

(2026) 08 DEL CK 4505

In the Delhi High Court, Principal Bench, New Delhi

Case No : W.P.(C) 10502/2017, CM APPL. 42977/2017, CM APPL. 16274/2018

Federal Bank Ltd.

APPELLANT

Vs

Vikas Gupta

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Constitution of India — Article 226, 227
Industrial Disputes Act, 1947
Indian Evidence Act

Citation : (2026) 08 DEL CK 4505

Hon'ble Judges : Shail Jain, J

Bench : Single Bench

Advocate : Mr. Rajat Arora, Mr. Niraj Kumar, Mr. Sourabh Mahla, Mr. Sahil A. Garg Narwana, Mr. Kapil Gaba, Mr. Kesri Nandan V. Atri

Judgement

Shail Jain, J

1. The present Writ Petition under Article 226 of the Constitution of India has been instituted by the petitioner-Bank assailing the Award dated 22.05.2017 (hereinafter '*the Impugned Award*') passed by the learned Central Government Industrial Tribunal-cum-Labour Court-I, Delhi (hereinafter '*the tribunal*'), in Industrial Dispute No.147/2003 under the Industrial Disputes Act, 1947 (hereinafter '*the Act*').

2. By the impugned Award, the CGIT answered the industrial reference in favour of the respondent-workman and held that the order of dismissal from service was illegal and unjustified. Consequently, CGIT directed reinstatement of the respondent in service with continuity of service, all consequential benefits and full back wages.

3. The petitioner also assails the earlier order dated 28.03.2012 passed by the tribunal, whereby the domestic enquiry against the workman was held to be unfair and vitiated.

4. The petition has been filed on behalf of the petitioner-Bank through its authorized officer, namely the Vice President and Zonal Head of its New Delhi Zonal Office, who is stated to be duly empowered under a General Power of Attorney to institute and prosecute the present proceedings.

FACTUAL BACKGROUND:

5. The brief facts and procedural history of the present case are that the respondent joined the services of the petitioner-Bank as a Clerk on 16.10.1998. He was initially posted at the Gurgaon Branch, which functioned under the administrative control of the Regional Office at New Delhi. According to the petitioner, during the course of his service, allegations of misconduct came to be levelled against the respondent, culminating in the initiation of disciplinary proceedings.

6. In pursuance to which, the first charge-sheet dated 13.10.2001 was issued to the respondent alleging that, on 04.09.2001, he had entered into a verbal altercation with the Manager (Administration) and the Senior Manager of the Branch. It was alleged that the incident occurred when an office order concerning allocation of duties was issued to another employee, namely Ms. Rachna Chadha. The petitioner alleged that the respondent displayed unruly and boisterous behaviour, raised his voice in the branch premises and acted in a manner unbecoming of a bank employee.

7. Shortly thereafter, a second charge-sheet dated 31.10.2001 was issued against the respondent. The allegations therein pertained to the opening of certain savings bank accounts. According to the petitioner, the respondent had introduced a few persons for opening accounts, one of whom was alleged to be a fictitious person. It was further alleged that the respondent had knowingly facilitated the opening of such accounts with the intention of enabling fraudulent withdrawal of funds and had thereby committed acts amounting to gross misconduct, dishonesty, wilful insubordination and conduct prejudicial to the interests of the Bank.

8. The respondent denied the allegations contained in both charge-sheets. The petitioner thereafter initiated a departmental enquiry. An Enquiry Officer was appointed to enquire into the charges, and enquiry proceedings were conducted after issuance of notices to the respondent.

9. Upon completion of the enquiry, the Enquiry Officer submitted his report dated 08.04.2002, holding the charges against the respondent to have been proved. The findings recorded by the Enquiry Officer were thereafter placed before the Disciplinary Authority.

10. On 05.07.2002, the Disciplinary Authority issued a notice proposing the punishment of dismissal from service without notice. Consequently, the respondent submitted his representation against the proposed punishment.

11. After considering the enquiry report, the representation submitted by the respondent and the material available on record, the Disciplinary Authority passed an order dated 10.08.2002 imposing the penalty of dismissal from service without notice upon the respondent.

12. Aggrieved by the order of dismissal, the respondent preferred a departmental appeal before the Appellate Authority. Upon consideration of the appeal, the Appellate Authority, by order dated 20.11.2002, affirmed the findings recorded by the Disciplinary Authority and rejected the appeal, thereby maintaining the punishment of dismissal.

13. Following the dismissal of his departmental appeal, the respondent raised an industrial dispute. Conciliation proceedings having failed, the Central Government, in exercise of powers under the Act, made a reference dated 14.11.2003 to the Central Government Industrial Tribunal for adjudication on the following question:

"Whether the action of the management of Federal Bank in dismissing Shri Vikas Gupta, Clerk from 10.08.2002 is just, fair and legal? If not, to what relief and from which date the workman is entitled for?"

14. Pursuant to the reference, the respondent-workman filed a Statement of Claim before the Tribunal. The respondent asserted that he had rendered satisfactory service and that the disciplinary proceedings had been initiated solely to victimize him. It was pleaded that he had been actively associated with the employees' union and had raised issues concerning the working conditions of employees, including the practice of requiring employees to work beyond office hours without payment of overtime wages. According to the respondent, these activities had displeased the management, resulting in false complaints being engineered against him.

