the respondent which were found proved by the Enquiry Officer and the finding of fact was confirmed by the disciplinary/appellate authority after meeting out objections raised by the respondent delinquent in his written brief furnished at different stages.

36. If the order of dismissal was based on the findings of charge no. 1 alone, it would have been possible for the Court to declare the order of dismissal illegal but on the finding of guilt being recorded by the Enquiry Officer in his report in reference to charges nos.2-7 and confirmed by the disciplinary/appellate authority was not liable to be interfered and those findings established the guilt of grave delinquency which, in our view, was an apparent error being committed by the High Court while interfering with the order of penalty of dismissal inflicted upon the respondent employee.

37. It is supported by the judgment of the Constitution Bench of this Court in ***State of Orissa and Others Vs. Bidyabhushan Mohapatra*** (supra) wherein it has been observed as under:-

> "**9.** The High Court has held that there was evidence to support the findings on heads (*c*) and (*d*) of Charge (1) and on Charge (2). In respect of Charge 1(*b*) the respondent was

> acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of Charges 1(*a*) and 1(*e*) in the view of the High Court "the rules of natural justice had not been observed". The recommendation of the Tribunal was undoubtedly founded on its findings on Charges 1(*a*), 1(*e*), 1(*c*), 1(*d*) and Charge (2). The High Court was of the opinion that the findings on two of the heads under Charge (1) could not be sustained, because in arriving at the findings the Tribunal had violated rules of natural justice. The High Court therefore directed that the Government of the State of Orissa should decide whether "on the basis of those charges, the punishment of dismissal should be maintained or else whether a lesser punishment would suffice". It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on Charges 1(*a*) and 1(*e*) were vitiated for reasons set out by it, because in our judgment the order of the High Court directing the Government to reconsider the question of punishment cannot, for reasons we will presently set out, be sustained. If the order of dismissal was based on the findings on Charges 1(*a*) and 1(*e*) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal...."

38. This was further considered by this Court in ***Binny Ltd. Vs. Workmen***[8] as under:-

> "..It was urged that the Court should not have assumed that the General Manager would have inflicted the punishment of dismissal solely on the basis of the second charge and consequently the punishment should not be sustained if it was held that one of the two charges on the basis of which it was imposed was unsustainable. This was rejected following the decision in *State of*

8 1972(3) SCC 806

> *Orissa* v. *Bidyabhushan Mohapatra* [AIR 1963 SC 779], where it was said that if an order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which punishment imposed can lawfully be given, it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question. In our view that principle can have no application to the facts of this case. Although the enquiry officer found in fact that the respondent had behaved insolently towards the Warehouse Master, he did not come to the conclusion that this act of indiscipline on a solitary occasion was sufficient to warrant an order of dismissal...."

39. Yet again, in ***Sawarn Singh and Another Vs. State of Punjab and Others***[9], this Court held:-

> **19.** In view of this, the deficiency or reference to some irrelevant matters in the order of the Commissioner, had not prejudiced the decision of the case on merits either at the appellate or revisional stage. There is authority for the proposition that where the order of a domestic tribunal makes reference to several grounds, some relevant and existent, and others irrelevant and non-existent, the order will be sustained if the Court is satisfied that the authority would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant or non-existing grounds could not have affected the ultimate decision [see *State of Orissa* v. *Bidyabhushan Mohapatra* [AIR 1963 SC 779].

40. The Constitution Bench has clearly laid down that even after the charges which have been proved, justify imposition of penalty, the Court may not exercise its power of judicial review.

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9 AIR 1976 SC 232

41. So far as the submission which has prevailed upon the High Court holding that the order passed by the disciplinary/appellate authority was a non-speaking order passed with non-application of mind, in our considered view, is not factually supported by the material available on record.

42. In the case on hand, the disciplinary/appellate authority was not supposed to pass a judgment however while passing the order dated 24th July, 1999, the disciplinary authority had taken note of the record of enquiry, including self-contained enquiry report dated 22nd May, 1999 and his prima facie opinion dated 29th June, 1999 which was made available to the respondent employee and after affording reasonable opportunity of hearing and meeting out the written objections raised by the delinquent, expressed its brief reasons in upholding the finding of guilt and penalty of dismissal by its order dated 24th July, 1999. That apart, the appeal preferred by the respondent delinquent was examined by the appellate

authority as it reveals under para 3(i) to (viii) in upholding the finding of guilt recorded by the enquiry officer in his report dismissing the respondent employee from service, rejected by

order dated 15th November, 1999. After detailed discussion, we are unable to accept the finding recorded by the High Court under its impugned judgment setting aside the orders passed by the disciplinary/appellate authority which deserves to be set aside.

43. Before we conclude, we need to emphasize that in banking business absolute devotion, integrity and honesty is a *sine qua non* for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24th July, 1999 confirmed in departmental appeal by order dated 15th November, 1999.

44. Consequently, the appeals deserve to succeed and are accordingly allowed and the judgment of the High Court impugned dated 13th September, 2018 is hereby set aside. No costs.

45. Pending application(s), if any, stand disposed of.

……………………………………….J.
(L. NAGESWARA RAO)

……………………………………….J.
(HEMANT GUPTA)

……………………………………….J.
(AJAY RASTOGI)

NEW DELHI
JANUARY 05, 2021