15. The respondent in his Statement of Claim further pleaded that both charge-sheets were baseless and had been issued with a view to victimizing him. It was alleged that the domestic enquiry was conducted in violation of the principles of natural justice. The respondent additionally submitted that the adequate opportunity to defend himself was not afforded, his defence representative was not properly accommodated, effective cross-examination of management witnesses was not permitted and he was not allowed to produce defence evidence. The respondent accordingly prayed that the enquiry proceedings and the consequential punishment be declared illegal.

16. The petitioner-Bank in response filed its Written Statement contesting the claim. It denied all allegations of victimization and asserted that the respondent had repeatedly displayed indiscipline and misconduct in the discharge of his duties. The petitioner maintained that the enquiry had been conducted fairly and in accordance with the applicable service regulations and principles of natural justice. It was pleaded that the findings of the Enquiry Officer were based upon evidence and that the punishment imposed was proportionate to the gravity of

the misconduct established against the respondent.

17. The respondent filed a rejoinder reiterating the averments made in the Statement of Claim while denying those contained in the Written Statement. Upon completion of pleadings, the learned Tribunal, by order dated 23.07.2007, framed the following issues:

"(i) Whether the enquiry conducted by the respondent management is proper and fair? If not, its effect?

(ii) As per terms of reference."

18. Both parties led evidence on the preliminary issue i.e. fairness and legality of the domestic enquiry. Upon appreciation of the evidence, the Tribunal passed an order dated 28.03.2012, holding that the domestic inquiry suffered from violation of the principles of natural justice and was not fair and proper. Consequently, the enquiry was held to be vitiated.

19. However, in view of the settled legal position, the Tribunal granted liberty to the petitioner-management to lead evidence before it to establish the charges independently on merits.

20. Pursuant to the aforesaid order, the petitioner adduced fresh evidence before the Tribunal. The petitioner examined Shri S. Rajan, Assistant General Manager, who tendered his affidavit and relied upon various documents relating to the disciplinary proceedings and the incidents forming the subject matter of the charge-sheets. The petitioner also examined Shri P.V. Sebastian, who similarly filed his affidavit and produced documents in support of the allegations contained in the charge-sheets.

21. Both management witnesses were subjected to detailed cross-examination by the respondent.

22. In rebuttal, the respondent deposed himself by filing an affidavit in evidence denying the allegations of misconduct and disputing the correctness of the allegations contained in both charge-sheets. The respondent also faced cross-examination by the petitioner.

23. After completion of oral evidence, both parties filed written submissions before the Tribunal in support of their respective cases.

24. Upon consideration of the pleadings, oral and documentary evidence, and the submissions advanced by the parties, the learned Tribunal passed the impugned Award dated 22.05.2017. The Tribunal held that, after the domestic enquiry had been declared vitiated, the petitioner had failed to establish the charges independently before the Tribunal.

25. Consequently, the learned Tribunal directed reinstatement of the respondent in service with continuity of service, all consequential benefits and full back wages.

26. Aggrieved by the Award dated 22.05.2017 and order dated 28.03.2012 the petitioner has preferred the present writ petition.

SUBMISSIONS OF PARTIES:

On behalf of the Petitioner-Bank:

27. Learned counsel appearing on behalf of the petitioner-Bank assailed the impugned Award, contending, at the outset, that the learned Tribunal has returned findings which are contrary to the evidence available on record and the settled principles governing adjudication of disciplinary proceedings. It was submitted that the impugned Award proceeds on a mis-appreciation of evidence, applies incorrect legal standards while examining the domestic enquiry, and grants reliefs which are wholly disproportionate to the facts and circumstances of the case.

28. Elaborating the challenge to the findings returned in relation to the first charge-sheet, learned counsel submitted that the learned Tribunal committed a manifest error in discarding the testimony of the Bank's witnesses, namely, Sh. S. Rajan, Assistant General Manager, and Sh. P.V. Sebastian, solely on the premise that they were "interested witnesses". It was argued that both the aforesaid officials were the only persons present during the incident dated 04.09.2001 and were, therefore, the most natural witnesses to depose regarding the misconduct alleged against the Respondent. Merely because they were officers of the petitioner-Bank could not, by itself, furnish a valid ground to discard their testimony.

29. Learned counsel further submitted that the Tribunal also failed to appreciate the gravity of the allegations forming the subject matter of the second charge-sheet dated 31.10.2001. It was contended that the material on record clearly established that the Respondent had introduced a person represented as "Prakash Bhadoria" for opening a savings bank account, whereas the individual so introduced was not the person he was purported to be. It was argued that a bank officer facilitating the opening of an account through false introduction commits a serious breach of fiduciary obligations, and the misconduct cannot be trivialised merely because no immediate pecuniary loss was ultimately suffered either by the Bank or by any account-holder.

30. Assailing the findings of the learned Tribunal on the issue of victimisation, learned counsel submitted that the conclusion reached in the impugned Award is wholly unsustainable in law. It was argued that the Respondent neither pleaded the necessary particulars constituting victimisation nor adduced any evidence whatsoever to establish that the disciplinary proceedings were actuated by mala fides arising out of any trade union activity. It was submitted that victimisation is a serious allegation carrying grave civil consequences and cannot be inferred on mere conjectures or surmises. Reliance was placed upon **Hamdard Dawakhana Wakf v. Its Workmen**, 1962 (2) LLJ 772, and **Bharat Iron Works v.**

Bhagubhai Balubhai Patel, AIR 1976 SC 98, to contend that such a plea must be specifically pleaded and established by cogent evidence. It was further submitted that the Respondent did not even disclose before the Tribunal the name of the trade union of which he claimed to be a member, thereby rendering the finding of victimisation entirely speculative and unsupported by the record.

31. Learned counsel next assailed the order dated 28.03.2012 whereby the domestic enquiry was held to be unfair and improper. It was submitted that the learned Tribunal adopted an unduly pedantic approach while examining proceedings which are essentially fact-finding in nature and are not governed by the strict rules of evidence applicable to judicial trials.

32. Learned counsel further submitted that, even assuming any infirmity in the disciplinary proceedings, the relief of reinstatement with continuity of service and full back wages is wholly disproportionate. It was contended that despite the Respondent having rendered only about four years of service, the impugned Award effectively grants service benefits for nearly fifteen years, without regard to the settled principles governing such relief.

33. It was further contended that the learned Tribunal has awarded full back wages in a mechanical manner, overlooking the well-settled principle that reinstatement does not automatically entail an award of back wages. Learned counsel submitted that while determining entitlement to back wages, the Court is required to consider several relevant factors including the length of service rendered, the nature of employment, the time elapsed since termination and the financial implications upon the employer.

34. Learned counsel lastly submitted that the Respondent had failed to discharge the initial burden cast upon him to establish that he remained unemployed during the interregnum or that he had made any reasonable effort to secure alternative employment. It was argued that no pleadings or evidence whatsoever were produced before the learned Tribunal regarding his alleged unemployment, and in the absence of such foundational material, no occasion arose for the burden to shift upon the petitioner-Bank. Reliance was placed upon **Kendriya Vidyalaya Sangathan v. S.C. Sharma**, AIR 2005 SC 768, and **Managing Director, Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale**, 2009 (1) LLN 770, to contend that the grant of back wages in the absence of proof of non-employment is contrary to the settled position of law.

35. On the aforesaid grounds, learned counsel submitted that the impugned Award is vitiated by errors of law as well as perversity in appreciation of evidence and, therefore, warrants interference by this Court in exercise of its writ jurisdiction.

On behalf of the Respondent:

36. Learned counsel appearing on behalf of the Respondent, at the outset, raised a preliminary objection to the maintainability of the present writ petition. It was

submitted that the petition does not disclose any jurisdictional error, patent illegality or perversity in the impugned Award so as to warrant interference under Articles 226 and 227 of the Constitution of India. According to learned counsel, the petitioner-Bank, under the guise of invoking the writ jurisdiction of this Court, merely seeks a re-appreciation of the oral and documentary evidence already considered by the learned Industrial Tribunal. It was submitted that such an exercise is wholly impermissible in writ proceedings, where interference with findings of fact is confined only to cases where the findings are based on no evidence, suffer from patent perversity, or are vitiated by jurisdictional error or violation of the principles of natural justice. In support of the aforesaid submissions, reliance was placed upon **Chandravarkar Sita Ratna Rao v. Ashalata S. Guram**, (1986) Supp SCC 315, and **G.M., ONGC, Silchar v. ONGC Contractual Workers Union**, AIR 2008 SCW 3996.

37. Learned counsel further submitted that the challenge mounted by the petitioner-Bank to the order dated 28.03.2012, whereby the domestic enquiry was held to be unfair and improper, is itself belated and legally impermissible. It was argued that the petitioner never questioned the said order when it came to be passed and, on the contrary, accepted the same without demur, participated in the subsequent proceedings before the learned Tribunal, and availed the opportunity granted to lead independent evidence in support of the charges. Having consciously elected to prove the charges afresh before the Tribunal and having failed to do so, it was submitted that the petitioner cannot now be permitted to reopen the correctness of the order dated 28.03.2012 merely because the final Award has gone against it.

38. On merits, learned counsel submitted that the contention of the petitioner that the testimony of Sh. S. Rajan and Sh. P.V. Sebastian was discarded merely because they were employees of the Bank is factually incorrect and contrary to the record. Drawing attention to paragraphs 13 to 16 of the impugned Award, learned counsel submitted that the learned Tribunal has undertaken a detailed appreciation of their evidence and has assigned cogent reasons for not accepting the version put forth by the petitioner. It was pointed out that the complaint allegedly made by Sh. P.V. Sebastian was found to have been lodged after an unexplained delay, thereby creating doubt regarding its spontaneity and credibility. It was further observed by the Tribunal that no independent witness had been examined to corroborate the alleged incident of misconduct, whereas the material on record indicated that disturbances in the concerned branch commenced only after the posting of the aforesaid officials. It was, therefore, submitted that the findings recorded by the Tribunal are reasoned findings based upon appreciation of evidence and cannot, by any stretch, be characterised as findings based on no evidence or as perverse so as to justify interference in writ jurisdiction.

39. Learned counsel next submitted that the challenge to the findings recorded in relation to the second charge-sheet is equally misconceived. It was contended

that the learned Tribunal has, at paragraph 17 of the impugned Award, examined the documentary evidence in detail, including Ex. WW-1/17 and the connected documents, and has returned a categorical finding that the account in question was neither fictitious nor forged. It was submitted that the Tribunal found that the signatures appearing on the account opening form and the subsequent closure application were similar and genuine, and further took note of the fact that the complainants themselves had withdrawn their complaints. Learned counsel further submitted that the petitioner-Bank failed to explain the fate of the cheques issued by the Provident Fund authorities in favour of the alleged account holder, which circumstance was also considered by the Tribunal while concluding that the allegations had not been substantiated. It was, therefore, argued that these are findings resting upon documentary evidence and cannot be displaced merely because the petitioner seeks a different appreciation of the material available on record.

40. Refuting the challenge to the finding of victimisation, learned counsel submitted that the contention that there were neither pleadings nor evidence in support thereof is wholly unfounded. It was argued that the circumstances indicating victimisation emerged from the evidence led by the parties during the course of the proceedings and were duly considered by the learned Tribunal while returning its findings. According to learned counsel, the Tribunal found that repeated allegations unsupported by credible evidence had been levelled against the Respondent and that the surrounding circumstances justified the inference drawn in the impugned Award. It was further submitted that the decisions relied upon by the petitioner-Bank, namely ***Hamdard Dawakhana Wakf (supra)*** and ***Bharat Iron Works(supra)***, turned upon the peculiar facts and pleadings in those cases and do not lay down any proposition which would render the finding recorded by the Tribunal in the present case unsustainable.

41. Learned counsel further submitted that the contention regarding non-employment is equally devoid of merit. It was argued that the Respondent had specifically stated during his cross-examination, as also in the written submissions filed before the learned Tribunal, that after his dismissal he remained without any regular employment and could secure only occasional and casual work for sustenance. Attention was invited to Annexures P-16 and P-17 filed by the petitioner itself to demonstrate that such evidence formed part of the record. It was submitted that once the Respondent had discharged the initial burden of asserting and deposing regarding his unemployment, the burden shifted upon the petitioner-Bank to establish gainful employment by leading rebuttal evidence, which admittedly was never done.

42. Learned counsel also opposed the petitioner's challenge to the relief of reinstatement with continuity of service and consequential benefits. It was submitted that the petitioner proceeds on an erroneous premise in comparing the Respondent's past service of approximately four years with the period for which consequential benefits have been awarded. According to learned counsel, once

the dismissal itself has been held to be illegal and vitiated by victimisation, the Respondent is entitled to be placed, as far as possible, in the same position in which he would have continued but for the illegal action of the employer. It was argued that the relief granted by the learned Tribunal is merely a consequence flowing from the finding that the dismissal was unlawful and cannot be characterised as arbitrary or disproportionate merely because the litigation remained pending for a considerable period.

43. Learned counsel lastly submitted that the order dated 28.03.2012, holding the domestic enquiry to be unfair and improper, is itself a detailed and reasoned order which attained finality insofar as the petitioner-Bank is concerned. It was reiterated that the petitioner accepted the said order, led fresh evidence before the learned Tribunal in support of the charges and fully participated in the adjudication on merits. Having failed to establish the allegations even after being afforded such opportunity, the petitioner cannot now seek to assail the said order collaterally in the present writ proceedings. It was, therefore, submitted that the impugned Award suffers from no legal infirmity warranting interference under Articles 226 or 227 of the Constitution and the present petition deserves to be dismissed.

DISCUSSION & ANALYSIS :

44. Having heard learned counsel for the parties and perused the impugned Award, the pleadings and the material placed on record, this Court finds that the controversy requires consideration at two distinct but interconnected levels. The first concerns the legality and fairness of the domestic enquiry conducted against the respondent-workman. The second concerns the manner in which the learned Tribunal, after permitting the petitioner-management to lead evidence independently on the charges, appreciated such evidence and arrived at the conclusion that the misconduct alleged against the respondent had not been established.

45. Before proceeding further, it is necessary to bear in mind the limited scope of judicial review available to this Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution. This Court does not sit as an appellate authority over an Industrial Tribunal and ordinarily does not substitute its own appreciation of evidence for that of the Tribunal. However, judicial review is available where the decision-making process suffers from an error of law, violation of the principles of natural justice, application of an erroneous legal standard, or where the conclusions are such as cannot reasonably follow from the material on record. A finding of fact does not become immune from judicial review merely because it is described as such, where the process by which the finding has been arrived at is legally flawed.

46. In the present case, the learned Tribunal initially proceeded to examine the fairness of the domestic enquiry as a preliminary issue. Upon considering the material then available, it concluded that the enquiry had not been conducted

fairly and was violative of the principles of natural justice. Consequently, the petitioner-management was granted an opportunity to establish the charges independently by leading evidence before the Tribunal. The Award records that, pursuant thereto, the management examined Shri S. Rajan, Assistant General Manager, as MW-3 and Shri P.V. Sebastian as MW-4, while the respondent examined himself as WW-1.

47. The first question, therefore, is whether the domestic enquiry was, in fact, vitiated for violation of the principles of natural justice.

48. Reliance in this regard can be placed upon the judgment of Hon'ble the Supreme Court rendered in **Sur Enamel and Stamping Works Ltd. v. Workmen**, 1963 SCC OnLine SC 97, wherein the essential ingredients of a domestic enquiry have been laid down. The relevant extract reads as under:

"4. It has been laid down by this Court in a series of decisions that if an industrial employee's services are terminated after a proper Domestic enquiry held in accordance with the Rules of natural justice and the conclusions reached at the enquiry are not perverse the Industrial Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined — ordinarily in the presence of the employee — in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the Domestic Tribunal." (Emphasis applied)

49. The requirements of a fair disciplinary enquiry may, for present purposes, be broadly examined through three essential safeguards. First, whether the delinquent employee was afforded a reasonable and adequate opportunity of hearing and of duly representing his case. Second, whether he was afforded an effective opportunity to cross-examine the witnesses relied upon by the management. Third, whether the relevant documents and material relied upon in support of the charges were made available to him so as to enable him to effectively defend himself.

50. These requirements, however, are not to be tested by importing into a domestic enquiry the strict procedural requirements applicable to a criminal trial. A departmental enquiry is essentially a fact-finding proceeding. What is indispensable is a fair opportunity to meet the case set up by the management and a fair procedure for determining the allegations. The delinquent is not entitled to insist upon a particular procedure or a particular result merely because he disputes the allegations against him.

51. Examined from this perspective, the conclusion of the learned Tribunal that the domestic enquiry was vitiated does not *prima facie* appear to be borne out from the enquiry proceedings. The enquiry report, which was available before the learned Tribunal, indicates that the respondent was afforded an opportunity to defend himself and was represented in the proceedings. He was permitted to participate through his representative, contest the allegations, examine the material placed before the Enquiry Officer and challenge the evidence led by the management.

52. Equally significant is the fact that the management witnesses were subjected to examination and the respondent was afforded an opportunity to cross-examine them. The record does not disclose that the respondent was prevented from putting questions to any management witness or that a request for cross-examination was rejected by the Enquiry Officer. There is also no material to establish that the respondent was prohibited from advancing his defence or from challenging the documents relied upon by the management.

53. The distinction between **denial of an opportunity** and **failure to avail an opportunity** is fundamental. The principles of natural justice require the employer to provide a reasonable and effective opportunity to the delinquent employee. The principles do not require the Enquiry Officer to compel the delinquent to utilise every opportunity afforded to him. Where the record demonstrates that an opportunity was duly provided, but the delinquent chose not to utilise it, or did not utilise it to the extent he could have, such conduct cannot subsequently be characterised as a denial of natural justice.

54. The same principle applies to the documents relied upon by the management. The respondent was entitled to know the material upon which the charges were founded and to have an opportunity to examine and contest such material. The record, however, indicates that the relevant documents relied upon by the management were produced before the Enquiry Officer. The respondent was afforded an opportunity to examine and challenge them. What the respondent was required to establish was not merely that, in his assessment, the documents were insufficient to prove the charges, but that relevant material relied upon against him had not been supplied or that its non-supply caused prejudice to his defence.

55. No such demonstrable prejudice is *prima facie* apparent from the material before this Court. The respondent's case that the material was not sufficient to

establish the charges goes to the **merits of the charges** and not to the **fairness of the procedure** by which those charges were enquired into. These two concepts cannot be conflated.

56. The Award records the respondent's allegation that he was not afforded the opportunity to cross-examine material witnesses and was not permitted to produce his own witnesses. However, such an allegation was required to be tested against the actual enquiry proceedings. A mere assertion that the enquiry was conducted in a biased, hurried or prejudicial manner cannot, without more, establish violation of natural justice. There must be a demonstrable denial of reasonable opportunity or prejudice resulting therefrom.

57. The charge-sheets themselves also set out the allegations with sufficient particularity. The first charge-sheet identified the alleged incident of 04.09.2001, the circumstances concerning allocation of duties to Ms. Rachna Chandna, the alleged altercation with superior officers, the alleged unruly conduct and the alleged refusal to obey instructions. The second charge-sheet specifically referred to the alleged introduction by the respondent of persons for opening savings bank accounts and the allegation that such introduction facilitated impersonation and fraud. Therefore, it would not be incorrect to observe at this stage that the respondent was thus aware of the case he was required to meet.

58. The aforesaid discussion also brings into focus an important distinction which appears to have been blurred in the proceedings before the Tribunal *viz* **the validity of the domestic enquiry and the proof of the charges are two separate questions.**

59. The first concerns the fairness of the procedure adopted against the delinquent employee i.e., whether he was informed of the allegations, given reasonable opportunity to represent himself, permitted to cross-examine the management witnesses and afforded access to the material relied upon against him. The second concerns the evidentiary question whether the material placed before the Enquiry Officer is sufficient to establish the misconduct.

60. A charge may ultimately fail for want of sufficient evidence even though the enquiry was conducted fairly. Conversely, the fact that a delinquent employee has been afforded a fair enquiry does not mean that the charges automatically stand proved. The two questions cannot be conflated.

61. In the present case, the learned Tribunal appears to have first treated the enquiry as procedurally defective without identifying a demonstrable denial of opportunity and thereafter, while examining the charges independently, applied an unduly restrictive approach to the evidence led by the management. The cumulative effect is that the impugned Award rests materially upon legal standards which cannot be sustained.

62. Furthermore, learned counsel for the respondent submits that the petitioner cannot, at this stage, assail the order whereby the domestic enquiry was held to

be vitiated. The said order was passed by the Tribunal at an earlier stage of the proceedings and was never challenged by the petitioner at the appropriate stage or within the time available to it. On the contrary, the petitioner consciously accepted the said order, availed the liberty granted by the Tribunal and proceeded to lead fresh evidence in support of the charges.

63. This Court finds considerable force in the aforesaid submission. The petitioner, having consciously elected to accept the order holding the domestic enquiry to be vitiated and having thereafter participated in the proceedings pursuant to the liberty granted by the Tribunal, cannot, after having contested the matter on merits and suffered an adverse Award, seek to reopen the correctness of the said interlocutory order in proceedings under Article 226 of the Constitution. Having chosen to proceed with the adjudication on the basis of the said order and having taken its chance before the Tribunal, the petitioner cannot be permitted to approbate and reprobate by challenging, at this belated stage, the very foundation upon which it had elected to proceed.

64. Accordingly, this Court is not inclined to examine the correctness of the Tribunal's earlier order whereby the domestic enquiry was held to be vitiated. The said order, having not been challenged by the petitioner at the appropriate stage, has attained finality *inter partes* for the purposes of the subsequent proceedings. The scope of the present petition is, therefore, confined to examining the legality and sustainability of the final Award passed by the Tribunal on the basis of the proceedings subsequently undertaken pursuant to the said order. The challenge to the earlier order holding the domestic enquiry to be vitiated cannot be permitted to be introduced collaterally in the present proceedings against the final Award.

65. Additionally, the finding of the learned Tribunal that the domestic enquiry was vitiated on account of violation of natural justice, therefore, *prima facie* is not just, but the said finding, having been accepted while leading evidence to prove the misconduct of the Respondent, cannot now be re-agitated or reconsidered by this Court.

66. This brings the Court to the second aspect, namely, the manner in which the learned Tribunal appreciated the evidence after granting the petitioner-management an opportunity to establish the charges independently. It is at this stage that the reasoning in the impugned Award requires closer examination.

67. In respect of the first charge-sheet, the management examined Shri S. Rajan as MW-3 and Shri P.V. Sebastian as MW-4. The Award records that MW-3 stated that the incident dated 04.09.2001 took place within his view and that he was present in the branch. He attributed the commotion to the respondent and Ms. Rachna Chandna. The Award further records that MW-4 deposed regarding the incident and the surrounding circumstances, although in cross-examination he clarified that the actual incident had not taken place in his presence.

68. Upon a careful perusal of the evidence available on record, this Court finds

that the Tribunal has failed to duly appreciate the presence and involvement of MW-4 in the incident in question. The record does not support the Tribunal's observation that the incident did not take place in the presence of MW-4. On the contrary, MW-4 was himself directly involved in the incident. It was his oral directions regarding allocation of work that the workmen allegedly refused to comply with, whereafter MW-4, the Manager (Administration), came with the printed orders relating to the allocation of work. Thus, MW-4 was not a mere witness to the incident but was himself the person against whom the alleged altercation had taken place and, in that sense, was the immediate complainant. The Tribunal's observation regarding the presence and involvement of MW-4, therefore, does not appear to have been arrived at upon a proper consideration of the evidence on record and cannot, for this reason, be sustained.

69. The learned Tribunal nevertheless attached considerable significance to the fact that no independent witness had been produced. It further treated the complaint made by MW-4 on 06.09.2001 in respect of the incident of 04.09.2001 as an act of afterthought and took note of the fact that, according to the evidence, there existed considerable tension between the Bank management and the employees' union. The Tribunal also noticed that no subordinate employee had made a complaint regarding the alleged misconduct.

70. In the opinion of this Court, these circumstances could certainly have been considered while assessing the weight of the evidence, but they could not have been converted into legal presumptions against the management. There is no rule of law that testimony of a management witness must necessarily be corroborated by an independent witness before it can be relied upon.

71. The mere fact that a witness is an officer or employee of the management does not, by itself, render him an "interested witness" whose testimony is liable to be discarded. The correct approach is to examine the testimony on its own merits, consider its consistency, test it in cross-examination, examine the surrounding circumstances and determine whether the witness has any demonstrated reason to falsely implicate the delinquent employee.

72. Reliance in this regard can be placed upon the judgment of Hon'ble the Supreme Court in **State of Haryana v. Rattan Singh**, (1977) 2 SCC 491, wherein, the Supreme Court upheld a domestic enquiry finding a bus conductor guilty of not issuing tickets, based solely on the checking inspector's report and testimony, without examining the passengers concerned. The Apex Court held that domestic enquiries are not bound by the strict rules of the Evidence Act, and any material logically probative to a prudent mind including hearsay with reasonable nexus and credibility is admissible. The mere absence of independent corroboration from passenger-witnesses does not vitiate an otherwise credible finding based on the sole testimony of an interested departmental witness. The relevant paragraph is extracted below:

"4. It is well settled that 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. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground." (emphasis applied)

73. Additionally, the learned Tribunal's approach becomes particularly difficult to sustain when considered against the evidence of the respondent himself. The respondent chose to examine himself as WW-1 in rebuttal. His evidence was naturally directed towards establishing his own defence and denying the allegations levelled against him. His direct interest in the outcome did not render his testimony inadmissible or incapable of consideration. The same principle necessarily applies to the evidence led by the management.

74. In other words, if the testimony of the respondent could be evaluated despite his direct interest in the outcome of the proceedings, the testimony of the management witnesses could not be rejected merely because they were officers of the Bank. The evidence of both sides was required to be subjected to the same test of credibility and reliability.

75. The absence of an independent witness may, in an appropriate case, be a circumstance relevant to the weight of the evidence. It cannot, however, be elevated into an inflexible rule that an allegation of misconduct within a workplace must fail in the absence of an independent third-party witness as has also been held in **Rattan Singh (supra)**. Moreover, workplace incidents ordinarily take place in the presence of co-employees and officers of the employer. The mere fact that such witnesses are employees of the employer does not render their evidence legally incapable of consideration.

76. Similarly, the fact that the complaint was made two days after the incident

could be considered as a circumstance affecting credibility, but a delay of two days cannot, without examination of the surrounding circumstances, automatically render the complaint an afterthought. The Tribunal was required to determine what significance, if any, should be attached to such delay in the totality of the evidence.

77. The same applies to the alleged tension between the management and the employees' union. The existence of tension may justify a more careful scrutiny of the evidence, but it cannot itself *prima facie* establish that the management witnesses had falsely implicated the respondent. The Tribunal was required to assess whether the allegations were supported by the evidence and whether the witnesses had been materially shaken in cross-examination.

78. The approach adopted by the Tribunal thus suffers from an error of principle. It did not merely prefer one version of facts over another; it attached an impermissible legal consequence to the status of the management witnesses and to the absence of independent witnesses. The evidentiary worth of the testimony had to be determined on its intrinsic merits.

79. The same issue arises, though in a somewhat different form, in relation to the second charge-sheet. The learned Tribunal concluded that there was no evidence worth the name to establish that the respondent had fabricated any account. It relied upon Ex. WW-1/7, the withdrawal of complaints, the alleged silence of the management regarding the PF cheques, the similarity of signatures on the account-opening and closure documents and the fact that the relevant documents contained identity cards and other particulars. The Tribunal consequently concluded that the accounts were genuine and that there was no role played by the respondent in their opening or closure.

80. The Tribunal was undoubtedly required to examine this documentary evidence. However, in doing so, it appears to have approached the charge substantially from the standpoint of establishing the criminal offences of forgery and cheating. The charge-sheet, as reproduced in the Award, alleged that the respondent had introduced persons for opening accounts and, by doing so, had facilitated impersonation and fraud and acted prejudicially to the interests of the Bank. The question before the Tribunal was whether the misconduct specified in the charge-sheet stood established on the standard applicable to a departmental proceeding.

81. The standard applicable to a domestic disciplinary proceeding is not that of proof beyond reasonable doubt. The Tribunal itself correctly recognised this position in the Award. Yet, while considering the second charge, it observed that evidence regarding forgery or cheating must be cogent and clear and proceeded to examine the matter substantially as though the management was required to establish a criminal case.

82. The question, therefore, was not simply whether the Bank had proved that a criminal offence of forgery or cheating had been committed. The relevant inquiry

was whether, on the evidence available, the respondent's conduct in introducing the account-holders and the surrounding circumstances established the particular acts of misconduct alleged against him.

83. The Tribunal was entitled to take into account the subsequent withdrawal of complaints, the similarity of signatures, the documents accompanying the account-opening forms and the fact that the accounts were subsequently closed. But these circumstances were required to be weighed against the entire evidence concerning the respondent's role as introducer, the allegations concerning the identity of the account-holders, the PF cheques and the explanation furnished by the respondent.

84. Similarly, the absence of the alleged aggrieved account-holder as a witness could be considered while evaluating the weight of the management's case, but it could not be treated as an indispensable legal requirement for proof of departmental misconduct. Nor could the fact that the alleged fraud was detected at an early stage, or that the Bank did not initiate criminal action against the account-holders, by itself conclusively establish that the respondent had no role in the conduct alleged against him.

85. The Tribunal was therefore required to consider whether the totality of the evidence, viewed on the applicable standard of preponderance of probabilities, established the misconduct alleged. The approach of testing the allegations as though the Bank were required to prove criminal offences of forgery and cheating beyond reasonable doubt was legally erroneous.

86. More importantly, this Court has found that the foundational conclusion regarding violation of natural justice is itself *prima facie* unsustainable. Participation by the petitioner in the subsequent proceedings, while relevant to the procedural history of the case, cannot prevent this Court from examining whether the final Award has been rendered on an erroneous legal foundation.

87. At the same time, this Court does not consider it appropriate to itself determine whether the respondent is guilty of either of the charges. The exercise of jurisdiction under Articles 226 and 227 does not warrant this Court substituting its own appreciation of the entire evidence for that of the Industrial Tribunal, particularly when the Tribunal has not considered the evidence in accordance with the correct legal principles identified herein.

88. Once this Court is of the opinion that the observation of the Tribunal holding the domestic enquiry to be vitiated is *prima facie* unsustainable and that the findings on the merits have also been arrived at by applying erroneous standards to the evidence on record, the direction for reinstatement with continuity of service and consequential benefits cannot be permitted to stand.

89. The question of proportionality of punishment, reinstatement, continuity of service, consequential benefits and back wages would necessarily depend upon the ultimate determination as to whether the charges are established and

whether the punishment imposed by the management is legally sustainable. These questions are, therefore, best left open for consideration by the learned Tribunal upon fresh adjudication.

90. This Court is also not inclined to examine at this stage the competing submissions regarding the respondent's alleged unemployment and the burden relating to back wages. Those questions would become relevant only after the legality of the dismissal is finally determined.

91. In these circumstances, the appropriate course is not to finally determine the charges in writ jurisdiction but to set aside the impugned Award and remit the matter to the learned Tribunal for fresh adjudication. Such a remand would ensure that the respondent's defence is fully considered while simultaneously ensuring that the petitioner-management's evidence is assessed without applying an erroneous legal standard.

CONCLUSION:

92. For the reasons recorded hereinabove, this Court is of the considered view that the learned Tribunal did not properly appreciate the settled principles governing departmental enquiries while holding the domestic enquiry to be vitiated on the ground of violation of the principles of natural justice. However, no opinion is being expressed on the correctness of the order dated 28.03.2012, whereby the domestic enquiry was held to be vitiated, as the said order was not challenged by the petitioner at the appropriate stage and has, therefore, attained finality.

93. The learned Tribunal further fell into error in its approach to the evidence led by the management. The mere fact that MW-3 and MW-4 were officers of the petitioner-Bank did not render their testimony inherently unreliable or incapable of being relied upon. The absence of independent witnesses, the delay in lodging the complaint, or the existence of tension between the management and the union in the absence of direct evidence could be relevant circumstances for assessing the weight of the evidence, but none could constitute an inflexible rule requiring rejection of the management's case.

94. In particular, the evidence of MW-3, who according to the Award, claimed to have been present at the incident of 04.09.2001, required assessment on its own merits. Similarly, in relation to the second charge-sheet, the documentary evidence concerning the accounts, the account-opening and closure forms, the complaints and their withdrawal, and the alleged PF cheques required consideration in their entirety and on the standard applicable to a departmental proceeding, rather than by importing the standard applicable to proof of criminal offences of forgery or cheating.

95. The learned Tribunal was required to maintain a clear distinction between the fairness of the domestic enquiry and the sufficiency of evidence to establish the charges. The two inquiries having been materially conflated, the impugned Award

cannot be sustained.

96. Accordingly, the impugned Award dated 22.05.2017 passed by the learned Central Government Industrial Tribunal-cum-Labour Court-I, Delhi, in I.D. No.147/2003 is set aside.

97. The matter is remanded to the learned Tribunal for fresh adjudication in accordance with law. The learned Tribunal shall reconsider the reference afresh, keeping in view the observations contained in the present judgment. It shall assess the evidence of the management witnesses on its intrinsic merits and shall not reject their testimony merely because they are employees or officers of the petitioner-Bank. At the same time, it shall remain free to scrutinise their evidence with due care, consider the effect of cross-examination, the contemporaneous documents and all relevant surrounding circumstances.

98. The learned Tribunal shall thereafter determine, in accordance with law, whether the charges stand established and, depending upon such determination, whether the order of dismissal is just, fair and legal. The consequential questions concerning proportionality of punishment, reinstatement, continuity of service, consequential benefits and back wages shall also be considered, if they arise.

99. It is clarified that this Court has not expressed any final opinion on the merits of either of the charges, the allegation of victimisation, or the quantum and nature of relief to which the respondent may ultimately be entitled. The observations contained herein are confined to the legal errors in the approach adopted by the learned Tribunal and shall not be construed as a finding either of guilt or innocence.

100. Considering the considerable period for which the industrial dispute has remained pending, the learned Tribunal is requested to endeavour to dispose of the reference expeditiously, preferably within a period of six months from the date of receipt of a copy of this judgment.

101. The writ petition is accordingly allowed in the aforesaid terms. Pending application(s), if any, also stand disposed of.

102. There shall be no order as to costs.